



YEARBOOK ON HUMAN RIGHTS FOR 1966

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CONTENTS

INTRODUCTION	vii
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PART I

STATES

	<i>Page</i>		<i>Page</i>
ALBANIA	3	KENYA	226
ALGERIA	14	KUWAIT	234
ARGENTINA	18	LEBANON	237
AUSTRALIA	20	LESOTHO	240
AUSTRIA	23	LIECHTENSTEIN	251
BARBADOS	24	LUXEMBOURG	254
BOLIVIA	36	MADAGASCAR	255
BOTSWANA	38	MALAYSIA	259
BRAZIL	51	MALTA	264
BULGARIA	58	MAURITANIA	266
BURUNDI	60	MOROCCO	267
BYELORUSSIAN SOVIET SOCIALIST		NETHERLANDS	268
REPUBLIC	62	NEW ZEALAND	271
CAMEROON	69	NICARAGUA	273
CANADA	76	NIGERIA	278
CEYLON	82	NORWAY	284
CHAD	85	PAKISTAN	288
CHILE	86	PANAMA	292
CHINA	88	PERU	295
COLOMBIA	90	PHILIPPINES	296
COSTA RICA	91	POLAND	297
CUBA	93	REPUBLIC OF KOREA	299
CYPRUS	95	ROMANIA	300
CZECHOSLOVAKIA	97	SAN MARINO	311
DAHOMEY	99	SENEGAL	313
DENMARK	106	SIERRA LEONE	316
DOMINICAN REPUBLIC	107	SINGAPORE	319
ECUADOR	114	SOUTH AFRICA	332
ETHIOPIA	122	SPAIN	343
FEDERAL REPUBLIC OF GERMANY	123	SUDAN	348
FINLAND	137	SWEDEN	349
FRANCE	139	SWITZERLAND	350
GAMBIA	144	THAILAND	352
GUYANA	145	TOGO	356
HAITI	157	TRINIDAD AND TOBAGO	357
HONDURAS	167	TUNISIA	360
HUNGARY	175	UGANDA	363
INDIA	177	UKRAINIAN SOVIET SOCIALIST REPUBLIC ..	367
IRAN	184	UNION OF SOVIET SOCIALIST REPUBLICS ...	370
IRAQ	193	UNITED KINGDOM OF GREAT BRITAIN	
IRELAND	194	AND NORTHERN IRELAND	386
ISRAEL	197	UNITED STATES OF AMERICA	389
ITALY	215	UPPER VOLTA	394
IVORY COAST	222	VENEZUELA	395
JAMAICA	223	YUGOSLAVIA	397
JAPAN	224	ZAMBIA	407

	<i>Page</i>		<i>Page</i>
A. TRUST TERRITORIES		Territory of Christmas Islands	419
<i>Australia</i>		The Northern Territory	419
Trust Territory of Nauru	417	<i>New Zealand</i>	
Trust Territory of New Guinea	417	Tokelau Islands	420
		Niue Island	420
B. NON-SELF-GOVERNING TERRITORIES		<i>United Kingdom of Great Britain and</i>	
<i>Australia</i>		<i>Northern Ireland</i>	
Territory of Papua	419	Fiji	421

PART III

INTERNATIONAL AGREEMENTS

	<i>Page</i>
UNITED NATIONS	
International Covenant on Economic, Social and Cultural Rights	437
International Covenant on Civil and Political Rights	442
Optional Protocol to the International Covenant on Civil and Political Rights	450
Protocol relating to the Status of Refugees	452
UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION	
Recommendation concerning the Status of Teachers	455
Declaration of the Principles of International Co-operation	460
COUNCIL OF EUROPE	
Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 22 and 40 of the Convention	462
AFRICAN AND MALAGASY COMMON ORGANIZATION	
Charter of the African and Malagasy Common Organization	464
OTHER INTERNATIONAL AGREEMENTS	
Convention of Old-Age, Survivors' and Invalidity Insurance between the Principality of Liechtenstein and the Swiss Confederation	467
STATUS OF CERTAIN INTERNATIONAL AGREEMENTS	471
INDEX	475

YEARBOOK ON HUMAN RIGHTS
FOR 1966

INTRODUCTION

Part I of this twenty-first volume of the *Yearbook on Human Rights* surveys constitutional, legislative and judicial developments in 1966 affecting human rights in ninety States. Part II describes such developments in certain Trust and Non-Self-Governing Territories. Part III reproduces the texts of, or extracts from, international agreements adopted in 1966 bearing on human rights.

New constitutions were adopted in 1966 in Barbados, Botswana, the Dominican Republic, Guyana and Lesotho. Extracts therefrom, and also from the Constitution of Fiji, appear in the *Yearbook for 1966*. Each of these constitutions reflects certain of the principles set out in the Universal Declaration of Human Rights, and each contains provisions on human rights.

Other constitutional developments during 1966 referred to in the present volume include the promulgation in Nigeria of the Constitution (Suspension and Modification) Decree 1966, the approval by the Spanish people, in an *ad hoc* referendum held on 14 December 1966, of the new Organic Law of the State, and the adoption of amendments to the Constitutions of Ecuador and Nicaragua. Reference is also made to the redrafting of the Constitution of the Netherlands; a draft prepared by the Ministry of the Interior was published in May 1966.

The legislation, governmental decrees and administrative orders presented in this volume relate, *inter alia*, to the right to a nationality, freedom of movement and residence, the right to take part in the government of one's country, the right to freedom of opinion and expression, equality before the law and the equal protection of the law, the status of women and the protection of young persons. The *Yearbook* also contains legislative texts pertaining to various economic, social and cultural rights.

Matters concerning the right to a nationality were dealt with in legislation adopted in 1966 in Australia: The Nationality and Citizenship Act 1966 (No. 11 of 1966) of the Commonwealth; Brazil: Law No. 5.145 of 20 October 1966; and France: Act 66-945 of 20 December 1966, terminating as on 22 March 1967 the application of Ordinance No. 62-825 of 21 July 1962 which had provided for the granting of French nationality to persons of Algerian origin for a period of three years.

Extracts from laws relating to freedom of movement and residence appear in this edition of the *Yearbook*, including the Banishment Ordinance, 1959, of Singapore, as modified *inter alia* by the Modification of Laws (Banishment) Order, 1966, and the Law of 1966 of Yugoslavia on the Abolition of Visas for Foreign Tourists during International Tourist Year, 1967.

The right of everyone to take part in the government of his country was the subject of new legislation in 1966 in a number of countries, including Australia: The Australian Capital Territory Representation Act 1966 (No. 3 of 1966); Brazil: Law No. 4.961 of 4 May 1966, altering the Electoral Code; Denmark: Amendment of 1966 to the Statutes on Election, providing for the casting of votes by mail in Greenland in elections for Parliament; Ecuador: Decree No. 273 of 7 March 1966, promulgating the Electoral Law for the Convening, Election and Function of the National Constituent Assembly and the Regulation of 11 August 1966 on the Election of Functional Deputies to the National Constituent Assembly; Haiti: Electoral Decree of 22 October 1966; Honduras: Electoral Act No. 118 of 4 November 1966; Hungary: Act III of 1966 on the Election of Members of Parliament and Councillors; Iran: Act amending article 29 of the Senate Electoral Act; and Israel: The Local Authorities (Elections) Law of 1966.

Laws relating to freedom of opinion and expression were adopted in 1966 in Austria: the Press Law of 1966 and the Law on Broadcasting of 1966; Brazil: Law No. 4.994 of 6 April 1966 on protection afforded artists, producers of recordings and broadcasting companies, and Law No. 5.089 of 30 August 1966, prohibiting the printing and circulation of publications for children and adolescents which deal with crime, terror and violence; the Byelorussian Soviet Socialist Republic: Decision of 2 September 1966 of the Council of Ministers on royalties for the performance of dramatic and musical works; Ceylon: The Ceylon Broadcasting Act of 1966; Dahomey: Decree No. 22 bis P.R. of 21 December 1966 on the creation, attributions and organization of the Office of the High Commissioner for Information; the Federal Republic of Germany: the incorporation on 22 February 1966 into the Act concerning Freedom of the

Press and the Law of the Press of *Land Hesse* of a provision according journalists the right to refuse to reveal sources of information; Israel: The Broadcasting Authority Law of 1966; Nigeria: The Circulation of Newspapers Decree, 1966; Sierra Leone: The Cinematograph Exhibition Act, 1966; Singapore: The Essential (Control of Publications and Safeguarding of Information) Regulations, 1966 and the Sedition Ordinance, 1948 as modified *inter alia* by the Modification of Laws (Sedition) Order, 1966; and Spain: the Press and Publications Act of 18 March 1966.

Provisions dealing with the prevention of discrimination were adopted during 1966 in Australia: The Prohibition of Discrimination Act, 1966 (No. 82 of 1966) of South Australia, prohibiting in that State the practice of discrimination by reason only of the race, country of origin or colour of skin; Canada: the adoption of anti-discrimination legislation prohibiting discrimination in employment (Alberta), requiring equal pay for equal work for female and male workers (Northwest Territories) and making it an offence for employers and unions to discriminate against persons between 40 and 65 years of age solely on grounds of age (Ontario); and Mauritania: Act No. 66,138 of 13 July 1966, making any propaganda of a racial or ethnic nature punishable.

Decrees promulgated during 1966 in Nigeria affect the right to peaceful assembly and association. The Suppression of Disorder Decree 1966 (No. 4 of 1966), *inter alia*, provides that if, as regards any five or more persons gathered together in any place within a military area, any police officer or member of the armed forces is not satisfied that the occasion for the gathering is a lawful and proper one, he may order the gathering to disperse, and The Public Order Decree 1966 (No. 33 of 1966) prohibits as from the date of its commencement, i.e. 24 May 1966, the formation of a new association, by whatever name or title it may be called.

New penal codes, or amendments to existing codes, were adopted in 1966 in Algeria: Code of Penal Procedure; Finland: Act No. 176 of 25 March 1966, amending the Code of Procedure, Act No. 196 of 1 April 1966 amending the Penal Code, and Act No. 197 of 1 April 1966 amending the Act on the Implementation of the Penal Code; Madagascar: Act No. 66-008 of 5 July 1966 amending various articles of the Code of Criminal Procedure; New Zealand: The Crimes Amendment Act 1966, making some important changes in the law governing criminal procedure; and Uganda: The Penal (Amendment) Act, 1966.

The Government of China, in its contribution, makes reference to a revision of the Statute on Compensation for Wrongful Detention and Punishment, promulgated by an order of the President of 2 June 1966. Other provisions relating to the treatment of offenders and detainees were adopted in 1966 in Hungary: Legislative Decree No. 21 of 1966 on the detailed rules governing the execution of the punishment of loss of liberty and confinement under remand; Iraq: Notification No. (1) of 1966 of the Ministry of Labour and Social Affairs concerning political prisoners; Japan: Ministry of Justice Ordinance No. 4 of 1 November 1966 on partial amendments to the Prison Law Enforcement Regulation; Kenya: The Public Security (Detained and Restricted Persons) Regulations 1966; and Zambia: The Local Courts Act, 1966, The Local Courts Rules, 1966, and the Prisons Rules, 1966.

With reference to the right to a fair hearing, the Bail Reform Act, adopted by the United States Congress in 1966, aimed at removing inequities against the poor. The Act generally provides for the release of persons charged with non-capital federal offences unless it appears that they are unlikely to return to trial. The Act further gives Federal district judges discretion to impose a number of conditions on release, and provides for giving credit toward sentence for any time served in jail awaiting trial.

Laws affecting marriage were adopted in Finland: Act No. 660 of 16 December 1966; in Sierra Leone: The Foreign Marriage Recognition Act, 1966; and in Tunisia: Act No. 66-49 of 3 June 1966.

In line with the world-wide trend towards eliminating discrimination on the ground of sex, in Australia, as a result of the operation of the Public Service Act (No. 2) 1966 (No. 85 of 1966) of the Commonwealth, female officers in the Commonwealth Public Service no longer lose their permanent status when they marry; the Superannuation Act (No. 2) 1966 (No. 86 of 1966) of the Commonwealth enables married women in the Commonwealth Public Service to enjoy the same superannuation benefits as other permanent officers. In South Africa, under the Matrimonial Affairs Amendment Act, 1966, a married woman, whether under the marital power or not, may *inter alia* be a depositor in any account in a banking institution as defined in section 1 of the Banks Act, 1965.

Legislation on the protection of young persons was adopted in Brazil: Law No. 5089 of 30 August 1966, referred to above in relation to the right to freedom of opinion and expression; France: Act of 11 July 1966 making certain basic and procedural changes in the institution of adoption; Haiti: Decree of 25 February 1966 concerning adoption; Liechtenstein: Decree of 9 May 1966 concerning special protection *inter alia* for juvenile workers; and Malaysia: the Children and Young Persons (Employment) Act, 1966.

Labour legislation adopted during 1966 includes laws promulgated in Albania, Australia, Bolivia, Bulgaria, the Byelorussian Soviet Socialist Republic, Ceylon, Chad, Colombia, Ecuador, Gambia, Honduras, Hungary, Israel, Japan, Liechtenstein, Luxembourg, Netherlands, Poland, Romania, San Marino, Sudan, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and Yugoslavia.

New social legislation was adopted in 1966 in Albania, Australia, Brazil, Bulgaria, the Byelorussian Soviet Socialist Republic, Cyprus, Czechoslovakia, Finland, Honduras, Hungary, Ireland, Israel, Liechtenstein, Netherlands, Romania, Sweden, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and Venezuela.

Court decisions bearing on human rights were rendered by various courts in Argentina, Australia, Canada, Ceylon, Denmark, the Federal Republic of Germany, India, Israel, Jamaica, Japan, Kuwait, Malta, New Zealand, Thailand, Trinidad and Tobago and the United States of America.

Part II relates to Trust Territories under the administration of Australia (Trust Territory of Nauru and Trust Territory of New Guinea) and to Non-Self-Governing Territories under the administration of Australia (Territory of Papua, Territory of Christmas Islands and the Northern Territory), under the administration of New Zealand (Tokelau Islands and Niue Island), and under the administration of the United Kingdom of Great Britain and Northern Ireland (Fiji).

Part III contains the texts of, or extracts from, the following international agreements: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966; the Protocol relating to the Status of Refugees, opened for accession by the General Assembly resolution 2198 (XXI) of 16 December 1966; the Recommendation concerning the Status of Teachers and the Declaration of the Principles of International Co-operation, adopted by the Special Intergovernmental Conference on the Status of Teachers on 5 October 1966 and by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its fourteenth session, on 4 November 1966 respectively; Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 22 and 40 of the Convention, adopted by the Council of Europe on 20 January 1966; and the Charter of the African and Malagasy Common Organization, done at Tananarive on 28 June 1966. Part III also contains extracts from the Convention of Old-Age, Survivors' and Invalidity Insurance between the Principality of Liechtenstein and the Swiss Confederation, concluded at Vaduz on 3 September 1965, which entered into force on 1 July 1966; and a statement on the status of certain international agreements in the field of human rights.

Information on a specific right may be found by consulting the index to the present volume which, as in the past years, is arranged according to the rights enumerated in the Universal Declaration of Human Rights.

The designations employed and the presentation of the material in the *Yearbook* do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.

PART I

STATES

ALBANIA

NOTE¹

DECREE No. 3920 OF 21 NOVEMBER 1964

on the enjoyment of civil rights by foreigners and the application of foreign decrees

Chapter I

ENJOYMENT OF CIVIL RIGHTS BY FOREIGNERS

Article 1

Foreign citizens enjoy in the People's Republic of Albania the same civil rights as are enjoyed by Albanian citizens.

The dispositions of the State will be considered in association with separate limitations concerning citizens of those States which have established specific limitations on the civil rights enjoyed by Albanian citizens.

The dispositions of the above two paragraphs also apply to legal persons in respect of property relationships.

Article 2

Persons who have no citizenship and are domiciled in the People's Republic of Albania enjoy the same civil rights as those of Albanian citizens.

Chapter II

APPLICATION OF FOREIGN DECREES

Article 3

Judicial and executive competences

Judicial and executive competences of a person are governed by the legislation of the State of which he is a citizen.

Nonetheless, when a foreign citizen undertakes a legal action in the People's Republic of Albania for which he does not possess executive competence according to the legislation of his own State, he is considered to have judicial competence for such legal action as has an Albanian citizen, except when the legal action is concerned with family relationships, inheritance, and with the disposal of immovable objects located abroad.

Article 4

The judicial and executive competence of legal persons

The judicial and executive competence of legal persons is regulated by the legislation of the State in which they have their main centre.

Article 5

Conditions for the contract of marriage

For the contract of marriage the conditions to be satisfied are those prescribed by the legislation of the State of the prospective spouses.

Article 6

Form of the marriage contract

The form of the marriage contract is determined by the legislation of the State where the marriage takes place.

The marriage contract which takes place in a diplomatic or consular mission is governed by the legislation of the State which is represented by the diplomatic or consular mission.

A marriage contracted abroad between Albanian citizens who are domiciled in Albania is valid only when the contract takes the form of a civil marriage.

Article 7

Dissolution and declaration of nullity of marriage

The dissolution of marriage terminating in divorce is governed by the legislation of the State of which both spouses are citizens at the time of the initiation of the proceedings.

When the spouses are not citizens of the same State and the legislation of their States is different, the marriage is dissolved according to Albanian legislation.

If the legislation governing the two spouses does not provide for termination of marriage by divorce or admits divorce for reasons of a quite different order and both or one of the spouses has been domiciled for an extended period in

¹ Texts furnished by the Government of the People's Republic of Albania.

the People's Republic of Albania, Albanian legislation is applicable for the dissolution of marriage.

The above dispositions are also applicable to declarations of nullity of marriage taking into consideration the citizenship of the spouses at the time of contracting the marriage.

Article 8

Personal and property relationships between spouses

Personal and property relationships between spouses are regulated by the legislation of the State of which they are citizens.

When the spouses are not citizens of the same State, and the legislation of their States is different, such relationships are regulated by Albanian legislation.

Article 9

Relationships between parents and children

Proofs and contestations of paternity or maternity are governed by the legislation of the State of which the child is a citizen at birth.

Other relationships between parents and children are regulated by the legislation of the State of which the child is a citizen.

When the child lives in the People's Republic of Albania, proofs or contestations of paternity or maternity as well as of other relationships between parents and children will be governed by Albanian legislation if that is in the interests of the child.

Article 10

Adoption

Adoption and [disavowal] are regulated by the legislation of the State of which the adopted person is a citizen at the time of adoption or [disavowal]. When the child is a citizen of a foreign State the agreement of the child for adoption and [disavowal] is necessary, if that is required by the legislation of its State, in which case the competent authorities are the diplomatic representation and the competent state organs of the State of which the child is a citizen.

When the child is adopted by spouses who are citizens of different States, adoption or [disavowal] has to take place in accordance with the legislation of the States of both spouses.

When the legislation of the other States which has to be respected according to the first and second paragraphs of this article does not provide for adoption or allows adoption only on a condition of the agreement of the adopted person, or, if one of the spouses nominated by the adopted person has not been domiciled in the People's Republic of Albania for an extended period, Albanian legislation is applicable to the adoption.

Article 11

Guardianship

The circumstances and conditions for placing a person in guardianship (tutorship or any other form of guardianship), or for removing him from guardianship, are regulated by the legislation of the State of which the person placed under guardianship is a citizen.

The duties and obligations of a guardian are governed by the legislation of the State of which a person acting as guardian is a citizen.

The relationships between the guardian and the person placed under guardianship are governed by the legislation of the State where the guardianship institutions are located.

The placing of a person under guardianship depends on the guardianship institutions of the State of which the person placed under guardianship is a citizen. In general, Albanian guardianship institutions are empowered to nominate the guardians of foreign citizens domiciled in the People's Republic of Albania.

Article 12

Declarations of disappearance or death

The declaration of the disappearance or death of a person is regulated by the legislation of the State of which the person in question was a citizen at the time of disappearance.

Article 13

Removal or limitation of executive competence

Removal or limitation of executive competence is regulated by the legislation of the State of which the person whose executive power is removed or limited is a citizen.

Article 14

Inheritance

Relations arising from inheritance of movable or immovable property are governed by the legislation of the State of which the testator was a citizen at the time of death.

In respect of relationships arising from inheritance of real estate located in the Albanian People's Republic, Albanian legislation is applicable.

Article 15

Competence in drawing up or revoking a testament

Competence to draw up or revoke a testament and the judicial determination of the expression of intent are governed by the legislation of the State of which the testator was a citizen at the time of expressing his will.

It is that legislation which also regulates their forms of testament.

In general, the form of testament is as prescribed in the legislation of the State of which

the testator was a citizen at the time of drawing up the testament. However, the form prescribed by the legislation of the State on the territory of which the testament was drawn up may suffice, as well as the form prescribed by Albanian legislation. This disposition is also valid for the revocation of testament.

In so far as the testament relates to real estate located in the People's Republic of Albania, authority to draw up or revoke a testament, as well as the form of the testament, are regulated by Albanian legislation.

Article 16

Possession, right of ownership and other claims over goods

Possession, right of ownership and rights over movable and immovable goods are regulated by the legislation of the State on which the objects are located. Rights of ownership and other real claims over ships and aeroplanes are regulated by the legislation of the State whose flag the ship or aeroplane was flying.

Article 17

Obligations

Persons entering into a contract are released from it by the legislation governing their reciprocal property relationships. This can be done by tacit agreement if the circumstances admit to no doubt regarding the intention of either side.

Article 18

When the contracting parties cannot be released by a definite legislation, the obligations flowing from the contract are regulated by the legislation which, in specific circumstances, is in accordance with the larger number of obligations.

Taking this into account, the applicable legislation is as follows:

(a) For sales contracts concerning immovable objects, the legislation of the State where these objects are located;

(b) For sales contracts concerning movable objects and for those of enterprises, the legislation of the State in which the seller or the enterprise is domiciled;

(c) For transport contracts, the legislation of the State in which the sender or transporter is domiciled at the time of entering into the contract;

(d) For insurance contracts, excepting the insurance of immovable goods, the legislation of the State in which the insured party is domiciled at the time of entering into the contract;

(e) For delivery contracts, the legislation of the State in which the buying party is domiciled at the time of entering into the contract;

(f) For contracts relating to trade representation and commission, the legislation of the State in which are domiciled the persons for whom the

representatives or commission agents possess judicial competence at the time of entering into the contract.

For other contracts the operative legislation is that of the country where the two parties are domiciled; when they do not have domiciles in the same State and the contract is between persons who are present at the same place, the effective legislation is that of the State where the contract was signed.

When the contract is entered into between persons who are not present at the same place, the effective legislation is that of the State where the contract was entered into.

Article 19

Obligations which are not incorporated in the contract are regulated by the legislation of the country where the facts in dispute took place.

Article 20

Relationships arising in work contracts

The relations governing a work contract are regulated, when there is no other agreement amongst the parties, by the legislation of the State whose workers undertake the work.

The working relations of workers of transport enterprises are regulated as follows:

For road and rail transport, by legislation of the State where the enterprise has its headquarters;

For river and air transport, by legislation of the State where the means of transport are registered;

For maritime transport, by legislation of the State under the flag of which the transport takes place.

Article 21

The forms of legal process

The form of legal process is regulated by the legislation of the State in which the action is initiated or by the one which regulates the subject matter of the action or by the legislation of the State of the contracting parties, provided that they are citizens of the same State. In general, a legal process cannot be considered invalid on the grounds that it is not of the prescribed form, provided it is in accordance with the forms laid down by the legislation of the People's Republic of Albania.

The form of legal action connected with immovable property located in the People's Republic of Albania is regulated by Albanian legislation.

Article 22

Acquisition or loss of citizenship

The acquisition or loss by any person of the citizenship of a State is regulated by the legislation of that State.

Article 23

Persons with Albanian citizenship who are considered by another State as its citizens, and persons with varied citizenship

When a person is an Albanian citizen and another State nominates him as its citizen, he is considered an Albanian citizen.

When a person is simultaneously the citizen of a number of foreign States, he is considered a citizen of that State the citizenship of which he obtained last.

When the citizenship of a person cannot be determined or when his final citizenship cannot be verified, that person is considered as a citizen of the State in which he was last domiciled.

Article 24

Persons without citizenship

When a person has no citizenship, the legislation of the State where he is domiciled is applicable in all cases where, in accordance with the dispositions of this decree, the applicable legislation is that of the State of which the person is a citizen.

Article 25

Reference to other legislation

When, in accordance with the dispositions of this decree, a foreign legislation should be applicable, the dispositions of such foreign legislation are effective, taking into account the references that are made to another legislation.

In general, when foreign legislation refers back to Albanian legislation, this re-transmittal is taken into consideration.

Article 26

Inapplicability of foreign decrees

In no case can decrees or other legal dispositions of a foreign State be applicable or take effect on the territory of the People's Republic of Albania concerning conditions governing contracts when these are in contradiction with the State and social system of the People's Republic of Albania.

Chapter III

PROCEDURAL DISPOSITIONS

Article 27

The rights and civil procedural competence of foreign citizens and legal persons

Foreign citizens have the right to administration of justice by tribunals of the People's Republic of Albania and enjoy civil procedural rights equal to those of Albanian citizens.

The procedural competence of foreign citizens is regulated by the legislation of the State of which they are citizens. In general, the form taken by procedural competence will be in accordance with Albanian legislation.

Foreign legal persons have the right to administration of justice by the tribunals of the People's Republic of Albania and enjoy the right of civil procedures for the defence of their interests. However, for those rights which arise abroad, the defence of the courts against persons domiciled in the People's Republic of Albania is accorded on condition that equivalent juridical protection is accorded to Albanian legal persons in the foreign States.

In conjunction with dispositions of the State, limitations on foreign citizens and legal persons can be taken into account when other States have imposed specific limitations on the civil procedural rights of Albanian citizens and legal persons.

THE JURISDICTION OF ALBANIAN AS OPPOSED TO FOREIGN TRIBUNALS

Article 28

Jurisdiction concerning declarations of the disappearance or death of a person

Albanian tribunals can make declarations of the disappearance or death of a foreign citizen:

(a) When application is made by a person claiming rights of inheritance over movable or immovable property located on the territory of the People's Republic of Albania;

(b) When application is made by a spouse who, at the time of making the application, is domiciled on the territory of the People's Republic of Albania.

Article 29

Jurisdiction on the dissolution and annulment of marriage

Albanian tribunals can try cases of the dissolution of marriage with divorce and claims for its annulment, when at the time of initiating the action the complainant and respondent have their domicile in Albania or one of the spouses is an Albanian citizen and the other a foreign citizen and one or other of the two is domiciled in the People's Republic of Albania.

Article 30

General jurisdiction

When the circumstances stated in the foregoing articles do not obtain, foreign citizens or legal persons can be judged by Albanian tribunals:

(a) When they are domiciled in the People's Republic of Albania or when they have accepted the jurisdiction of Albanian tribunals, except when the case concerns immovable property located abroad;

(b) When the case concerns movable or immovable objects located in the People's Republic of Albania or concerns applications arising in or due to be undertaken on territory of the People's Republic of Albania;

(c) When the case is linked to another case which is *sub judice* before Albanian tribunals;

(d) When, in the converse case, the tribunals of the State of which the foreign legal person is a citizen can try cases brought against Albanian citizens or legal persons.

Article 31

Inapplicability of the dispositions of this decree when an international convention exists

The dispositions of this decree are inapplicable when an international convention entered into by

the People's Republic of Albania prescribes different dispositions.

Article 32

Entry into force

This decree enters into force one month after its publication in the official Gazette.

LABOUR CODE FOR THE PEOPLE'S REPUBLIC OF ALBANIA

Promulgated by Act No. 4170 of 12 September 1966 and entered into force on 1 November 1966²

Chapter I

GENERAL PRINCIPLES

1. In the construction phase leading to the establishment of a fully socialist society, the Labour Code of the People's Republic of Albania regulates the employment relationships of wage and salary earners employed in state and social undertakings, institutions and organisations, free from the exploitation of man by man.

Drawing upon the teachings of the Albanian Labour Party and based on the Constitution of the People's Republic of Albania, the Labour Code is designed to safeguard the application of the socialist principles: "Work is a duty and an honour" and "From each according to his capacities, to each according to his work".

2. The State guarantees employment for its citizens.

Recognising that work is a prerequisite for building socialism, creating material and cultural values and strengthening the social and national influence of socialism, wage and salary earners shall work wherever the higher interests of their country require.

3. In its administration of the country and the national economy our socialist State shall draw upon the purposeful assistance of wage and salary earners and shall promote the development of a spirit of initiative and creativeness among the working masses.

4. In accordance with the Social Security Act³ the State shall provide all wage and salary earners who are parties to an employment relationship with the material means of existence in the event of their incapacity or old age.

5. The State shall provide special protection for women and young persons. Women shall be treated on an equal footing with men in matters of both work and pay.

² *Gazeta Zyrtare*, No. 6, 29 September 1966. A translation of the Code into English has been published by the International Labour Office as *Legislative Series* 1966 — Alb.1.

³ *Ibid.*

Chapter II

TRADE UNIONS

6. Wage and salary earners shall have the right to organise in trade unions.

The Albanian trade unions are mass social organisations uniting wage and salary earners on a voluntary basis and acting in accordance with their by-laws as a school of communist education under the guidance of the Albanian Labour Party.

8. The trade unions shall be entitled to carry out educational activities, organise socialist competition schemes, encourage the work of innovators and rationalisers, spread a knowledge of progressive production techniques, organise production meetings and cultural and sporting events and administer rest homes for wage and salary earners and their children.

They shall participate in the nomination of candidates for election to public bodies, suggest, and assist in preparing, laws substantially affecting the working and living conditions of wage and salary earners, supervise the implementation of the provisions governing employment relationships and living conditions and acquaint themselves with the relevant reports by the economic authorities.

9. The trade unions shall also be consulted by the government authorities before provisions are issued on matters directly affecting the employment, working conditions, pay, living conditions and social security of wage and salary earners.

Chapter III

RECRUITMENT AND TRANSFER

12. A person shall be admitted to employment if he has reached the age of 15 years.

His recruitment shall be for a job corresponding to his specific qualifications, as agreed with the management of the undertaking, institution or organisation concerned.

15. If absolutely necessary a salary earner or skilled worker (category V or above) may be transferred to another undertaking, institution or organisation, wherever it may be, in accordance with his specific qualifications.

Transfers within the same district or within the same undertaking shall be decided by the executive committee of the district people's council or by the management of the undertaking, as the case may be, while transfers to another district shall be decided by the appropriate ministry or other central institution.

Chapter IV

HOURS OF WORK AND REST

18. The normal hours of work of wage and salary earners shall be eight a day.

For wage and salary earners employed on arduous or unhealthy jobs the Council of Ministers shall prescribe shorter working hours without any reduction in pay.

The hours of work of young persons under 16 years of age shall not exceed six a day.

19. Where work is done at night between 10 p.m. and 6 a.m., the working time shall be reduced by one hour without loss of pay.

In jobs and services where work is carried on continuously 24 hours a day, the hours of work at night shall be the same as the hours of work by day, but in that case a wage or salary earner shall receive an additional allowance equivalent to one hour's pay.

23. Night work and overtime shall be prohibited for expectant and nursing mothers, young persons under 16 years of age and medically certified invalids.

24. A woman wage or salary earner who is nursing a child under 9 months old shall be given a nursing break of not less than half an hour after three or four hours' work. This break shall be counted as part of the working day.

25. Every wage and salary earner shall be entitled to a rest period of not less than 11 hours between successive working days; this minimum rest period shall be 13 hours in the case of wage earners working in mines.

26. Every wage and salary earner shall be entitled to a weekly rest day and to public holidays.

If a wage or salary earner has worked on his weekly rest day or on a public holiday, he shall be granted another day of rest in lieu.

27. Every wage and salary earner shall be entitled to a weekly rest of not less than 36 consecutive hours; for continuous shift workers the weekly rest shall not be less than 24 hours.

28. Every wage and salary earner shall be entitled to 12 working days' annual leave. Wage or salary earners on their first jobs shall acquire this right after 11 months' employment.

For young persons under 16 years of age the period of leave shall be 24 working days a year.

Supplementary leave shall be granted, in addition to annual leave, for such periods and to such categories of wage and salary earners as may be specified by decision of the Council of Ministers.

29. Wage and salary earners shall be paid their average remuneration throughout their period of leave, payment being made before the leave begins.

30. Wage or salary earners attending evening classes or following correspondence courses shall be entitled to annual leave with pay, the duration of which shall be fixed by decision of the Council of Ministers.

On marriage or in the event of the serious illness or death of a member of his family, a wage or salary earner shall be granted not more than five working days' special unpaid leave.

Such leave shall not count as ordinary or supplementary leave.

31. An undertaking, institution or organisation may, if it considers a wage or salary earner's request to be well founded and if production is not adversely affected by his absence, grant him up to 12 days' unpaid leave a year; a woman wage or salary earner with children under 3 years old may be granted up to three months' unpaid leave a year.

32. In the event of her pregnancy and confinement a woman wage or salary earner shall be entitled to between 12 and 15 weeks' leave with pay under the provisions governing the state social insurance scheme.

A woman whose maternity leave has expired and who has not been able to place her child in a crèche may take up to three months' unpaid leave; throughout this period she shall retain her employment, grading and seniority in the undertaking, institution or organisation.

33. If a wage or salary earner is absent from his work because he is performing national or social duties or is on leave, and if the work he has been doing cannot be interrupted, the undertaking, institution or organisation shall be entitled to engage another person as a temporary substitute until the person who has been replaced resumes his work.

Chapter V

REMUNERATION

34. In return for the work he does, a wage or salary earner shall be paid a remuneration calculated in accordance with its quantity and quality.

Rates of remuneration for the various types of work shall be fixed by the Council of Ministers,

due allowance being made for the difference between light and heavy work and skilled and unskilled jobs and also for the importance of the work.

35. A wage or salary earner under 16 years of age shall, in addition to the remuneration for the job performed, receive the remuneration payable for two hours' work in accordance with the job classification table.

...

Chapter VI

PROTECTION OF LABOUR

44. Workshops, factories and other workplaces and their departments shall be designed, built, rebuilt and operated in accordance with the relevant occupational safety, health and hygiene regulations.

Dangerous machines and plant shall not be brought into operation until they have been equipped with protective devices.

45. The management of an undertaking, institution or organisation shall ensure proper safety and health conditions for its wage and salary earners in accordance with the special regulations issued by the appropriate ministries and other central institutions.

46. Women wage earners, young persons under 18 years of age and medically certified invalids shall not be employed underground or on jobs declared to be particularly arduous or unhealthy in the relevant occupational safety and hygiene regulations.

...

Chapter VII

FINANCIAL LIABILITY

49. A wage or salary earner who, in the performance of his job or duty and whether with intent or as a result of negligence, damages the property of the undertaking, institution or organisation in which he is employed shall pay compensation for the actual damage he has caused.

...

Chapter VIII

TERMINATION

55. A wage or salary earner who has valid reasons for so doing and who considers that the termination of his contract will not be detrimental

to the interests of his undertaking, institution or organisation may obtain such termination on 15 days' notice.

...

57. No wage or salary earner may be terminated by his undertaking, institution or organisation while he is on ordinary or supplementary leave, unless the undertaking, institution or organisation is wound up or suspends its operations or he is convicted of an offence committed in connection with his work.

Chapter IX

SETTLEMENT OF GRIEVANCES

58. A wage or salary earner shall be entitled to submit any grievances against the management of the undertaking, institution or organisation to the trade union body at his workplace.

Any such grievance shall be submitted within seven days of the date on which he is notified of the management's decision that is the subject of the grievance.

If a wage or salary earner does not accept the trade union body's decision or if the management of the undertaking, institution or organisation does not comply with it, he may appeal to a people's court within seven days of the date of the decision.

59. A wage or salary earner may appeal directly to a people's court against a compensation order within seven days of being notified of it.

Chapter X

CONCLUDING PROVISIONS

60. The provisions of this Code as to the hours of work and rest of young persons and other measures for the protection of women and young workers, the protection of labour and financial liability shall also apply to members of handicraft co-operative societies.

61. The Council of Ministers may draw up special regulations for seasonal and temporary wage or salary earners who have been engaged for a period of up to six months.

62. The Labour Code promulgated by Act No. 2250 of 3 April 1956⁴ and all other contrary provisions shall stand repealed on the date of commencement of this Code.

...

⁴ *Legislative Series*, 1956-Alb.2, 1960-Alb.1.

STATE SOCIAL INSURANCE ACT OF THE PEOPLE'S REPUBLIC OF ALBANIA

Date of entry into force: 1 January 1967

Chapter I

GENERAL PROVISIONS

Article 1

State social insurance is one of the triumphs achieved by the working class in establishing the power of the people.

The State Social Insurance Act of the People's Republic of Albania, inspired by the teachings of the Albanian Labour Party and based on the Constitution, recognizes and guarantees to citizens in active employment and to the other persons mentioned in the Act the material means of subsistence in the event of disablement and old age.

Article 2

Wage-earning and salaried workers, in addition to the free medical service which is guaranteed to all citizens of the People's Republic of Albania without exception, shall also be entitled to State social insurance, including:

(a) Insurance against temporary incapacity for work through illness, quarantine, accident or maternity leave;

(b) Assistance by way of health protection in night sanatoria and prophylaxis centres, courses of treatment at health resorts or at thermal or mineral spas, meals in dietetic dining-rooms, rest periods at workers' rest homes for wage-earning and salaried workers and their children, facilities for physical culture, tourism and after-school work with children, as well as cash assistance pending the recovery of the capacity to work, in maternity cases, and to cover burial expenses;

(c) Retirement pensions for old age and disablement, family pensions, pensions for length of service and for distinguished service.

Article 3

The State social insurance fund shall be financed by:

(a) Payments made by State or social enterprises, institutions and organizations;

(b) The State budget.

The amount of the payments shall be determined by the Council of Ministers.

The State shall assume liability for any cost of State social insurance by which the social insurance fund falls short.

Article 4

State social insurance shall be administered by State organs designated by the Council of Ministers.

Chapter II

INSURANCE AGAINST TEMPORARY INCAPACITY FOR WORK AND SCALE OF ALLOWANCES

Article 5

For the period during which he is unable to work, a wage-earning or salaried worker shall receive:

(a) 70 per cent of the average remuneration for his last working month, if he has up to ten years of service;

(b) 85 per cent of the average remuneration for his last working month, if he has more than ten years of service.

A worker regularly employed in underground work in the mines shall receive during the period of incapacity for work:

(a) 80 per cent of the average remuneration for his last working month, if he has up to five years of service;

(b) 95 per cent of the average remuneration for his last working month, if he has more than five years of service.

A wage-earning or salaried worker classified in Group III or Group IV of persons disabled during the War of National Liberation shall receive 95 per cent of his average remuneration for his last working month, irrespective of the length of his service, for the period of his incapacity.

A wage-earning or salaried worker who, in accordance with the Labour Code, performs temporary or seasonal work and has worked for at least three months in the previous twelve months shall receive 60 per cent of the average remuneration for his last working month during the period of his incapacity, but for a period not exceeding seventy-five days.

Article 6

A wage-earning or salaried worker, irrespective of his length of service, shall during the period of incapacity for work caused by an accident at work or occupational disease, receive 95 per cent of the average remuneration for his last working month.

A worker regularly employed in work underground in the mines shall receive, during a period of incapacity for work caused by an accident while at work or occupational disease, 100 per cent of the average remuneration for his last working month, irrespective of his length of service.

Article 7

A wage-earning or salaried woman worker shall receive for the period of her maternity leave:

(a) 75 per cent of the average remuneration for her last working month, if she has up to five years of service;

(b) 95 per cent of the average remuneration for her last working month, if she has more than five years of service.

Article 8

Maternity leave shall be granted for twelve weeks, thirty-five days before confinement and forty-nine days after. In the case of a difficult birth or of the birth of two or more children, maternity leave shall be thirteen weeks—thirty-five days before confinement and fifty-six days after.

Maternity leave for women employed in direct productive activities or in arduous work sectors shall be fourteen weeks—forty-five days before confinement and fifty-three days after; in the event of a difficult birth or of the birth of two or more children, maternity leave shall be fifteen weeks—forty-five days before the birth and sixty days after.

Arduous work for women employed in productive activities shall be regulated by government order.

...

Article 13

Wage-earning and salaried workers and retired workers, and their families, shall be entitled to spend their holidays in rest homes.

Rest homes shall be organized and managed by the trade unions out of State social insurance funds.

...

Chapter III

PENSIONS

1. Old age retirement pensions

Article 17

A wage-earning or salaried worker shall be entitled to an old age retirement pension on attaining the required age and length of service, in accordance with the following categories:

(a) Category I: men who have attained the age of fifty and have twenty years' service, and women who have attained the age of forty-five and have fifteen years' service;

(b) Category II: men who have attained the age of fifty-five and have twenty-five years' service, and women who have attained the age of fifty and have twenty years' service;

(c) Category III: men who have attained the age of sixty and have twenty-five years' service, and women who have attained the age of fifty-five and have twenty years' service.

A wage-earning or salaried worker shall be entitled to the old age retirement pension applicable to Categories I and II if he has spent at least one-half of his working life in one of those categories.

The type of work included in each category shall be determined by the Council of Ministers.

Article 18

A wage-earning or salaried woman worker who has given birth to six or more children and brought them up until they reached the age of eight shall be entitled to an old age pension when she attains the age of fifty and has fifteen years' service.

Article 19

Blind persons, deaf-mutes and persons who were deemed to be disabled persons of Groups I and II prior to their employment shall receive an old age pension on attaining the required age, namely for men, fifty with not less than fifteen years' service, and for women, forty with not less than ten years' service.

Article 20

The old age retirement pension shall be at the rate of 70 per cent of the average monthly remuneration.

The old age retirement pension may not be less than 350 leks or more than 900 leks per month.

2. Disablement pensions

Article 21

Disablement pensions shall be payable to:

(a) Persons disabled during the War of National Liberation;

(b) Wage-earning or salaried workers who become disabled while actively employed or during the thirty calendar days after ceasing to work, or within two years after ceasing to work if the disablement arose as the result of an accident while at work or an occupational disease contracted prior to their ceasing to work;

(c) Pupils attending a vocational course or school, or students at a higher institution who were formerly actively employed if they become disabled during the period of their attendance, and such pupils as students who, although not previously employed, become disabled as a result of the practical work connected with their course;

(d) Persons who become disabled in the course of performing special State or social functions assigned to them by State organs or social organizations or in the performance of their duty of defending the socialist order, or in saving human life, defending socialist property or performing social work for the socialist development of the country;

(e) Persons who become disabled in the course of military service or during training exercises or within sixty calendar days after demobilization or the end of training exercises, and persons who become disabled within two years after demobilization or the end of training exercises if the disablement was caused by an accident sustained or illness contracted during compulsory military service or training exercises.

Article 22

Disablement pensions shall be payable to the persons enumerated in article 21 on the loss of the whole or part of their capacity for work.

Disablement shall be classified in four groups according to the degree of loss of capacity for work:

(a) Group I shall comprise those who have completely lost their capacity for work and require to be cared for by other persons;

(b) Group II shall comprise those who have completely lost their capacity for work;

(c) Group III shall comprise those who have lost the capacity to work in their own or any other occupation, but who in some cases are able to do simple work in conditions specified by the workers' medical board and those who have physical disabilities (seriously maimed persons);

(d) Group IV shall comprise those who are incapable of working regularly in their occupations but are able to pursue this work part-time or to do other work requiring less skill.

The causes of the disablement, the date on which it began and the group in which disabled persons are classified shall be determined by the workers' medical board.

Article 23

Disablement pensions shall be payable to wage-earning or salaried workers irrespective of their length of service if the disablement occurred during the War of National Liberation or as the result of an accident while at work or an occupational disease.

If disablement was caused by a non-occupational disease or by an accident unrelated to work, pensions shall be payable to wage-earning or salaried workers who, on the date on which disablement is deemed to have occurred, had the following length of service:

Age	Length of service
<i>From 20 to 25</i>	
Men	2 years
Women and Category I workers	1 year
<i>Over 25 up to 35</i>	
Men	5 years
Women and Category I workers	3 years
<i>Over 35 up to 45</i>	
Men	8 years
Women and Category I workers	5 years
<i>Over 45 up to 55</i>	
Men	11 years
Women and Category I workers	8 years
<i>Over 55</i>	
Men	16 years
Women and Category I workers	12 years

Wage-earning or salaried workers who are disabled as the result of a non-occupational disease or of an accident unrelated to their work but have not attained the age of twenty shall be entitled to a pension, irrespective of their length of service.

...

*3. Family pensions**Article 28*

Dependent members of a family of a wage-earning or salaried worker who are incapable of working shall receive a family pension if the person whose dependants they were dies while actively employed or within two years after ceasing to work, provided he satisfied the requirements for entitlement to a disablement pension stipulated in article 23.

The family pension shall also be payable to dependent members of the family of the persons enumerated in article 21 (c) and (d) who are incapable of working, upon the death of such persons, provided they satisfied the requirements for entitlement to a disablement pension.

Family pensions shall also be payable to members of the family who are incapable of working and who were dependants of a retired person or one who died in the War of National Liberation.

Article 29

The members of the family entitled to receive the family pension shall be:

(a) Children, grandchildren, adopted children, and any children of the foregoing who are under the age of sixteen or, if they are attending secondary school, under the age of nineteen or, if they are continuing higher studies, up to the age of twenty-five, or older children who become unfit for work before attaining that age, and brothers and sisters to whom these conditions apply and who have no parents capable of working;

(b) Parents, adoptive parents, and spouses having attained the age of sixty in the case of men and fifty-five in the case of women, or under that age but unfit for work;

(c) One parent or spouse, irrespective of age and capacity for work, if he or she is not employed and takes care of the children, grandchildren, adopted children or the children, brothers and sisters of the deceased who have not completed their eighth year of age;

(d) Grandparents, if there are no other persons bound, under the law, to maintain them;

(e) Step-parents who have reached the age of sixty in the case of men and fifty-five in the case of women, if they were the dependants of the son of a previous marriage for not less than ten years;

(f) Step-children who meet the requirements of sub-paragraph (a) of this article and are not receiving maintenance from their parents.

The spouse shall lose the right to the pension upon remarriage.

Article 30

Children shall be entitled to the family pension on the death of one parent, even if the surviving parent is employed or in receipt of a pension.

...

*4. Pension for distinguished service**Article 33*

Persons who participated with distinction in the National Resurgence Movement, in the popular movements, in the National Liberation Movement or in the anti-Fascist struggle outside the frontiers of the State, and persons who have distinguished themselves in science, technology, culture, the arts or the social and economic activities of the State shall be entitled to a pension for distinguished service if they become incapacitated for work or on attaining the age of fifty-five in the case of men, or fifty in the case of women.

The pension for distinguished service shall also be payable to members of families on the death of the persons mentioned in this article.

These pensions shall be awarded and may be withdrawn by the Council of Ministers.

*5. Reduced pensions**Article 34*

Wage-earning and salaried workers who have attained the age of sixty, in the case of men, and fifty-five in the case of women, but who have not the length of service required to qualify them for a full old age retirement pension, shall be entitled to receive a reduced old age pension if they have not less than twelve and a half years' service, in the case of men, and ten years' service in the case of women, under the People's Government.

Reduced pensions shall be not less than one-half of the full pension and shall be proportionate to the length of service.

...

*Chapter IV*STATE SOCIAL INSURANCE FOR REGULAR
MILITARY PERSONNEL ON ACTIVE SERVICE*Article 37*

Regular military personnel on active service shall be entitled to insurance and benefits for temporary incapacity, and to old age retirement and disablement pensions, and members of their families shall be entitled to the family pensions in accordance with the provisions of this Act.

...

Article 54

Persons who qualify for more than one pension may choose only one of them.

...

Article 57

The disablement pension shall be suspended for any period during which the recipient fails to follow the advice of his doctors concerning the recovery of his capacity for work or to submit to the supervision laid down by the workers' medical board, or refuses to attend a course or school in order to learn a new occupation.

The pension shall be suspended if the recipient is in custody. In such event, dependent members of his family who are incapable of working shall receive one-half of the pension during such time as he remains in custody. If at the end of the preliminary examination or after judgement the charge is dismissed or the recipient of the pension is acquitted, the pension shall be paid in respect of the time during which it was suspended.

Article 58

A recipient shall lose his right to a pension if he is sentenced, by a decision having the force of *res judicata*, to deprivation of the right to a pension; the loss of pension shall apply for the period stipulated in the judgement.

Pensions, insurance and other benefits shall not be paid while the recipient is serving a term of imprisonment or detention imposed by the court.

Article 59

A wage-earning or salaried worker or a member of the regular armed forces on active service who wilfully endangers his health, feigns illness, fails to present himself for medical examination or fails to follow the doctor's advice, shall not be entitled to insurance and other benefits or to a disablement pension.

Persons disabled in the course of committing a crime for which they are sentenced by the courts shall not be entitled to the disablement pension.

Article 60

Members of the family of a wage-earning or salaried worker sentenced to deprivation of liberty for a period of not less than ten years and members of the family of the recipient of a pension who is sentenced to loss of the right to a pension shall not be entitled to the family pension in the event of the death of such persons before the sentence expires.

Likewise, members of the family of a wage-earning or salaried worker or a recipient of a pension who has committed a crime against the State, has pillaged or misappropriated socialist property on a substantial scale and has died before sentence shall not be entitled to the family pension. Members of the family shall be deprived of this right only when the district court declares, at the request of the State social insurance bodies, that the wage-earning or salaried worker or pensioner from whom the right to a family pension is derived committed the crime and has died.

...

ALGERIA

NOTE ON THE PROTECTION OF HUMAN RIGHTS¹

There is nothing in Algerian legislation which could infringe human rights. Article 2 of the Act of 31 December 1962 guarantees protection of fundamental human rights: "All texts or provisions jeopardizing the normal exercise of democratic freedoms are deemed to be null and void". The protection of human rights from a negative standpoint springs from this legal provision.

Positively speaking, the protection of fundamental human rights is guaranteed by many individual texts, which cannot all be listed here. Three particularly significant aspects may be mentioned:

- I. Guarantees of the freedoms of the individual laid down in the Code of Penal Procedure.
- II. Supervision by the judge of the acts of public authorities and their officials.
- III. Equal access to public office and protection of public officials.

I. GUARANTEES OF THE FREEDOMS OF THE INDIVIDUAL LAID DOWN IN THE CODE OF PENAL PROCEDURE

The fundamental principle from which all guarantees protecting the freedoms of the individual are derived is the principle stated in article 11 of the Universal Declaration of Human Rights: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." The new Algerian Code of Penal Procedure conforms in all particulars to these provisions, whether as regards remand in custody, surveillance, protection of the home and property or the rights of the defence.

(1) Warrants, detention and provisional release

Art. 112. ...An accused person brought before an examining judge under a warrant of arrest must be questioned immediately.

If the questioning cannot be carried out immediately, the accused shall be taken to the

place of detention, at which he may not be held for more than forty-eight hours.

Once that period has elapsed, and if he has not been questioned, he shall be brought before the *Procureur de la République*, who shall require the examining judge to proceed immediately with the questioning; otherwise, the accused shall be set free.

Art. 113. Any accused person who has been held for more than forty-eight hours in a place of detention under a warrant to appear and has not been questioned shall be deemed to have been arbitrarily detained.

Any judge or public official who has ordered or knowingly allowed such detention shall be liable to the penalties laid down in the provisions concerning illegal detention.

Art. 118. The examining judge may issue an order for committal to prison only after questioning the accused and if the offence involves a correctional penalty of imprisonment or a more serious penalty.

Art. 123. Remand in custody shall be an exceptional measure.

Art. 124. In cases involving a correctional offence (*délit*), 'when the maximum legal penalty is less than two years' imprisonment, an accused person domiciled in Algeria shall not be held in custody for more than twenty days after his first appearance before the examining judge, unless he has been sentenced either for a serious offence (*crime*) or to imprisonment for more than three months without a suspended sentence for a correctional offence under the ordinary law.

Art. 125. In other cases... remand in custody may not exceed four months.

... The *Procureur de la République* may ask for remand in custody at any time. The examining judge shall make his decision within a period of forty-eight hours after the request.

Art. 179. ... The *chambre d'accusation* must make its decision in matters regarding remand in custody as soon as possible and not later than forty-five days after the appeal provided for in article 172; otherwise, the accused shall automatically be allowed provisional release, unless an order for additional information is issued.

¹ Note communicated by the Government of the Democratic and Popular Republic of Algeria.

Art. 203. ... With regard to remand in custody, the Presiding Judge of the *chambre d'accusation* may visit any penal institutions under the jurisdiction of the Court in order to ascertain the situation of an accused person held in custody...

Art. 205. He may refer the matter to the *chambre d'accusation* for a decision on keeping the accused in custody.

(2) Holding under surveillance

Art. 51. For the purposes of the inquiry, the officer of the criminal police may keep one or more of the persons referred to in article 50 at his disposal; the holding under surveillance may not exceed forty-eight hours.

If there is serious and concordant evidence against a person giving grounds for him to be charged, the office of the criminal police shall bring him before the *Procureur de la République* and may not keep him at his disposal for more than forty-eight hours.

The period laid down in the preceding paragraph may be extended by a further period of not more than forty-eight hours, by written authorization from the *Procureur de la République* and after examination by him of the dossier on the inquiry.

All periods laid down in the present article shall be doubled in any matters involving a threat to the security of the State.

On expiry of the period of surveillance, a medical examination must be made of the person concerned, if he so requests. He shall be informed of this right.

Art. 52. All officers of the criminal police must state on the record of the examination of any person kept under surveillance the duration of the periods of questioning to which he has been subjected and the intervening periods of rest and the date and time on which he was released or brought before the appropriate judge.

Such particulars must be accompanied in the margin by the signature of the person concerned or by a note of his refusal to sign. They must also include the reasons for the surveillance.

Similar particulars must likewise be shown in a special register numbered and initialled by the *Procureur de la République*, which must be kept for that purpose in all police premises at which a person may be held under surveillance.

(3) Searches

Art. 45. The operations... shall be conducted as follows:

(1) When the search is conducted at the house of a person suspected of having taken part in the offence, it shall be done in his presence; if the person is unable to be present at the search, the officer of the criminal police shall be obliged to invite him to designate a representative. In the

event of a refusal to do so, or if the person has fled, the officer of the criminal police shall call upon two witnesses other than members of the staff under his authority.

(2) When the search is conducted at the house of a third party who may be holding articles connected with the accused persons, the third party must be present during the search; where this is not possible, the procedure referred to in the preceding paragraph shall be followed.

The officer of the criminal police alone, together with the persons mentioned above, shall be entitled to examine papers or documents before their seizure.

Nevertheless, in the case of searches conducted in premises occupied by a person bound by law to keep professional secrecy, he shall be obliged to take all proper measures to guarantee observance of such secrecy.

Art. 47. House searches and visits shall not be started before 5 a.m. or after 8 p.m. except in the event of a request by the head of the house or calls from within the house or if an exception is provided for by law.

(4) The rights of the defence

Art. 89. ... The examining judge responsible for an investigation and the officials and officers of the criminal police acting on a rogatory commission may not, with the aim of obstructing the rights of the defence, hear as witnesses any persons against whom there is serious and concordant evidence of culpability.

Art. 100. During the first appearance, the examining judge shall ascertain the identity of the accused, shall inform him explicitly of each of the allegations against him and shall caution him that he is free to say nothing. This warning shall be mentioned in the record. If the accused wishes to make any statements, they shall be allowed immediately by the examining judge. The judge shall advise the accused of his right to choose a counsel and, if no choice is made, shall himself appoint one if the accused so demands. The fact shall be mentioned in the record....

Art. 101. Notwithstanding the provisions of article 100, the examining judge may immediately proceed with any questioning or confrontations which have become urgently necessary as a result either of the condition of a witness who is in danger of dying or of the existence of evidence which is about to disappear. The record shall mention the causes for the urgency.

Art. 102. Any accused person held in custody may communicate with his counsel immediately after the first appearance.

Art. 105. ... The counsel shall be summoned by registered letter sent at least two days before the questioning. The proceedings shall be made available to the accused's counsel at least twenty-four hours before each period of questioning.

Art. 139. Officers of the criminal police may not undertake the questioning of the accused, nor may they hear the plaintiff unless the latter so wishes.

Art. 157. The provisions of article 100 concerning the questioning of accused persons and the provisions of article 105 concerning the hearing of the plaintiff must be observed, under pain of nullity both of the questioning or hearing and of later proceedings.

Art. 159. There shall be nullity in the event of infringement of the substantive provisions of the present Title other than those laid down in articles 100 to 105, when the consequence of such infringement is to jeopardize the rights of the defence and of any party to the case.

The *chambre d'accusation* shall decide whether nullity shall apply solely to the act vitiated or extend partially or wholly to any later proceedings.

Art. 168. The counsel of the accused and the plaintiff shall be informed of any court decisions within twenty-four hours, by registered letter.

Art. 271. ... The accused shall be invited by the Presiding Judge to choose a counsel to assist in his defence. If the accused does not make any choice, a counsel shall be appointed by the court.

Art. 272. The accused shall be able to communicate freely with his counsel, who may acquaint himself with all items in the dossier on the spot; this, however, shall not cause any delay in the proceedings. The dossier shall be placed at the counsel's disposal at least five days in advance.

II. SUPERVISION BY THE JUDGE OF ACTS OF THE PUBLIC AUTHORITIES AND THEIR OFFICIALS

Algerian legislation contains many provisions on this subject and is in accordance with article 8 of the Universal Declaration of Human Rights, whereby everyone has the right to appeal to a judge in order to obtain the fundamental rights granted to him by law. Although it is impossible to give an exhaustive list of these provisions, it is worth mentioning the most important.

(1) *Supervision of acts of public authorities*

Art. 274. The Code of Civil Procedure states: "The administrative division of the Supreme Court shall be competent in first and final instance for:

"(a) Petitions for cancellation of statutory or individual decisions made by public authorities;

"(b) Petitions for interpretation and appraisal of the legality of acts in matters within the competence of the Supreme Court."

The aim of these provisions is to ensure observance of the law by public authorities. Any act, whether general or particular in scope, which disregards the regulations established by law will be reversed by the judge as an act in excess of power. This supervision is thus very comprehensive and each year since it was instituted, the Supreme

Court has reversed dozens of administrative decisions as infringements of the law.

Furthermore, public authorities may be sued for liability in the courts, in first instance, and on appeal before the Supreme Court, for damages their actions may have caused to private persons. This is a petition for compensation, which may, of course, be based on an error committed by the public authorities, but may also be based on the concept of risk and on the principle that all citizens are equally responsible for fiscal burdens.

(2) *Supervision of acts of officials of the public authorities*

Such supervision and the punishment of offences committed by public officials is provided for in articles 107 to 111 and articles 135 to 137 of the Penal Code.

Art. 107. When a public official has ordered or committed an arbitrary act or one infringing the personal freedom or civil rights of one or more citizens, he shall be liable to a penalty of imprisonment for five to ten years.

Art. 108. Serious offences, as provided for in article 107, shall involve the personal third party liability of the offender and of the State, except in the event of an appeal by the State against the offender.

Art. 109. Civil servants, police officers and public officials responsible for the administrative or criminal police who have refused or neglected to deal with a complaint seeking to establish illegal and arbitrary detention either in establishments or premises used for holding persons in custody or in any other place and who do not give proof of reporting the matter to a higher authority shall be liable to imprisonment for five to ten years.

Art. 110. Any supervisor or warder of a penal institution or of premises used for holding persons in custody who has received a prisoner without one of the usual custody documents or who has refused, without giving proof that the examining judge has forbidden it, to bring forward the prisoner for the authorities or persons authorized to visit him or who has refused to present his records to such persons shall be guilty of arbitrary detention and liable to imprisonment for six months to two years and a fine of 500 to 1,000 DA.

Art. 111. Any judicial or police official who, except in cases of *flagrante delicto*, instigates proceedings, issues or signs an order or judgement, or issues a warrant against a person who has been granted immunity, without first obtaining removal of such immunity by the legal procedure, shall be liable to imprisonment for six months to three years.

Art. 135. Any administrative, judicial or police official or police officer who, in his official capacity, enters the home of a citizen against the latter's will, except in the cases provided for by law and in accordance with the formalities prescribed therein, shall be liable to imprisonment for

two months to one year and a fine of 500 to 3,000 DA, without prejudice to application of the provisions of article 107, paragraph 2.

Art. 136. Any judge or administrator who, for any reason whatsoever, refuses to administer justice to the parties concerned, after being called upon to do so, and who continues to act in the same way after a warning or an order from his superiors, may be prosecuted and punished with a fine of 750 to 3,000 DA and barred from holding public office for a period of five to twenty years.

Art. 137. Any public official or officer or employee or official of the postal services who opens, misappropriates or disposes of letters in the post or helps to open, misappropriate or dispose of them, shall be liable to imprisonment from three months to five years and a fine of 500 to 1,000 DA.

The same penalty shall apply to any employee or official of the telegraph service who misappropriates or disposes of a telegram or divulges the content thereof.

The guilty person shall, moreover, be barred from holding any public post for a period of five to ten years.

III. STATUTE ON PUBLIC OFFICE

(Order of 2 June 1966)

(1) *Principle of equal access to public office*

"An important principle of the legal system governing public office is the principle of equal access for all Algerians to such office, with the exception of persons whose conduct during the war of national liberation was contrary to the interests of the State."

(*Preamble of the Statute*)

This principle leads in particular to those provisions of the Statute which require recruitment by competitive examination (article 26). There are wide opportunities for internal promotion for officials without university degrees but with experience and skills such as to allow them to hold a higher post. The principle of equal access to public office is merely the consequence of the equal status of all Algerians.

(2) *Disciplinary system for public office*

(Articles 54-61 of the Statute,
supplemented by Decree 66-152 of 2 June 1966)

Art. 54. Disciplinary powers shall be vested in the authority entitled to make appointments and shall be exercised, where necessary, after the joint

committee meeting as a disciplinary committee has given its opinion.

Art. 57. A public official brought before the joint committee shall be entitled, once disciplinary proceedings are initiated, to have his individual dossier and all annexed documents made available to him.

He may be assisted by a defence counsel of his own choosing. He may submit to the joint committee written or verbal explanations of the testimony of witnesses.

The citizen's right of equal access to public office and the public official's guarantee that he will not be liable to arbitrary disciplinary penalties are two aspects of the right stated in article 21, paragraph 2, of the Universal Declaration of Human Rights.

As demonstrated by the above-mentioned texts, this right is formally recognized by the Republic of Algeria. The judicial authorities—in this case the administrative chamber of the Supreme Court—make every effort to ensure that these principles are respected and do not hesitate to reverse administrative decisions which impose arbitrary penalties on public officials.

"... Whereas it is not contested that the petitioner, prior to becoming the subject of the contested removal from office, was not advised by the public authority that it proposed to dismiss him;

"Whereas he was not in a position to submit a defence against all the allegations made;

"Whereas there are consequently grounds for maintaining that the procedure followed with respect to him was irregular and was therefore vitiated by excess of powers;

"Accordingly

"Reverses the order of ... on the removal from office of Mr. ...".

(Supreme Court, Administrative Chamber,
2 December 1966).

This is only one of many examples, but is very typical of such decisions by Algerian Courts.

In conclusion, it is necessary to say once again that this is merely a selection. There could be no question of quoting all laws or regulations which protect human rights in Algeria or all the judgments by which strict application of them has been ensured. Examples had to be given and an attempt has been made to give the most important ones. The intention has been to emphasize recent provisions issued since Algeria's independence, which are suited to the country's requirements and give evidence of its profound respect for the principles of the Universal Declaration of Human Rights.

ARGENTINA

NOTE¹

I. INTRODUCTORY REMARKS

In Argentine juridical tradition, which has never yet been disowned, there are no problems relating to the effective exercise of the Human Rights proclaimed by the United Nations in the Universal Declaration of 10 December 1948 and its subsequent amendments and additions. Neither the customs nor the literature of the country offer any pretext for the disregard of the fundamental rights of man or for discrimination on grounds of race, colour, nationality or religion.

II. CONSTITUTIONS AND CONSTITUTIONAL AMENDMENTS

In the General Constituent Assembly of 1813 the equality of all men was proclaimed and slavery was abolished. The Constitution of 1853, which is now in force, embodied the following principles:

"Art. 15: In the Argentine nation there are no slaves; the few that exist today are free from the moment this Constitution is promulgated... Any contract for the purchase or sale of persons is a crime... And slaves, whatever the manner in which they shall be introduced, shall be free by the mere act of setting foot on the territory of the Republic.

"Art. 16: The Argentine nation does not recognize prerogatives of blood or birth: there are no personal privileges, or titles of nobility. All its inhabitants are equal before the law and eligible for employment on the sole condition that they are fitted for it. Equality is the basis of taxation and of public responsibility.

"Art. 20: Aliens in Argentina enjoy all the civil rights of citizens; ...They are not obliged to assume citizenship, or to pay compulsory extraordinary taxes..."

A comparison of the text of the Universal Declaration of Human Rights with that of the Argentine Constitution shows that for the main part, the two texts are implicitly or explicitly

similar; there is an exhaustive work on this subject entitled *Cuadro Comparativo de la Declaración de Derechos Humanos y la Constitución Argentina* by Dr. Jorge Aja Espil, published by the National Commission of Argentina for UNESCO, Buenos Aires, 1963.

In short, under the Argentine Constitution, which is still after more than a century a progressive legal instrument, Argentina has one of the broadest and most liberal legislations governing the enjoyment of all the rights of the individual without discrimination.

The constitutional reform of 1957 added an important paragraph relating to social rights to article 14.

III. LEGISLATIVE MEASURES AND DECREES

Argentine Governments have been most assiduous in their efforts to give full effect to United Nations Declarations; thus, in order to implement the Declaration on the Elimination of all Forms of Racial Discrimination of 20 November 1963, Act No. 16648 was passed and was made law on 30 October 1964. This Act constituted a partial reform of the Criminal Code: it incorporated into the Code article 213 (*bis*), sub-headings 2 and 3, which, in effect, brings the Declaration into force in Argentine penal law and improves and supplements it by the inclusion of a reference to religious discrimination.

Furthermore, the Republic of Argentina is a party to the following human rights Conventions, having deposited the appropriate instruments on the dates indicated:

1. Convention on the Prevention and Punishment of the Crime of Genocide (5 June 1956);
2. Convention relating to the Status of Refugees (15 November 1961);
3. Convention on the Nationality of Married Women (10 October 1953);
4. Convention on the Political Rights of Women (27 February 1961); and
5. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (13 August 1964).

¹ Note furnished by the Government of Argentina.

IV. REPORT ON COURT RULINGS

There are no records of court decisions in cases of discrimination on grounds of race, colour, religion or ethnic origin, the main reason being that the acts of violence which were found to have been committed could not be proved to be typical of discrimination.

In the context of crimes of inhumanity, more particularly crimes against humanity and war crimes, there is on record the ruling of the Central Federal Appeals Court, Criminal and Correctional Division, given on 23 March 1966 in respect of an extradition order applied for by the Federal Republic of Germany for one Gerhard J.B. Bohne. The ruling was confirmed by the National Supreme Court of Justice on 24 August 1966 and recorded in the review *El Derecho* of 22 February 1967, page 2. The order was granted on the grounds of the nature of the alleged crimes, which were described as "participation in the planning, organization and operation of a subsidiary of the National Socialist Party, known as the Chancellery

of the Führer of the NSDAP, in accordance with a secret authorization or provision dating from 1 September 1939".

V. COMMENTARY ON RESULTS
OBTAINED

The information given above provides sufficient proof of the honourable tradition of the Argentine Republic in the field of human rights, and of the zeal of the legislative, administrative and judicial authorities in allowing no violation of those rights to go unpunished. For example, the ex-Minister of the Interior told the Chamber of Deputies at the meeting on 20 August 1965:

"... in the Argentine Republic there is no form of discrimination on grounds of religion, race or ideology... the people of Argentina have never been, are not and never will be penalized for their beliefs or racial origin". (*Diario de Sesiones*, 36th assembly, 18th ordinary meeting).

AUSTRALIA

HUMAN RIGHTS IN AUSTRALIA IN 1966¹

I. Legislation

(A) THE PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration, Articles 2, 6, 7)

The *Prohibition of Discrimination Act*, 1966 (No. 82 of 1966) of South Australia is designed to assist the ratification by the Commonwealth of Australia of the United Nations Convention on Racial Discrimination.

The Act prohibits in the State the practice of discrimination by reason only of the race, country of origin or colour of skin of the person discriminated against and it penalises, and in some cases makes void or inoperative, measures taken in furtherance of such discrimination.

The *Juries Act Amendment Act*, 1965 (No. 28 of 1965) of South Australia enables a woman to cancel or reinstate her liability to serve as a juror. It also provides that the Court may order that a jury shall consist of men only or of women only. It enables the Court to excuse a woman from serving as a juror by reason of the nature of the evidence to be given or the issues to be tried.

(Note: Women may now serve on juries in all States and mainland Territories of the Commonwealth; they may, however, avoid the obligation if they wish.)

As a result of the operation of the *Public Service Act* (No. 2) 1966 (No. 85 of 1966) of the Commonwealth, permanent female officers in the Commonwealth Public Service will not now automatically lose their permanent status when they marry. In addition, married women will for the first time be eligible for permanent appointment to the Service. The effect will be to treat married women officers and married women recruits to the Service in the same way as other officers and recruits.

The Act provides that a female officer who has become pregnant must absent herself from duty for at least 12 weeks and may, at her option, in the same circumstances and on application, absent herself for 6 months. To cover her absence from

duty she may use any accumulated sick leave, recreation leave or furlough entitlements that she may have. She will fully retain her employment rights.

Consequent upon the provisions of the *Public Service Act* (No. 2) 1966 that are described above, the *Superannuation Act* (No. 2) 1966 (No. 86 of 1966) of the Commonwealth enables married women in the Commonwealth Public Service to enjoy the same superannuation benefits as other permanent officers. Thus, it enables married women who are recruited to the Service to join the Superannuation Fund or to contribute to the Provident Account and it enables single women who continue as permanent officers after marriage to continue to contribute to the Superannuation Fund. It also permits temporary employees of the Commonwealth who are married women to become contributors to the Provident Fund, on the same conditions as other temporary employees.

(B) RIGHT TO A NATIONALITY

(Universal Declaration, Article 15)

The *Nationality and Citizenship Act* 1966 (No. 11 of 1966) of the Commonwealth, an amending Act, enables a man and his wife who wish to become naturalized to be naturalized at the same ceremony.

(C) EQUAL RIGHTS IN MARRIAGE

(Universal Declaration, Article 16)

The *Married Women's Property Act* 1965 (No. 61 of 1965) of Tasmania provides that each of the parties to a marriage has the like right of action in tort against the other, as if they were not married.

(D) THE SUFFRAGE AND ACCESS TO PUBLIC SERVICE

(Universal Declaration, Article 21)

The Commonwealth Parliament passed the *Australian Capital Territory Representation Act* 1966 (No. 3 of 1966), to give the member representing the Australian Capital Territory in the

¹ Note furnished by Mr. J. O. Clark, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

Parliament the same voting rights as other members.

When the first member was elected to represent the Territory, in 1949, the number of electors for the Territory was about 11,800. By 1966 the number had grown to about 43,700. Until the passage of this Act of 1966, the member representing the Territory had been entitled to vote, broadly speaking, only on a proposed law that related solely to the Territory, on a motion for the disallowance of an Ordinance of the Territory or on a motion for the disallowance of a modification or variation of the plan of layout of the city of Canberra.

The *Commonwealth Public Service Act (No. 2) 1966* and the *Superannuation Act (No. 2) 1966*, described above, are relevant to this heading also.

(E) CONDITIONS OF WORK (Universal Declaration, Articles 23, 25)

By operation of the *Attachment of Wages Limitation Ordinance 1966* (No. 7 of 1966) of the Australian Capital Territory the Attachment of Wages Limitation Act, 1900 of the State of New South Wales ceases to apply to the Territory. The Ordinance provides that a court of the Territory shall not make an order for the attachment of a debt for wages owing or accruing to a judgement debtor that would, if enforced, reduce the wages remaining payable to the judgement debtor to less than \$23 per week, if the debtor is a male, or to less than \$15.25 per week if the debtor is a female.

(F) SOCIAL SERVICES (Universal Declaration, Article 25)

The *Children's Services Act of 1965* (No. 42 of 1965) of Queensland is designed to promote, safeguard and protect the well-being of the children and youth of the State through a comprehensive and co-ordinated programme of child and family welfare: it repeals and replaces a number of older enactments dealing with this subject. The Act increases the jurisdiction of the Children's Court and, in particular, gives the Court limited jurisdiction over the matters of guardianship and custody of children under the age of 17, excluding cases involving property. The overall jurisdiction of the Supreme Court with regard to these matters is, however, preserved.

The *Mental Health Act Amendment Act, 1965* (No. 37 of 1965) of Western Australia provides a new interpretation of "approved hospital" to make it clear that these institutions are those in which a person may be detained and that the expression has no other significance. It provides for the continuance of reception homes and for the reception, assessment and early treatment of patients. It also makes better provision for the removal of persons from hospitals to hostels: the emphasis is now on removing persons from the hospital and from restraint to new surroundings more conducive to their progress and rehabilitation.

The *Child Welfare Act Amendment Act, 1965* (No. 79 of 1965) of Western Australia deals with the transfer of maintenance, affiliation and custody matters from the jurisdiction of the Children's Court into the ambit of the Married Persons (Summary Relief) Court. (In each of the Australian States there has been in recent years an effort to bring under one jurisdiction all those matters concerned with family disturbances. In Western Australia that jurisdiction is that of the Married Persons (Summary Relief) Court.)

The Act seeks to modernise the treatment of deprived and delinquent children by deleting from the principal Act the provisions under which children's courts can commit children directly to nominated institutions.

It contains amendments concerned with protection of young offenders from publicity given to their court appearances and to the conditions under which they can be imprisoned.

Finally, the Act contains a number of other provisions, each designed to improve the department's procedures for caring for unfortunate children.

The *Commonwealth Social Services Act 1966* (No. 41 of 1966) (1) increased the standard rate of pension by \$1 a week, to bring the maximum weekly rates payable to single age and invalid pensioners, and to widow pensioners with children, to \$13 a week; (2) increased by \$1 a week the pension payable to widows without children; (3) increased by \$1.50 a week the combined pensions of a married couple, raising the basic payment to them to \$23.50 a week; (4) increased the deduction for each child allowed from a pensioner's income for means test purposes; (5) increased benefits for certain patients on discharge from a mental hospital; and (6) repealed the nationality qualification for age, invalid and widows' pensions. These changes added more than \$40 million to the Commonwealth's annual liability for social services.

This Act also removed three remaining specific references to aboriginal natives in the Social Services Act. Since 1959, however, the position has been that all aboriginal natives of Australia, other than those who are nomadic or primitive, may qualify for social service benefits equally with other members of the community.

(G) RIGHT TO EDUCATION (Universal Declaration, Article 26)

The *Education Act Amendment Act, 1965* (No. 17 of 1965) of Western Australia enables a greater measure of financial assistance to be given to independent schools. The Government of the State will pay a tuition fee subsidy: secondary scholars in first, second and third years will receive \$30 per annum and fourth and fifth year scholars \$36 per annum.

Schools will be assisted to meet their interest payments on loans raised for the provision of residential accommodation. The subsidy rate and

the terms for repayment are to be determined from time to time by the Treasurer but initially the Government will meet interest charges of up to 5 per cent per annum, provided the loan is paid off in equal instalments over a maximum period of 20 years; there will be no limit to the amount that may be borrowed.

The *Flinders University of South Australia Act*, 1966 (No. 23 of 1966) of South Australia provides for the establishment and incorporation of a new university to be known as the Flinders University of South Australia. (There is only one other university in the State — the University of Adelaide.)

The *States Grants (Advanced Education) Act* 1966 (No. 89 of 1966) of the Commonwealth appropriated \$24 million for capital expenditure and \$11.18 million for recurrent expenditure in colleges of advanced education for the three years commencing January, 1967. The first grants to these new colleges were noted in the contribution to the *Yearbook for 1965*.

The *Universities (Financial Assistance) Act* 1966 (No. 90 of 1966) of the Commonwealth authorised grants to the States under section 96 of the Constitution for the Commonwealth's share of the agreed programme for State universities during the three years 1967, 1968 and 1969. The total Commonwealth contribution authorised was approximately \$175 million.

II. Court Decisions

(A) RIGHT TO LIBERTY

(Universal Declaration, Articles 3, 9)

Drymalik v. Feldman (1966 South Australian State Reports 227)

Supreme Court of Australia

False imprisonment—Justification—Arrest in Criminal Proceedings.

Police officers arrested F. without a warrant upon a charge of attempting by threats or persuasion to induce a witness not to give evidence on the hearing of a complaint against F. The police officers were in possession of information that F. had thereby committed an offence. After F. had been arrested, he was detained at a suburban police station and interrogated for about half an hour. He was then removed to police headquarters, where he was further detained before being taken before a justice and charged. In all, a period of about three hours elapsed between the time when F. was arrested and the time when he was charged. F. sued the police officers for damages for wrongful arrest and false imprisonment. *Held*: (1) On the facts, that as the arresting police officers honestly

believed on reasonable grounds that F. had committed an offence, they were justified in arresting him without warrant. (2) That having arrested F., the police officers were required by s. 78 of the Police Offences Act, 1953-1961, to bring him forthwith before a justice, and that their detention of F. for about three hours, before bringing him before a justice, was a false imprisonment of F.

(B) FAIR TRIAL

(Universal Declaration, Article 10)

R. v. Industrial Court (1966 Queensland Reports 245)

Judicial Officer—Bias—Test to be applied.

The wife of the presiding judge held 1,235 five shilling stock units in Mount Isa Mines Ltd., a respondent to the appeal, of which the paid up capital was £23,820,788 divided into 95,283,152 stock units. The judge did not own and had never owned any stock in the company and had no pecuniary interest in the units held by his wife. *Held*: (1) A judicial officer whose wife holds shares in a company which is party to the proceedings before him does not on that account himself have a disqualifying interest, the question being whether, in all the circumstances of the case, it has been shown that there is a real likelihood of bias. (2) Taking all the circumstances into consideration, there was no real likelihood of bias, and accordingly the president was not disqualified from hearing and determining the appeal.

(C) DUE PROCESS IN CRIMINAL PROCEEDINGS

(Universal Declaration, Article 11)

Richardson v. Brennan (1966 Western Australian Reports 159)

Supreme Court of Western Australia

Criminal law — Penalties — Statute amended between date of offence and date of conviction increasing penalty — Lesser penalty to apply — No retrospectivity.

The Traffic Act Amendment Act (No. 2) passed on 19 November 1965, increased the penalties applicable under section 32 of the Act for the offence of driving a vehicle when under the influence of drink or drugs so as to be incapable of having proper control of it.

Held that the increased penalties did not apply to an offence for which the accused was convicted after the amending Act was passed where the offence had been committed before it was passed.

AUSTRIA

NOTE¹

1. It has already been pointed out in our earlier contributions that Austria possesses a century-old comprehensive system of fundamental rights and freedoms which, in conjunction with the wealth of judicial decisions handed down by the Constitutional Court and its predecessor, the Supreme Court of the Reich, is so well established that it leaves little room for further development.

Our domestic activity in the field of human rights is at present focused on the endeavour to prepare a new codification of fundamental rights and freedoms. For this purpose, a Committee of experts on these problems was formed whose activity was described in Austria's contributions to the *Yearbooks on Human Rights* for 1964 and 1965. This Committee met on ten occasions in 1966 for sessions lasting a full day each. The following subjects were considered in these sessions:

(a) Recognition of man as a person (subject of law) and the prohibition to treat man as an object; right to self-determination and to free development of one's personality; right to individuality.

(b) Right to life and to security of person, physically and mentally; protection against measures which tend to take advantage of man's gullibility; prohibition of inhuman or degrading treatment.

(c) Prohibition of slavery, serfdom and forced labour.

(d) Right to decent living space, commensurate with human dignity, in particular, the right to air, water and protection against excessive noise.

(e) Right to protection of man's honour.

(f) Right to protection of man's private life, in particular, protection of his mind, his body, his personal and family life.

In 1967, deliberations of the Committee concerning further concrete rights and freedoms were continued. The reasonable expectation is that in 1968 it will be possible to begin the work of formulating the new code of fundamental rights and freedoms.

2. Jurisprudence in the field of fundamental rights and freedoms in 1966 remained true to principles evolved during the preceding decades. No new trends were discernible in 1966.

3. In the field of legislation as well, with the exception of two Federal Acts—pertaining to freedom of information and of the Press which are described below—there are no specific measures to report.

(a) The new Press Law of 1966 (*Bundesgesetzblatt* No. 104) introduced once again the obligation to compensate for unjustified seizure of publications.

(b) The law on Broadcasting (*Bundesgesetzblatt* No. 195-1966) attempts to regulate the objectives and the organization of Austrian broadcasting so as to ensure its independence and impartiality. This law aims at providing the population with objective information through radio and television.

¹ Note furnished by the Government of Austria.

BARBADOS

EXPLANATORY NOTE¹

The Preamble of the Constitution consists of an unequivocal declaration of the firm faith of the people of Barbados in the principles of human rights and fundamental freedoms. The principles which have been given expression in the Universal Declaration of Human Rights are recited in various forms in individual countries.

The need for the existence of effective guarantees for the protection of human rights and fundamental freedoms is fully recognized in this territory.

The preamble extols the principle of the dignity of the human person; it focuses on the position of the family in a society of free men and free institutions.

In the context of the Barbados Constitution, these principles have been made to serve a purpose greater than being useful guidelines for the conduct of interpersonal relationships. They

have been securely entrenched in the constitution of the land and are given legal effect within the limits of the prevailing legal system.

To this end, Chapter III of the Constitution in accordance with the Universal Declaration of Human Rights spells out in detail the machinery for the protection of fundamental rights and freedoms of the individual. Some of the rights and freedoms protected in the Constitution include the protection of the right to life, liberty, and security of person; the right of protection from slavery and forced labour; the right of protection of freedom of thought, conscience and religion; the right of protection of freedom of opinion and expression, peaceful association and assembly.

The Constitution of Barbados, like the Constitutions of most countries which have gained independence in recent times, demonstrates forcibly the impact which the Universal Declaration of Human Rights has had on the minds of those who formulated such a Constitution.

¹ Note and text of Constitution furnished by the Government of Barbados.

THE CONSTITUTION OF BARBADOS²

Whereas the love of free institutions and of independence has always strongly characterised the inhabitants of Barbados,

And Whereas the Governor and the said inhabitants settled a Parliament in the year 1639,

And Whereas as early as 18th February 1651 these inhabitants, in their determination to safeguard the freedom, safety and well-being of the Island, declared, through their Governor, Lords of the Council and members of the Assembly, their independence of the Commonwealth of England,

And Whereas the rights and privileges of the said inhabitants were confirmed by articles of agreement, commonly known as the Charter of Barbados, had, made and concluded on

11th January 1652 by and between the Commissioners of the Right Honourable the Lord Willoughby of Parham, Governor, of the one part, and the Commissioners on the behalf of the Commonwealth of England, of the other part, in order to the rendition to the Commonwealth of England of the said Island of Barbados,

And Whereas with the broadening down of freedom the people of Barbados have ever since then not only successfully resisted any attempt to impugn or diminish those rights and privileges so confirmed, but have consistently enlarged and extended them,

Now, therefore, the people of Barbados:

(a) Proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity of the human person, their unshakable faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions;

² Published as the Schedule to the Barbados Independence Order 1966 in *Statutory Instruments*, 1966, No. 1455, by Her Majesty's Stationery Office, London, 1966. Barbados became an independent State on 30 November 1966.

(b) Affirm their belief that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(c) Declare their intention to establish and maintain a society in which all persons may, to the full extent of their capacity, play a due part in the institutions of the national life;

(d) Resolve that the operation of the economic system shall promote the general welfare by the equitable distribution of the material resources of the community, by the human conditions under which all men shall labour and by the undeviating recognition of ability, integrity and merit;

(e) Desire that the following provisions shall have effect as the Constitution of Barbados.

...

Chapter II

CITIZENSHIP

2. (1) Every person who, having been born in Barbados, is on 29 November 1966 a citizen of the United Kingdom and Colonies shall become a citizen of Barbados on 30th November 1966.

(2) Every person who, having been born outside Barbados, is on 29th November 1966 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of Barbados in accordance with the provisions of subsection (1) become a citizen of Barbados on 30th November 1966.

(3) Any person who on 29th November 1966 is a citizen of the United Kingdom and Colonies:

(a) Having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in Barbados as a British subject before that Act came into force; or

(b) Having become such a citizen by virtue of his having been naturalised or registered in Barbados under that Act, shall become a citizen of Barbados on 30th November 1966.

3. (1) Any woman who on 29th November 1966 is or has been married to a person:

(a) Who becomes a citizen of Barbados by virtue of section 2; or

(b) Who, having died before 30th November 1966, would but for his death have become a citizen of Barbados by virtue of that section,

shall be entitled, upon making application, and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Barbados.

(2) Any person who is a Commonwealth citizen (otherwise than by virtue of being a citizen of Barbados) and who:

(a) Has been ordinarily resident in Barbados continuously for a period of seven years or

more at any time before 30th November 1966; and

(b) Has not, since such period of residence in Barbados and before that date, been ordinarily resident outside Barbados continuously for a period of seven years or more,

shall be entitled, upon making application, to be registered as a citizen of Barbados:

Provided that the right to be registered as a citizen of Barbados under this subsection shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(3) Any woman who on 29th November 1966 is or has been married to a person who subsequently becomes a citizen of Barbados by registration under subsection (2) shall be entitled, upon making application, and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Barbados:

Provided that the right to be registered as a citizen of Barbados under this subsection shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(4) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of twenty-one years and is not a woman who is or has been married but shall be made on behalf of that person by a parent or guardian of that person.

4. Every person born in Barbados after 29th November 1966 shall become a citizen of Barbados at the date of his birth:

Provided that a person shall not become a citizen of Barbados by virtue of this section if at the time of his birth:

(a) His father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign state accredited to Her Majesty in right of Her Government in Barbados and neither of his parents is a citizen of Barbados; or

(b) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

5. A person born outside Barbados after 29th November 1966 shall become a citizen of Barbados at the date of his birth if at that date his father is a citizen of Barbados otherwise than by virtue of this section or section 2 (2).

6. Any woman who, after 29th November 1966, marries a person who is or becomes a citizen of Barbados shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Barbados.

7. Any citizen of Barbados who has attained the age of twenty-one years and who:

(a) Is also a citizen or national of any other country; or

(b) Intends to become a citizen or national of any other country, shall be entitled to renounce his citizenship of Barbados by a declaration made and registered in such manner as may be prescribed:

Provided that:

(a) In the case of a person who is not a citizen or national of any other country at the date of registration of his declaration of renunciation, if he does not become such a citizen or national within six months from the date of registration he shall be, and shall be deemed to have remained, a citizen of Barbados notwithstanding the making and registration of his declaration of renunciation; and

(b) The right of any person to renounce his citizenship of Barbados during any period when Barbados is engaged in any war shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

...

9. Parliament may make provision:

(a) For the acquisition of citizenship of Barbados by persons who do not become citizens of Barbados by virtue of the provisions of this Chapter; or

(b) For depriving of his citizenship of Barbados any person who is a citizen of Barbados otherwise than by virtue of subsection (1) or (2) of section 2 or section 4 or section 5.

10. ...

(2) Any reference in this Chapter to the father of a person shall, in relation to any person born out of wedlock other than a person legitimated before 30th November 1966, be construed as a reference to the mother of that person.

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth, shall, in relation to a person born after the death of the father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 30th November 1966 and the birth occurred after 29th November 1966 the national status that the father would have had if he had died on 30th November 1966 shall be deemed to be his national status at the time of his death.

Chapter III

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

11. Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) Life, liberty and security of the person;

(b) Protection for the privacy of his home and other property and from deprivation of property without compensation;

(c) The protection of the law; and

(d) Freedom of conscience, of expression and of assembly and association,

the following provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

12. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Barbados of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order lawfully to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

13. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(a) In consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Barbados or some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of an order of the High Court or the Court of Appeal or such other court as may be prescribed by Parliament

punishing him for contempt of any such court or of another court or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Barbados;

(f) In the case of a person who has not attained the age of twenty-one years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Barbados, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Barbados or for the purpose of restricting that person while he is being conveyed through Barbados in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Barbados or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Barbados in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal adviser of his own choice, being a person entitled to practise in Barbados as a barrister or solicitor, and to hold private communication with him; and in the case of a person who has not attained the age of sixteen years he shall also be afforded a reasonable opportunity for communication with his parent or guardian.

(3) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed or being about to commit a criminal offence,

and who is not released, shall be brought be-

fore a court as soon as is reasonably practicable; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the foregoing provisions of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) Where a person is detained by virtue of such a law as is referred to in subsection (5), the following provisions shall apply:

(a) He shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, of the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) He may from time to time request that his case be reviewed under paragraph (d) but, where he has made such a request, no subsequent request shall be made before the expiration of three months from the making of the previous request;

(d) Where a request is made under paragraph (c), the case shall, within one month of the making of the request, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practise in Barbados as barristers or solicitors; and

(e) He shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal adviser of his own choice, being a person entitled to practise as aforesaid, and he and any such legal adviser shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(7) On any review by a tribunal in pursuance of subsection (6) of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency

of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(8) When any person is detained by virtue of such a law as is referred to in subsection (5) the Prime Minister or a Minister authorised by him shall, not more than thirty days after the commencement of the detention and thereafter not more than thirty days after the making of the previous report, make a report to each House stating the number of persons detained as aforesaid and the number of cases in which the authority that ordered the detention has not acted in accordance with the recommendations of a tribunal appointed in pursuance of subsection (6);

Provided that in reckoning any period of thirty days for the purposes of this subsection no account shall be taken of any period during which Parliament stands prorogued or dissolved.

14. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(d) Any labour required during any period when Barbados is at war or in the event of any hurricane, earthquake, flood, fire or other like calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that calamity, for the purpose of dealing with that situation.

15. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any punishment or the administration of any treatment that was lawful in Barbados immediately before 30th November 1966.

16. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that acquisition or taking of possession is made by a written law:

(a) Prescribing the principles on which and the manner in which compensation therefor is to be determined and given; and

(b) Giving to any person claiming such compensation a right of access, either directly or by way of appeal, for the determination of his interest in or right over the property and the amount of compensation to the High Court.

...

17. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required:

(a) In the interests of defence, public safety, public order, public morality, public health, town or country planning, the development or utilisation of mineral resources, or the development or utilisation of any other property in such manner as to promote the public benefit;

(b) For the purpose of protecting the rights or freedoms of other persons;

(c) For the purpose of authorising an officer or agent of the Government, or of a local government authority or of a body corporate established directly by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, duty, rate, cess or other impost or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that authority or body corporate, as the case may be;

(d) For the purpose of authorising the entry upon any premises in pursuance of an order of a court for the purpose of enforcing the judgement or order of a court in any proceedings; or

(e) For the purpose of authorising the entry upon any premises for the purpose of preventing or detecting criminal offences.

18. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his consent, the trial shall not take place in his absence unless he so conducts himself as to render the proceedings in his presence impracticable and the court has ordered the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or nature than the most severe penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such court or other tribunal, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other tribunal, including the announcement of the decision of the court or other tribunal, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court or other tribunal from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other tribunal:

(a) May by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of decency, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) May by law be empowered or required so to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(a) Subsection (2) (a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) Subsection (2) (e) to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) Subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) Nothing contained in subsection (2) (d) shall be construed as entitling a person to legal representation at public expense.

19. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community whether or not that community is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) Except with his own consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) Which is reasonably required:

- (i) In the interests of defence, public safety, public order, public morality or public health; or
- (ii) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

(b) With respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

20. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence or other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) That is reasonably required for the purpose of protecting the reputations, rights and

freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the administration or technical operation of telephony, telegraphy, posts, wireless broadcasting, television or other means of communication or regulating public exhibitions or public entertainments; or

(c) That imposes restrictions upon public officers or members of a disciplined force.

21. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) That imposes restrictions upon public officers or members of a disciplined force.

22. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Barbados, the right to reside in any part of Barbados, the right to enter Barbados, the right to leave Barbados and immunity from expulsion from Barbados.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For the imposition of restrictions on the movement or residence within Barbados of any person or on any person's right to leave Barbados that are reasonably required in the interests of defence, public safety or public order;

(b) For the imposition of restrictions on the movement or residence within Barbados or on the right to leave Barbados of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health;

(c) For the imposition of restrictions on the movement or residence within Barbados of any person who is not a citizen thereof or the

exclusion or expulsion from Barbados of any such person;

(d) For the imposition of restrictions on the acquisition or use of land or other property in Barbados;

(e) For the imposition of restrictions, by order of a court, on the movement or residence within Barbados of any person or on any person's right to leave Barbados either in consequence of his having been found guilty of a criminal offence under the law of Barbados or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Barbados;

(f) For the imposition of restrictions upon the movement or residence within Barbados or on the right to leave Barbados of public officers or members of a disciplined force;

(g) For the removal of persons from Barbados:

- (i) To be tried or punished in some other country for a criminal offence under the law of that country;
- (ii) To undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Barbados of which he has been convicted;
- (iii) To be detained in an institution in some other country for the purpose of giving effect to the order of a court made in pursuance of a law of Barbados relating to the treatment of offenders under a specified age; or
- (iv) To be detained for care or treatment in a hospital or other institution in pursuance of a law of Barbados relating to persons suffering from defect or disease of the mind; or

(h) For the imposition of restrictions on the right of any person to leave Barbados that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law.

(4) Where a person's freedom of movement is restricted by virtue of such a provision as is referred to in subsection (3) (a), the following provisions shall apply:

(a) He shall, as soon as reasonably practicable and in any case not more than five days after the commencement of the restriction, be furnished with a statement in writing, in a language that he understands, of the grounds upon which the restriction has been imposed;

(b) Not more than fourteen days after the commencement of the restriction, a notification shall be published in the Gazette stating that his freedom of movement has been restricted and giving particulars of the provision of law under which the restriction is authorised;

(c) He may from time to time request that his case be reviewed under paragraph (d) but, where he has made such a request, no subsequent request shall be made before the

expiration of three months from the making of the previous request;

(d) Where a request is made under paragraph (c), the case shall, within one month of the making of the request, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practise in Barbados as barristers or solicitors; and

(e) He shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal adviser of his own choice, being a person entitled to practise as aforesaid, and he and any such legal adviser shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

23. (1) Subject to the provisions of this section:

(a) No law shall make any provision that is discriminatory either of itself or in its effect; and

(b) No person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.

(3) Subsection (1) (a) shall not apply to any law so far as that law makes provision:

(a) With respect to persons who are not citizens of Barbados;

(b) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(c) Whereby persons of any such description as is mentioned in subsection (2) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable;

(d) For authorising the taking during a period of public emergency of measures that

are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or

(e) For the imposition of taxation or appropriation of revenue by the Government or by any local government authority for local purposes.

(4) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) (a) to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinion, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, or any office in the service of a local government authority or of a body corporate established by any law for public purposes.

(5) Subsection (1) (b) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (3) or (4).

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (2) may be subjected to any restriction on the rights and freedoms guaranteed by sections 17, 19, 20, 21 and 22, being such a restriction as is authorised by subsection (2) of section 17, subsection (6) of section 19, subsection (2) of section 20, subsection (2) of section 21, or subsection (3) of section 22, as the case may be.

(7) Subsection (1) (b) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by this Constitution or any other law.

24. (1) Subject to the provisions of subsection (6), if any person alleges that any of the provisions of sections 12 to 23 has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(a) To hear and determine any application made by any person in pursuance of subsection (1); and

(b) To determine any question arising in the case of any person which is referred to it in pursuance of subsection (3),

and may make such orders, issue such writs and

give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 12 to 23:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of sections 12 to 23, the person presiding in that court shall refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under this Constitution to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary or desirable for the purpose of enabling the High Court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Parliament may make provision with respect to the practice and procedure:

(a) Of the High Court in relation to the jurisdiction and powers conferred upon it by or under this section;

(b) Of the High Court and the Court of Appeal in relation to appeals to the Court of Appeal from decisions of the High Court in the exercise of such jurisdiction; and

(c) Of subordinate courts in relation to references to the High Court under subsection (3), including provision with respect to the time within which any application, reference or appeal shall or may be made or brought; and, subject to any provision so made, provision may be made with respect to the matters aforesaid by rules of court.

(7) In this section "the Court of Appeal" has the same meaning as it has in section 87.

25. (1) In this Chapter "period of public emergency" means any period during which:

(a) Barbados is engaged in any war; or

(b) There is in force a proclamation by the Governor-General declaring that a state of public emergency exists; or

(c) There is in force a resolution of each House supported by the votes of not less than two-thirds of all the members of that House declaring that democratic institutions in Barbados are threatened by subversion.

26. (1) Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23 to the extent that the law in question:

(a) Is a law (in this section referred to as "an existing law") that was enacted or made before 30th November 1966 and has continued to be part of the law of Barbados at all times since that day;

(b) Repeals and re-enacts an existing law without alteration; or

(c) Alters an existing law and does not thereby render that law inconsistent with any provision of sections 12 to 23 in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In subsection (1)(c) the reference to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it; and in subsection (1) "written law" includes any instrument having the force of law and in this subsection and subsection (1) references to the repeal and re-enactment of an existing law shall be construed accordingly.

27. . . .

(2) References in sections 12, 13, 17 and 22 to a criminal offence shall be construed as including references to an offence against a disciplinary law, and such references in subsections (2) to (7) and (11) (a) of section 18 shall, in relation to proceedings before a court established by a disciplinary law, be similarly construed.

(3) In relation to any person who is a member of a disciplined force raised under the law of any country other than Barbados and lawfully present in Barbados, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any provision of sections 12 to 23.

...

Chapter V

PARLIAMENT

Part 1. Composition of Parliament

35. There shall be a Parliament of Barbados which shall consist of Her Majesty, a Senate and a House of Assembly.

36. (1) The Senate shall consist of twenty-one persons who, being qualified for appointment as Senators in accordance with the provisions of this Constitution, have been so appointed in accordance with the provisions of this section.

(2) Twelve Senators shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, by instrument under the Public Seal.

(3) Two Senators shall be appointed by the Governor-General, acting in accordance with the advice of the Leader of the Opposition, by instrument under the Public Seal.

(4) Seven Senators shall be appointed by the Governor-General, acting in his discretion, by instrument under the Public Seal, to represent religious, economic or social interests or such other interests as the Governor-General considers ought to be represented:

Provided that before appointing any person under this subsection the Governor-General shall consult such persons as, in his discretion, he considers can speak for those interests and ought to be consulted.

37. Subject to the provisions of section 38, any person who at the date of his appointment:

(a) Is a Commonwealth citizen of the age of twenty-one years or upwards; and

(b) Has been ordinarily resident in Barbados for the immediately preceding twelve months, shall be qualified to be appointed as a Senator.

38. (1) No person shall be qualified to be appointed as a Senator who:

(a) Is a member of the House of Assembly;

(b) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;

(c) Holds or is acting in the office of a Judge, the Director of Public Prosecutions or the Auditor-General;

(d) Is under sentence of death imposed by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(e) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Barbados;

(f) Has been adjudged or otherwise declared bankrupt under any law in force in Barbados and has not been discharged; or

(g) Is disqualified for membership of the House of Assembly by or under any law in force in Barbados by reason of his having been convicted or reported guilty of any corrupt or illegal practice at elections.

(2) Without prejudice to the provisions of subsection (1)(c), Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be appointed as a Senator if:

(i) He holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;

(ii) He belongs to any armed force of Barbados or to any class of person that is comprised in any such force; or

(iii) He belongs to any police force of Barbados or to any class of person that is comprised in any such force.

(3) For the purposes of subsection (1) (d):

(a) Two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

...

41. (1) The House of Assembly shall consist of twenty-four members or such greater number of members as Parliament may prescribe.

(2) The members of the House (who shall be known as "Members of Parliament") shall be persons who, being qualified for election as such in accordance with the provisions of this Constitution, have been so elected in the manner provided by any law in force in Barbados.

42. (1) Any law providing for the election of members of the House of Assembly shall:

(a) Contain provisions for the division of Barbados into constituencies; and

(b) Contain provisions designed to ensure that so far as is practicable any person entitled to vote at an election of members of the House of Assembly shall have a reasonable opportunity of so voting; and

(c) Contain provisions relating to the conduct of elections of members of the House of Assembly, including provisions relating to the identification of electors, designed to ensure that so far as is practicable no person shall vote at an election of a member of the House of Assembly:

(i) Who is not entitled to vote; or

(ii) When he is not entitled to vote; or

(iii) Where he is not entitled to vote.

(2) No election of a member of the House of Assembly shall be called in question on the ground that the law under which that election was conducted was inconsistent with this section.

43. Subject to the provisions of section 44, any person who:

(a) Is a Commonwealth citizen of the age of twenty-one years or upwards; and

(b) Has such connection with Barbados by residence therein as may be prescribed by Parliament, shall be qualified to be elected as a member of the House of Assembly.

44. (1) No person shall be qualified to be elected as a member of the House of Assembly who:

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State;

(b) Holds or is acting in the office of a Judge, the Director of Public Prosecutions or the Auditor-General;

(c) Is a clerk in holy orders or other minister of religion;

(d) Is under sentence of death imposed by a court in any part of the Commonwealth or is serving a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(e) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Barbados;

(f) Has been adjudged or otherwise declared bankrupt under any law in force in Barbados and has not been discharged;

(g) Is disqualified for membership of the House of Assembly by or under any law in force in Barbados by reason of his having been convicted or reported guilty of any corrupt or illegal practice at elections;

(h) Is disqualified for such membership by or under any such law by reason of his having been convicted of making a false declaration of qualification for election;

(i) Is disqualified for such membership by or under any such law on any ground not mentioned in the foregoing provisions of this subsection, being a ground for disqualification for membership of the House of Assembly by or under any law, other than the Representation of the People Act 1957 in force in Barbados immediately before 30th November 1966.

(2) Without prejudice to the provisions of subsection (1) (b) and (c), Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be elected as a member of the House of Assembly if:

(a) He holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;

(b) He belongs to any armed force of Barbados or to any class of person that is comprised in any such force; or

(c) He belongs to any police force of Barbados or to any class of person that is comprised in any such force.

(3) For the purposes of subsection (1) (d):

(a) Two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

...

Part 2. Powers and Procedure of Parliament

Part 2. Appeals

...
49. (1) Subject to the provisions of this section, Parliament may, by an Act of Parliament passed by both Houses, alter this Constitution.
...

Chapter VII

THE JUDICATURE

Part 1. Supreme Court

80. (1) There shall be for Barbados a Supreme Court of Judicature, consisting of a High Court and a Court of Appeal, with such jurisdiction, powers and authority as may be conferred upon those Courts respectively by this Constitution or any other law.
...

...
87. (1) An appeal to the Court of Appeal shall lie as of right from final decisions of the High Court given in exercise of the jurisdiction conferred on the High Court by section 24 (which relates to the enforcement of fundamental rights and freedoms).

(2) An appeal shall lie as of right to Her Majesty in Council from any decision given by the Court of Appeal in any such case.

(3) In this section "the Court of Appeal" means such court as may be vested with jurisdiction to hear appeals from any court in Barbados in pursuance of section 86 or, if there is no such court, the Court of Appeal established by Part 1 of this Chapter.
...

BOLIVIA

PRESIDENTIAL DECREE No. 7822 OF 23 SEPTEMBER 1966 TO PROMULGATE ADMINISTRATIVE REGULATIONS UNDER THE LABOUR CODE¹

I. General Principles

1. For the purposes, aims and objects of the Labour Code¹ and the Decree promulgating the regulations thereunder each trade union shall be a voluntary association of workers and as such shall be endowed with juridical personality and be deemed to be a body established in the public interest, constituted for the representation and defence of the interests of its affiliated members, the raising of their standard of living, the integral advancement of the workers' conditions and their participation in the development of the country.

2. For the purposes of this Decree "worker" means any person who performs manual or professional activities on behalf of an employer, receiving from the latter the appropriate remuneration.

"Trade union organisation" shall cover trade union committees, trade unions, federations, confederations, and such Central Organisation as the confederations may wish freely to establish.

3. The affiliation of workers to the trade union organisations shall be free and voluntary and shall be guaranteed by the State. For this purpose nothing more shall be required than the express wish to affiliate and the fact that the worker is employed in the branch, activity or undertaking concerned.

The legal representatives of the employers, managerial staff or confidential staff in the employers' service shall not be entitled to join a trade union organisation.

4. Any political, religious, social, cultural, economic or other form of discrimination is expressly prohibited in trade union organisations.

5. Membership or office in a trade union organisation shall be strictly personal and shall not be delegated or transferred.

6. Pursuant to the provisions of section 128 of the State Constitution² and the Decree of

7 February 1944³ every office-holder in a trade union legally elected and recognised as such shall enjoy freedom of association and freedom to carry on trade union business with respect to all specifically trade union activities carried on by him and shall not on this account be dismissed, transferred or be the subject of duress or victimisation or be arrested.

The rule as to privilege of trade union activities shall not apply to any activity which is not genuinely of a trade union nature. Any act, delict, negligence or offence for which a trade union office-holder is responsible and falling under the civil, penal or administrative jurisdiction shall not be protected by the rule respecting freedom of trade union activities.

Privilege of trade union activities shall be withdrawn in the cases prescribed by law.

7. As soon as a worker ceases to be in the employ of the employer concerned he shall automatically cease to be a member of the corresponding trade union.

8. The State, through the Ministry of Labour and Social Security, shall exercise over-all guidance over the trade union organisations without prejudice to freedom of action.

II. Aims and Objects of Trade Unionism

9. Pursuant to the provisions of section 100 of the Labour Code¹ and sections 1 to 6 of the regulations thereunder, the trade union organisations shall have the following aims and objects:

(a) To represent their affiliated members in matters arising out of the work;

(b) To improve the living standards of their affiliated members, principally by increasing productivity;

(c) To organise their affiliated members for their increased industrial proficiency and further education for social advancement in every respect;

¹ Translations of the Presidential Decree into English and French have been published by the International Labour Office as *Legislative Series* 1966-Bol. 1.

² See *Yearbook on Human Rights for 1946*, p. 44.

³ Legislative Decree to provide that employees who hold managerial posts in industrial associations shall not be dismissed without due preliminary proceedings (*Legislative Series*, 1944-Bol. 2).

(d) To conclude collective labour agreements and contracts and exercise the rights contained therein, fulfilling and causing to be fulfilled the stipulations as contracted;

(e) To represent their affiliated members in collective and individual labour disputes, particularly in conciliation and arbitration procedure;

(f) To represent their affiliated members in the exercise of rights conferred by individual contracts of employment;

(g) To promote any cultural activity of an educational nature for workers;

(h) To encourage the organisation of co-operatives;

(i) In general to pursue the objects of assistance, solidarity, co-operation and social provident activities approved by the affiliated members and incorporated in the trade union rules.

10. It shall be unlawful for trade union organisations to engage in party politics or any activities which are contrary to the aims and objects of trade unionism set out in the preceding section. Affiliated members of trade unions may freely engage in the political activity of their preference as individuals.

III. Organisation

11. A trade union may be established only by 20 or more workers in the service of the same employer. In undertakings with less than 20 workers the latter may join together with the employees of two or more employers in the same activity to set up a trade union committee or trade union.

12. "Employer" shall mean any physical or juridical person giving employment together with the corresponding remuneration and covered by the scope referred to in section 1 of the Labour Code¹ and section 1 of the Decree to promulgate regulations thereunder.

13. In each undertaking or company a trade union may be organised under the name of "workers' trade union", covering all the workers in the undertaking without distinction as to occu-

pation, post, special skill or activity: Provided that in those undertakings or work centres where the manual and non-manual employees wish to organise in separate trade unions they shall be entitled to do so.

14. If the employer has two or more work centres in different localities the workers may organise a trade union in each of the said centres, on condition that there are 20 workers at least in each centre. If there are less than 20 workers in a given centre, a works union may be organised.

Each works union shall be managed by not more than two representatives who shall be elected at a general meeting.

...

19. Each trade union organisation shall have a managing committee whose members shall be jointly and severally responsible and shall fulfil the following conditions:

(a) Be a Bolivian national by birth;

(b) Be 21 years of age or over;

(c) Not have been sentenced by a Court to a term of imprisonment, nor be under warrant for arrest, nor be the object of prosecution or legal proceedings for non-payment of debts;

(d) Have discharged all his financial obligations towards the trade union organisations, furnishing evidence that he has no outstanding debts towards them;

(e) Be an active worker with at least six months' uninterrupted service in the undertaking;

(f) Have satisfied his obligations under the Compulsory Military Service Act or have been legally excused therefrom;

(g) Not be a member of any committee of any political party or group, or have resigned from such committee at least two months before his election.

20. For the purpose of ensuring free and democratic elections, at least two candidates shall be nominated for each trade union election. The majority and minority opinions shall be reflected in the constitution of the elected managing committee....

BOTSWANA¹

THE CONSTITUTION OF BOTSWANA²

Chapter I

THE REPUBLIC

1. Botswana is a sovereign Republic.

...

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3. Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) of this section if he dies as the result of the use, to such extent and in such

circumstances as are permitted by law, of such force as is reasonably justifiable:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

5. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(a) In execution of the sentence or order of a court, whether established for Botswana or some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of the order of a court of record punishing him for contempt of that or another court;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana;

(f) Under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Botswana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Botswana or for the purpose of restricting that person while he is being conveyed through Botswana in the course of his extradition or

¹ Bechuanaland became the independent State of Botswana on 30 September 1966.

² Published as Schedule 2 to the Botswana Independence Order 1966, in Statutory Instruments, 1966, No. 1171, by Her Majesty's Stationery Office, London, 1966.

removal as a convicted prisoner from one country to another; or

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Botswana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Botswana in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana,

and who is not released, shall be brought as soon as is reasonably practicable before a court; and if any person arrested or detained as mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) Any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifi-

able in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

7. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the former Protectorate of Bechuanaland immediately before the coming into operation of this Constitution.

8. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:

(a) The taking of possession or acquisition is necessary or expedient:

(i) In the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) In order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; and

(b) Provision is made by a law applicable to that taking of possession or acquisition:

(i) For the prompt payment of adequate compensation; and

(ii) Securing to any person having an interest in or right over the property a right of access to the High Court, either direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Botswana.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorises:

(a) The attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(b) The imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section:

(a) To the extent that the law in question makes provision for the taking of possession or acquisition of any property:

- (i) In satisfaction of any tax, rate or due;
- (ii) By way of penalty for breach of the law whether under civil process or after conviction of a criminal offence under the law in force in Botswana;
- (iii) As an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iv) In the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
- (v) In circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;
- (vi) In consequence of any law with respect to the limitation of actions; or
- (vii) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) To the extent that the law in question makes provision for the taking of possession or acquisition of:

- (i) Enemy property;
- (ii) Property of a deceased person, a person of unsound mind, a person who has not attained the age of twenty-one years, a prodigal, or a person who is absent from Botswana, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) Property of a person declared to be insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) Property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

9. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) That authorises an officer or agent of the Government of Botswana, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) That authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognised by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established or recognised by law and shall

be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(a) May consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(b) May be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(a) Subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) Subsection (2)(d) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under African customary law (being proceedings against any person who, under that law, is subject to that law);

(c) Subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) Subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law;

(e) Subsection (8) of this section to the extent that the law in question authorises a court to convict a person of a criminal offence under any African customary law to which, by virtue of that law, such person is subject.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(d) and (e) and subsection (3) of this section shall not apply in relation to his trial

for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section "criminal offence" means a criminal offence under the law in force in Botswana.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent

with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or

(c) That imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

13. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) That imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

14. (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Botswana, the right to reside in any part of Botswana, the right to enter Botswana and immunity from expulsion from Botswana.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on

the acquisition or use by any person of land or other property in Botswana and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society;

(b) For the imposition of restrictions on the freedom of movement of any person who is not a citizen of Botswana;

(c) For the imposition of restrictions on the entry into or residence within defined areas of Botswana of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or well being of Bushmen;

(d) For the imposition of restrictions upon the movement or residence within Botswana of public officers; or

(e) For the removal of a person from Botswana to be tried outside Botswana for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Botswana of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by order under such a provision as is referred to in subsection (3) (a) of this section (other than a restriction which is applicable to persons generally or to general classes of persons) so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Botswana, appointed by the Chief Justice.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

15. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision:

(a) For the appropriation of public revenues or other public funds;

(b) With respect to persons who are not citizens of Botswana;

(c) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(d) For the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(e) Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorised by section 9 (2), 11 (5), 12 (2), 13 (2) or 14 (3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceeding in any court that is vested in any person by or under this Constitution or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section:

(a) If that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or

(b) To the extent that the law repeals and re-enacts any provision which has been contained in any written law at all times since immediately before the coming into operation of this Constitution.

16. (1) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 5 or 15 of this Constitution to the extent that the law authorises the taking, during any period when Botswana is at war or any period when a declaration under section 17 of this Constitution is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period.

(2) Where a person is detained by virtue of such an authorisation as is referred to in subsection (1) of this section the following provisions shall apply:

(a) He shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) Not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, qualified to be enrolled as an advocate in Botswana, appointed by the Chief Justice;

(d) He shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal representative and he and any such legal representative shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations, concerning the necessity or expediency of continuing his detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

17. (1) The President may at any time, by Proclamation published in the Gazette, declare that a state of public emergency exists.

(2) A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect:

(a) In the case of a declaration made when Parliament is sitting or has been summoned to meet within seven days, at the expiration of a period of seven days beginning with the date of publication of the declaration;

(b) In any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration;

unless before the expiration of that period, it is approved by a resolution passed by the National Assembly, supported by the votes of a majority of all the voting members of the Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration approved by a resolution of the National Assembly under subsection (2) of this section shall continue in force until the expiration of a period of six months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution:

Provided that the National Assembly may, by resolution, supported by the votes of a majority of all the voting members of the Assembly, extend its approval of the declaration for periods of not more than six months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration approved by the Assembly under this section.

18. (1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 3 to 16 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(a) To hear and determine any application made by any person in pursuance of subsection (1) of this section;

(b) To determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 16 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 3 to 16 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(5) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

(2) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under

the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6, and 7.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Botswana, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

Chapter III

CITIZENSHIP

20. (1) Every person who, having been born in the former Protectorate of Bechuanaland, is on 29th September 1966 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Botswana on 30th September 1966.

(2) Every person who, having been born outside the former Protectorate of Bechuanaland, is on 29th September 1966 a citizen of the United Kingdom and Colonies or a British protected person, and is not a citizen of any other country, shall, if his father becomes, or would but for his death have become, a citizen of Botswana in accordance with the provisions of subsection (1) of this section, become a citizen of Botswana on 30th September 1966.

21. Every person born in Botswana on or after 30th September 1966 shall become a citizen of Botswana at the date of his birth:

Provided that a person shall not become a citizen of Botswana by virtue of this section if at the time of his birth:

(a) Neither of his parents is a citizen of Botswana and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Botswana; or

(b) His father is a citizen of a country with which Botswana is at war and the birth occurs in a place then under occupation by that country.

22. A person born outside Botswana on or after 30th September 1966 shall become a citizen of Botswana at the date of his birth if at that date his father is a citizen of Botswana:

Provided that a person shall not become a citizen of Botswana by virtue of this section if at the time of his birth he becomes a citizen of any other country.

23. (1) Any person born outside the former Protectorate of Bechuanaland before 30th September 1966, who does not become a citizen of Botswana in accordance with section 20 (2) of this Constitution, but whose father becomes or would but for his death have become, a citizen of Botswana in accordance with section 20 (1) of this Constitution shall be entitled, upon making application before the specified date

in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana:

Provided that any person who is under the age of twenty-one years (other than a woman who is or has been married) shall not be competent to make an application for registration under this subsection, but an application may be made on behalf of that person by his parent or guardian.

(2) Any person who, on 30th September 1966, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalised or registered under the British Nationality Act 1948 in the former Protectorate of Bechuanaland or whilst in the service of the Bechuanaland Government, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana:

Provided that any person who is under the age of twenty-one years (other than a woman who is or has been married) shall not be competent to make an application for registration under this subsection, but an application may be made on behalf of that person by his parent or guardian.

(3) Any woman who, on 30th September 1966, is or has been married to a person:

(a) Who becomes a citizen of Botswana by virtue of subsection (1) or subsection (2) of section 20 of this Constitution; or

(b) Who, having died before that date would, but for his death, have become a citizen of Botswana by virtue of that section,

shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(4) Any woman who:

(a) On 30th September 1966, is married to a person who becomes entitled to be registered as a citizen of Botswana under subsection (1) or subsection (2) of this section but whose marriage is terminated after that date by death or dissolution and before that person exercises his right to be so registered; or

(b) On 30th September 1966, has been married to a person who becomes or would but for his death have become entitled to be registered as a citizen of Botswana under subsection (1) or subsection (2) of this section, but whose marriage has been terminated by death or dissolution before that date,

shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(5) In this section "the specified date" means 1st October 1968, or such later date as may be prescribed by or under an Act of Parliament.

24. Any person who is born outside Botswana on or after 30th September 1966 and whose father is at the date of such birth a citizen of Botswana

shall, if he does not become a citizen of Botswana under section 22 of this Constitution, be entitled, upon application being made on his behalf by his parent or guardian within two years of his birth or with the permission of the Minister at a later date, to be registered as a citizen of Botswana.

25. (1) Any person who:

(a) Has attained the age of twenty-one years or is a woman who is or has been married;

(b) Is a citizen of any country to which this section applies; and

(c) Has been ordinarily resident in Botswana (including the former Protectorate of Bechuanaland) for the period of five years immediately preceding that person's application for registration or for such shorter period as the President may in exceptional circumstances in any particular case direct,

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(2) This section applies to:

(a) Any country to which section 28 of this Constitution applies; and

(b) Any other country which is a country in Africa and is for the time being declared by the Minister, by notice published in the Gazette, to be a country which grants to citizens of Botswana a right to obtain citizenship of that country corresponding to that conferred by this section.

26. (1) Any woman who, after 29th September 1966, marries a person who is or becomes a citizen of Botswana shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(2) Any woman who is, on 30th September 1966, married to a man who after that date becomes a citizen of Botswana shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

27. (1) Parliament may make provision for the acquisition of citizenship of Botswana by persons who are not eligible or who are no longer eligible to become citizens of Botswana under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Botswana any person who is a citizen otherwise than by virtue of section 20, 21 or 22 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Botswana.

(4) Parliament may make provision to regulate the procedure relating to the acquisition and loss of citizenship of Botswana.

28. (1) Every person who under this Constitution or any Act of Parliament is a citizen of Botswana or under any enactment for the time being in force in any country to which this section

applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948 or who continues to be a British subject under section 2 of that Act, or who is a British subject by virtue of section 1 of the British Nationality Act 1965 shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may otherwise be provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, the Gambia, Zambia, Southern Rhodesia, Singapore, Guyana, and any other country that may be prescribed by Parliament.

29. (1) Any person who, upon the attainment of the age of twenty-one years, is a citizen of Botswana and also a citizen of some country other than Botswana shall, subject to the provisions of this section, cease to be a citizen of Botswana upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and made such declaration of his intentions concerning residence as may be prescribed by Parliament.

(2) Any person who:

(a) Has attained the age of twenty-one years before 30th September 1966; and

(b) Becomes a citizen of Botswana on that day by virtue of the provisions of section 20 (1) of this Constitution; and

(c) Is immediately after that day also a citizen of some country other than Botswana,

shall, subject to the provisions of this section, cease to be a citizen of Botswana upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and made such declaration of his intentions concerning residence as may be prescribed by Parliament.

(3) Subject to the provisions of this section a citizen of Botswana shall cease to be a citizen if:

(a) Having attained the age of twenty-one years, he acquires the citizenship of some country other than Botswana by voluntary act (other than marriage); or

(b) Having attained the age of twenty-one years he otherwise acquires the citizenship of some country other than Botswana and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made such declaration of his intention concerning residence as may be prescribed by Parliament.

(4) A person who, having attained the age of twenty-one years or being a woman who is or has been married:

(a) Becomes a citizen of Botswana otherwise than under section 20, 21 or 22 of this Constitution; and

(b) Is immediately after the day upon which he becomes a citizen of Botswana also a citizen of some other country,

shall, subject to the provisions of this section, cease to be a citizen of Botswana upon the specified date unless he has renounced the citizenship of that other country, taken the oath of allegiance, and made such declaration of his intentions concerning residence as may be prescribed by Parliament.

(5) For the purposes of this section, where, under the law of a country other than Botswana, a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed by Parliament.

(6) In this section "the specified date" means:

(a) In relation to a person to whom subsection (1) of this section refers, the date on which he attains the age of twenty-two years;

(b) In relation to a person to whom subsection (2) of this section refers, 1st October 1968;

(c) In relation to a person to whom subsection (3) (b) of this section refers, the expiration of one year after the date on which he acquired the citizenship of the country other than Botswana; and

(d) In relation to a person to whom subsection (4) of this section refers, at the expiration of three months after the date upon which he became a citizen of Botswana,

or, in the case of a person of unsound mind, such later date as may be prescribed by or under an Act of Parliament.

(7) Provision may be made by or under an Act of Parliament for extending beyond the specified date the period in which any person may make a renunciation of citizenship, take an oath or make a declaration for the purposes of this section, and if such provision is made that person shall not cease to be a citizen of Botswana upon the specified date but shall cease to be such a citizen upon the expiration of the extended period if he has not then made the renunciation, taken the oath or made the declaration, as the case may be.

30. ...

(2) For the purpose of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 30th September 1966 and the birth occurred after 29th September 1966 the national status that the father would have had if he had died on 30th September 1966

shall be deemed to be his national status at the time of his death.

(4) An application for registration as a citizen under section 23, 24 or 25 of this Constitution or under any Act of Parliament shall not be made by or on behalf of any person who, under any law in force in Botswana, is adjudged or otherwise declared to be of unsound mind.

Chapter IV

THE EXECUTIVE

Part 1. The President and Vice-President

31. There shall be a President of the Republic of Botswana who shall be the Head of State.

...

34. A person shall be qualified for election as President if, and shall not be so qualified unless, he:

(a) Is a citizen of Botswana;

(b) Has attained the age of thirty years; and

(c) Is qualified to be elected as a member of the Assembly.

...

Chapter V

PARLIAMENT

Part 1. Composition

58. There shall be a Parliament of Botswana which shall consist of the President and a National Assembly.

59. (1) The National Assembly shall consist of:

(a) Thirty-one Elected Members who shall be elected in accordance with the provisions of this Constitution and subject thereto in accordance with the provisions of any Act of Parliament; and

(b) Four Specially Elected Members who shall be elected in accordance with the provisions of the Schedule to this Constitution and subject thereto in accordance with the provisions of any Act of Parliament; and

(c) The Attorney-General.

(2) If a person who is not a member of the National Assembly is elected to the office of Speaker of the Assembly that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsection (1) of this section.

...

62. Subject to the provisions of section 63 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be qualified to be so elected unless:

(a) He is a citizen of Botswana;

(b) He has attained the age of twenty-one years;

(c) He is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered; and

(d) He is able to speak, and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.

63. (1) No person shall be qualified to be elected as a member of the National Assembly who:

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

(b) Has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;

(c) Is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;

(d) Is a member of the House of Chiefs;

(e) Subject to such exceptions as may be prescribed by Parliament, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months;

(f) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(g) Holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the Assembly or the compilation or revision of any electoral register for the purposes of such elections.

(2) Parliament may provide that a person shall not be qualified for election to the National Assembly for such period (not exceeding five years) as may be prescribed, if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

...

68. (1) A person who:

(a) Is a citizen of Botswana or of any other country to which this section is applied by Parliament; and

(b) Has attained the age of twenty-one years; and

(c) Has either resided in Botswana for a continuous period of at least 12 months immediately

preceding the date on which he applies for registration as a voter or was born in Botswana and is domiciled in Botswana on the date on which he applies for registration as a voter;

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by any law, to be registered as a voter for the purposes of elections of Elected Members of the National Assembly, and no other person may be so registered.

(2) A person who has not continuously resided in Botswana for the period mentioned in paragraph (c) of subsection (1) of this section but has during the whole period retained his residence (or if he has more than one residence, his principal residence) in Botswana and has been absent therefrom for some temporary purpose only shall be deemed for the purposes of the said paragraph (c) to have been resident in Botswana during such absence.

(3) (a) A person shall be entitled to be registered as a voter:

(i) In the constituency in which he has his residence, or if he has more than one residence in Botswana in the constituency in which he has his principal residence, or

(ii) In the case of a person who does not have a residence in Botswana, in the constituency in which he was born.

(b) A person shall be entitled to be registered as a voter in one constituency only.

(4) Every person who is registered in any constituency as a voter for the purposes of elections of the Elected Members of the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or on the grounds of his having been reported guilty of such an offence by the Court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under a law in that behalf; and no other person may so vote.

...

Part 2. General Provisions Relating to Procedure in National Assembly

...

76. Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding fifty rand or such other sum as may be prescribed by Parliament for each day on which he so sits or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General.

...

Part 3. The House of Chiefs

78. (1) There shall be a House of Chiefs for Botswana.

(2) The House of Chiefs shall consist of:

- (a) Eight ex-officio Members,
- (b) Four Elected Members, and
- (c) Three Specially Elected Members.

79. The ex-officio Members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa Tribes, respectively.

80. (1) The Elected Members of the House of Chiefs shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, Francistown, Ghanzi and Kgalagadi districts, respectively.

(2) The Specially Elected Members of the House of Chiefs shall be elected by the ex-officio and Elected Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics.

...

(4) Subject to the provisions of subsections (5) and (6) of this section a person shall be qualified to be elected as a Specially Elected Member of the House of Chiefs if, and shall not be qualified to be so elected unless, he:

- (a) Is a citizen of Botswana;
- (b) Has attained the age of twenty-one years;
- (c) Is able to speak and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the House; and
- (d) Is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered.

(5) No person shall be qualified to be elected as a Specially Elected Member of the House of Chiefs who:

- (a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) Has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;
- (c) Is certified insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;
- (d) Subject to such exceptions as may be prescribed by Parliament, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months;

(e) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(f) Holds or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the National Assembly or the compilation or revision of any electoral register for the purposes of such elections; or

(g) Is disqualified for election to the National Assembly by virtue of provision made in pursuance of section 63 (2) of this Constitution.

(6) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms, and no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

...

85. The House of Chiefs shall not be disqualified for the transaction of business by reason of any vacancy among the members thereof including any vacancy not filled when the House is first constituted or is reconstituted at any time; and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the House or otherwise took part in the proceedings.

86. (1) (a) The House of Chiefs shall consider the copy of any bill which has been referred to it under the provisions of section 89 (2) of this Constitution and the House shall be entitled to submit resolutions thereon to the National Assembly.

(b) Any resolution which has been submitted to the National Assembly in accordance with the last foregoing paragraph shall forthwith be laid before the Assembly by the Clerk of the Assembly.

(c) Any Minister who is responsible for a bill such as is referred to in paragraph (a) of this subsection, or his representative, may attend the proceedings of the House when the copy of the bill is being considered.

(2) Any Minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House, and for that purpose the Minister or his representative may attend the proceedings of the House.

(3) The House of Chiefs shall be entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interests of the tribes and tribal organizations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly.

(4) A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (1) (c) or (2) of this section shall be entitled to take part in the proceedings of the House relating to the matter in respect of which he attends as if he were a member of the House:

Provided that he shall not be entitled to vote in the House.

Part 4. Powers of Parliament

89. ...

(2) The National Assembly shall not proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution of affect:

(a) The designation, recognition, removal or powers of Chiefs, Sub-Chiefs or Headmen;

(b) The organisation, powers or administration of African Courts;

(c) African customary law, or the ascertainment or recording of African customary law; or

(d) Tribal organisation or tribal property;

unless:

(i) A copy of the bill has been referred to the House of Chiefs after it has been introduced in the National Assembly; and

(ii) A period of thirty days has elapsed from the date when the copy of the bill was referred to the House of Chiefs.

90. (1) Subject to the provisions of this section Parliament may alter this Constitution.

...

BRAZIL¹

1. ACT No. 4.944 OF 6 APRIL 1966

Concerning the protection of performers, producers of sound recordings and broadcasting organizations, and other matters

Art. 1. It shall be the exclusive right of the performer, his authorized representative, or his heir or successor, to prevent the recording, reproduction, transmission or retransmission, by broadcasting organizations or otherwise, whether free of charge or subject to remuneration, of any of his public interpretations and performances, without his express and prior consent.

Art. 2. For the purposes of this Act:

(a) "Performer" shall mean an actor, announcer, narrator, orator, singer, choreographer, dancer, musician or any other person who interprets or performs a literary, artistic or scientific work;

(b) "Producer of sound recordings" shall mean an individual or body corporate responsible for issuing sound recordings;

(c) "Broadcasting organizations" shall mean radio and television enterprises which transmit programmes to the public;

(d) "Sound recording" shall mean the recording, exclusively in sound, on a physical substance, of the sounds of a performance or of other sounds;

(e) "Reproduction" shall mean the copying of sound recordings;

(f) "Broadcasting" or "transmission" shall mean the dissemination by means of radio waves of sounds or of sounds synchronized with pictures;

(g) "Retransmission" shall mean the broadcasting of a transmission of one broadcasting organization by another, whether simultaneously or at a later time;

(h) "Issuing" shall mean the act of making available to the public copies of sound recordings.

Art. 3. Broadcasting organizations may make non-permanent recordings of the interpretations and performances of a performer who has agreed to their being transmitted, to be used solely for broadcasting, on the agreed number of occasions and subject to their being destroyed immediately after the final authorized transmission.

Art. 4. It shall be the exclusive right of the producer of sound recordings to authorize or

prohibit their reproduction, direct or indirect, their transmission or re-transmission by broadcasting organizations and their public use in any form.

Art. 5. Broadcasting organizations shall have the right to authorize or prohibit the re-transmission, recording and reproduction of their broadcasts and the public showing of their transmissions on television in places of public assembly.

Art. 6. The performer and the producer of sound recordings shall be entitled to remuneration for the use of their sound recordings by broadcasting organizations, bars, recreation and charitable associations, clubs, amusement centres and any establishments which derive profit, directly or indirectly, from their public use.

1. The producer of sound recordings, in his capacity as tacit representative of the performer shall have the right to collect from the user remuneration for the public use of sound recordings and shall share it with the performer in the manner laid down in paragraphs 2 and 3 below.

2. Unless otherwise agreed between the parties, one half of the amount collected, less expenses, shall be paid to the performer who has participated in the making of the sound recording and the remaining half to the producer of the sound recording.

3. Where more than one performer has participated in the recording, the amount collected shall be divided in the following manner:

(i) Two thirds shall be payable to the performer, who shall be deemed to be the singer, vocal group or artist whose name is featured on the label of the sound recording or, in the case of an instrumental recording, the conductor of the orchestra;

(ii) One third shall be payable, in equal shares, to the musicians providing the accompaniment and the members of the chorus;

(iii) Where the performer is a vocal group, its share under the provisions of subparagraph (i) shall be divided equally among its members and shall be paid to the leader of the group.

¹ Texts in Portuguese furnished by the Government of Brazil.

4. For the purpose of exercising their rights under this Act, orchestras and vocal groups shall be represented by their respective conductors.

Art. 7. In the implementation of the provisions of this Act, regard shall be had at all times to their compatibility with the principles of the international conventions governing the protection of performers, producers of sound recordings and broadcasting organizations.

Art. 8. The protection granted under this Act shall remain in force for 60 (sixty) years, reckoned from 31 December of the year in which: the recording was made, in the case of sound recordings; the transmission took place, in the case of broadcasts by broadcasting organizations; the performance took place, in the case of performances not recorded or broadcast.

Art. 9. Any public presentation, whether in writing or sound, of a literary, artistic or scientific work protected by law in Brazil shall indicate, in full or in abbreviated form, the name or known pseudonym of the author or authors and of the performer, except where the nature of the contract makes such indication unnecessary or where otherwise agreed between the parties.

1. This requirement shall not apply to sound programmes of an exclusively musical character,

with no spoken material or commercial advertising.

2. Anyone who infringes the provisions of this article shall be obliged to announce the identity of the author or performer:

(a) In the case of broadcasting organizations, on 3 (three) consecutive days at the same programme time as that at which the infringement occurred;

(b) In the case of a written or recorded work, in a single-column notice of 20 (twenty) lines in 3 (three) consecutive issues of a daily newspaper having a large circulation in the place of the publisher's or producer's domicile.

3. Should the omission not be rectified in the manner specified in the preceding paragraph within 30 (thirty) days following receipt of a written communication from the person concerned, the compensation provided for in article 1,553 of the Civil Code shall be payable.

Art. 10. The principle to which this Act gives effect shall in no way alter the protection of copyright in artistic, literary or scientific works.

Art. 11. The Executive shall issue regulations for the implementation of this Act not later than 90 (ninety) days following its publication.

2. ACT No. 4.961 OF 4 MAY 1966

Amending Act No. 4.737 of 15 July 1965 (Electoral Code)

Art. 1. The following articles of Act No. 4.737 of 15 July 1965 shall be amended in the manner hereinafter indicated.

Art. 2. The leading paragraph of Article 7 shall be amended to read:

"*Art. 7.* Voters who fail to vote and do not justify their failure to vote before the electoral judge within thirty days after the holding of the election shall be liable to a fine of 3 to 10 per cent of the minimum wage for the region, which shall be imposed by the electoral judge and paid in the manner laid down in article 367."

Art. 3. The leading paragraph of Article 8 shall be amended to read:

"*Art. 8.* Natural-born Brazilians who fail to register on attaining the age of nineteen and naturalized Brazilians who fail to register within one year following acquisition of Brazilian nationality shall be liable to a fine of 3 to 10 per cent of the minimum wage for the region, to be imposed by the judge and paid at the time of the electoral registration by means of a cancelled Federal stamp on the application for registration."

Art. 4. Article 14, the leading paragraph of which shall remain unchanged, shall be amended to include the following paragraphs:

"1. The two-year terms shall run continuously, no absences, including leave, public holidays or special leave, being discounted, save in the circumstances specified in paragraph 3.

"2. Judges who are absent from their ordinary court posts by reason of leave, public holidays or special leave shall automatically be absent from the electoral courts for the same period, except when periods of leave for court personnel collectively coincide with the holding of an election, counting of votes, or closing of the register.

"3. From the time when the decisions of the convention of a candidate's party are finally approved until the completion of the counting of votes cast in the election, neither the spouse nor any blood relative, whether legitimate or illegitimate, nor any relative by affinity to the second degree, of a candidate for any elective office in the district shall serve as a judge of an electoral court or as an electoral judge.

"4. In the event of re-appointment for a second two-year term, the same formalities shall be observed as in the case of the first appointment."

Art. 5. Article 16 (1) shall be amended to read:

"1. The President of the Republic shall appoint judges with the rank of jurists within

thirty days following the receipt from the Federal Supreme Court of the list, in triplicate, which shall not include the names of retired judges or members of the *Ministério Público*."

...

Art. 13. The following paragraph shall be added to article 45:

"12. It shall be obligatory to forward the voter's file card to the regional court after his electoral certificate has been issued."

Art. 14. Paragraph 4 of article 46 shall be re-numbered 5 and the following text shall become paragraph 4:

"4. A voter may at any time apply to the electoral judge to have his electoral certificate or his individual ballot paper amended if it contains an obvious error or if it specifies an electoral district different from that covering his place of residence as indicated in his application for registration or transfer."

Art. 15. The following paragraphs shall be added to article 47:

"1. Every Civil Registry Office shall maintain a special register, to be opened and initialled by the electoral judge, in which citizens or party delegates may record applications for certificates for electoral purposes, stating the date of such application.

"2. The Registrar shall issue the certificate within fifteen days of the date of the application or shall submit to the electoral judge his reasons for failing to do so.

"3. Infringement of the provisions of this article shall render the registrar liable to the penalties provided for in article 293."

Art. 16. Paragraph 2 of article 55 shall be amended to read:

"2. The provisions of sub-paragraphs II and III of the preceding paragraph shall not be applicable to the transfer of the electoral certificate of civil servants, members of the armed forces or of autonomous State corporations or members of their families in the event of their reassignment or transfer."

Art. 17. The leading paragraph and paragraph 1 of article 57 shall be amended to read:

"*Art. 57.* Applications for transfer of electoral domicile shall be publicized immediately in the official press in the Capital and in the Registry in other places, and may be challenged by persons concerned within ten days.

"1. As soon as the provisions of this article have been complied with, the application shall be decided upon and the judge's decision shall be published in the same manner."

Art. 18. Article 62 (4) shall be amended and a fifth paragraph shall be added, as follows:

"4. The name submitted by the electoral judge for the office of registration clerk shall be announced in advance by means of a notice displayed at the Electoral Registry and any candidate or party may challenge the nomination within three days.

"5. Should the judge not withdraw the nomination, the challenge shall be submitted to the regional court, which shall consider it before deciding on the nomination."

Art. 19. The following paragraph shall be added to article 71:

"4. In the event of a well-founded complaint of fraud in the registration of voters of a zone or municipality, the regional court may order the necessary correction made and, should the extent of the fraud be significant, shall order that the electoral register be checked in accordance with the regulations of the High Court and any recommendations it may, in addition, hand down, any entries corresponding to electoral certificates not submitted for checking being cancelled automatically."

Art. 20. Article 94 (1) (V) shall be amended to read:

"V. by a dossier supplied by the competent authorities, in order that it may be determined whether the candidate has full political rights (art. 132 (III) and art. 135 of the Federal Constitution)."

Art. 21. The following paragraph shall be added to article 100:

"5. Following the drawing of lots in accordance with the provisions of this article, parties shall, if possible, retain the same series of numbers, and candidates for re-election the same individual numbers, unless the latter choose to have new numbers."

Art. 22. The leading paragraph of article 120 shall be amended to read:

"*Art. 120.* The polling committee shall be composed of a chairman, a first officer, a second officer, two secretaries and an alternate, all to be appointed by the electoral judge sixty days before the election at a public hearing of which at least five days' notice shall be given."

...

Art. 34. The leading paragraph and paragraph 1 of article 166 shall be amended to read:

"*Art. 166.* On opening the ballot-box the Board shall ascertain whether the number of official ballot-papers corresponds to the number of persons voting.

"1. A discrepancy between the number of persons voting and the number of official ballot-papers in the ballot-box shall not have the effect of invalidating the ballot unless it is the result of a proven fraud."

Art. 35. Sub-paragraphs III and IV of article 167 shall be revoked and sub-paragraphs I and II shall be amended to read:

"I. examine the white envelopes in the ballot-box and cancel the ballots of voters not entitled to vote;

"II. mix the official ballot-papers of those entitled to vote with the others in the ballot-box."

Art. 36. Article 169 (4) shall be amended to read:

"4. Appeal proceedings shall be instituted automatically, on the basis of a certificate showing the decision from which the appeal is lodged; if the appeal is made orally, the certificate shall also show the relevant passage of the report."

Art. 37. Article 172 shall be amended to read:

"*Art. 172.* If an appeal is lodged on the basis of incorrect counting of votes, invalid ballots, or, in the case of separate votes, invalid envelopes, the official ballot-papers shall be placed in a sealed container which shall accompany the appeal and shall be initialled by the electoral judge, the appellant and any party delegates who so desire."

Art. 38. The sole paragraph of article 174 shall become paragraph 3, and the following paragraphs 1 and 2 shall be added:

"1. When a blank ballot is announced and before the next ballot is read out, an indelible mark shall be made on the ballot-paper in the place where the vote should be shown, with the initials of the presiding officer.

"2. The checking of ballots in a ballot-box shall not begin until the blank ballots from the preceding ballot-box have been recorded in the manner described in paragraph 1. Violators shall be subject to the penalties provided for in article 345."

Art. 39. Article 175 (2) shall be revoked and paragraphs 3 and 4 shall become paragraphs 2 and 3.

Art. 40. Vetoed.

Art. 41. Vetoed.

Art. 42. Article 184 shall be amended to read:

"*Art. 184.* On completion of the count the Board shall forward to the regional court within twenty-four hours all the electoral documents relating to state or federal elections, together with the documents relating to the count and a general report of its work, which shall state the number of votes cast under each heading and for each candidate, the number of votes not counted and the reason for not counting them.

"1. These documents shall be placed in a closed, sealed container which shall be initialled by the members of the Board and by party

delegates and inspectors, and shall be forwarded by mail or by official courier, depending on which is the quickest and safest way of ensuring its arrival.

"2. If the electoral documents are not forwarded, as provided in this article, within the period stipulated herein, the members of the Board shall be liable to a fine corresponding to one-half of the regional minimum wage for each day of delay.

"3. Should the regional court not receive the documents to which this article refers or not be informed of their dispatch within fifteen days, it shall instruct the nearest regional magistrate or electoral judge to have them seized and forwarded immediately, and competence to take decisions concerning the documents shall be transferred to the regional court."

Art. 43. The sole paragraph of article 198 shall be replaced by the following:

"1. The High Court may extend this period, once only and for fifteen days, if there are compelling reasons for doing so, stated sufficiently far in advance.

"2. Should the regional court not complete the count within the statutory period its members shall be liable to a fine corresponding to one-half of the regional minimum wage for each day of delay."

...

Art. 52. The following paragraph shall be added to article 266:

"*Sole paragraph.* Should the appellant allege coercion, fraud, or use of the means referred to in article 237 or of propaganda or methods of soliciting votes prohibited by law, proof of which is to be established by the court, he shall be required only to state the means employed."

Art. 53. Article 267, paragraph 6, shall be amended to read:

"6. Within forty-eight hours following the expiry of the periods to which the foregoing paragraphs refer, the electoral judge shall, unless he reverses his decision, submit the records to the regional court together with his findings and the documents on which they are based; if he fails to do so he shall be liable to a fine corresponding to 10 per cent of the regional minimum wage for each day of delay."

Art. 54. Article 268 shall be amended to read:

"*Art. 268.* No allegation in writing or document may be submitted to the regional court by any of the parties, except as provided in article 270."

Art. 55. Article 270 shall be amended to read:

"*Art. 270.* Should the appeal relate to coercion, fraud, or use of the means referred to in article 237 or of propaganda or methods of soliciting votes prohibited by law, proof of

which will depend on evidence cited by the parties in lodging or challenging the appeal, the *relator* of the regional court shall decide within twenty-four hours after receiving the appeal whether to admit such evidence, which, if admitted, must be produced within five days.

"1. The court shall accept as means of proof on which to base its judgement the evidence and expert opinions presented before the electoral judge of the area, and shall hear the political parties which have taken part in the electoral campaign and the representative of the *Ministério Público*.

"2. If the *relator* does not admit the evidence, the records of the proceedings shall, at the request of the appellant, be submitted within twenty-four hours to the first meeting of the court, which shall consider the matter.

"3. The procedures instituted to determine the validity of the charge having been recorded, or the evidence or documents relating to such procedures having been attached, the secretariat of the court shall immediately make the records available for a continuous period of twenty-four hours to the appellant and the appellee for their comments.

"4. On the expiry of the above period, the records shall be transmitted to the *relator*."

Art. 56. Article 345 shall be amended to read:

"Art. 345. Failure by the judicial authority or other official of the organs of electoral justice to comply, within the statutory periods, with the duties laid down by this Code, if the offence is not subject to other penalties:

"Penalty: payment of thirty to ninety times the daily fine."

Art. 57. The sole paragraph of article 367 shall be replaced by the following:

"1. Fines imposed by electoral courts shall be considered immediately and unconditionally payable, for the purposes of collection by fiscal authorities, once they have been recorded in the appropriate register of the secretariat of the competent court.

"2. The fine may be increased as much as tenfold if the judge or the court considers that, by virtue of the economic position of the offender, the imposition of even the maximum fine would be ineffective.

"3. Registrants or voters who provide proof of indigence shall be exempt from payment of fines.

"4. The National Treasury shall be authorized to issue stamps, to be called electoral stamps, to be used for the payment of emoluments, costs, expenses and fines, both administrative and penal, which are payable to the electoral justice authorities.

"5. Should the electoral justice authorities not have sufficient electoral stamps available to supply those concerned, fines may be paid by means of revenue collection forms."

Art. 58. The sole paragraph of article 374 shall be revoked and the leading paragraph of that article shall be amended to read:

"Art. 374. Members of electoral courts, electoral judges and civil servants seconded to serve in the organs of electoral justice who, by virtue of their duties in the said organs, have not been given the leave to which they are entitled may take it in the following year, cumulatively or otherwise."

3. ACT No. 5.089 OF 30 AUGUST 1966

Prohibiting the printing and distribution of publications for children and adolescents which exploit crime, terror and violence

Art. 1. The printing and distribution of any publications intended for children or adolescents which contain or exploit subject-matter involving crime, terror or violence shall be prohibited.

Sole paragraph. The publications referred to in this article shall be deemed offensive to public morality and social order; those responsible for them shall be liable to the penalties provided for in article 9 (e) of Act No. 2.083 of 12 November 1953, and the competent authorities shall apply the measures specified in articles 53 and 54 of that Act.

Art. 2. This Act shall enter into force on the date of its publication.

4. DECREE-LAW No. 41 OF 18 NOVEMBER 1966

Providing for the dissolution of welfare associations

Art. 1. Any welfare association which is aided or subsidized by the public authorities or is maintained, wholly or in part, by the periodic contributions of members of the public shall be dissolved in the circumstances and in the manner herein provided.

Art. 2. The association shall be dissolved if it:

I. fails to carry out effectively the welfare activities which it is intended to provide;

II. applies the sums received by way of aid, subsidies or contributions from the public for purposes other than those stipulated in its articles of association or statutes;

III. has no effective administration because of the dereliction of duty or continued negligence of its governing organs.

Art. 3. On receiving proof of the existence of any of the circumstances mentioned in the preceding article, the *Ministério Público* shall, *ex officio* or at the instance of any person concerned, apply to the competent courts for the dissolution of the association.

Sole paragraph. The procedure for dissolution and liquidation shall be that laid down in articles 655 *et seq.* of the Code of Civil Procedure.

Art. 4. The penalty provided for by this Decree-Law shall not preclude the imposition of any other appropriate penalties on those responsible for the irregularities which have occurred.

...

5. ACT No. 5.145 OF 20 OCTOBER 1966

Concerning the naturalization of minors born prior to the naturalization of their parents, amending Act No. 818, articles 3, 4 and 8, revoking Act No. 4.404 of 14 September 1964, and other provisions

Art. 1. Articles 3, 4 and 8 of Act No. 818 of 18 September 1949 shall be amended to read:

"*Art. 3.* The option to which articles 1 (II) and 2 refer shall be exercised by means of a declaration entered in the civil register of births and signed by the person concerned or his authorized representative.

"1. Application for the entry of the declaration in the register shall be made to the court within whose jurisdiction the applicant's domicile is situated in the form of a petition accompanied by a document proving that one of the applicant's parents was a Brazilian national on the date of the applicant's birth.

"2. Having heard the representative of the Federal *Ministério Público* within a period of five days, the judge shall make his decision within a further period of five days and, should he authorize the entry of the declaration, shall appeal the authorization *ex officio*.

"*Art. 4.* The child of a Brazilian father or mother, born in a foreign country of parents who are not in the service of Brazil in that country, may, having come to Brazil with the intention of residing there, apply to the court within whose jurisdiction his domicile is situated to have the fact of his domicile—as indicated by the application and by the relevant certificates—accepted as proof of Brazilian nationality until four years after he attains his majority.

"1. The application shall be accompanied by documents proving that one of the applicant's parents was a Brazilian national on the date of

the applicant's birth and that the applicant's domicile is in Brazil.

"2. Having heard the representative of the Federal *Ministério Público* within five days of the application, the judge shall make his decision within a further five days.

"3. A decision to authorize the relevant entry in the record shall be appealed by the judge *ex officio*.

...

"*Art. 8.* The conditions for naturalization shall be:

"I. Legal capacity of the applicant in accordance with Brazilian law;

"II. Continuous residence in Brazilian territory for at least five years immediately preceding the application for naturalization;

"III. Ability to read and write Portuguese, due account being taken of the circumstances of the applicant;

"IV. The exercise of an occupation or the possession of means adequate to support the applicant and his family;

"V. Good conduct;

"VI. No indictment or conviction in Brazil for an offence the penalty for which exceeds imprisonment for one year;

"VII. Good health.

"1. The requirement under IV above shall not apply to the alien wife of a Brazilian national or to Portuguese nationals; with

reference to II and III above, Portuguese nationals shall be required only to submit proof of one year's continuous residence and to have a satisfactory command of Portuguese.

"2. Proof of good health shall not be required of any alien if his period of residence exceeds one year.

"3. Minor children of naturalized Brazilians residing in Brazil who were born prior to the naturalization of one parent shall be permitted to apply for naturalization on attaining the age of eighteen; they shall also be exempted from the provisions of article 8 (IV) if they are dependent on their parents, and their applications shall have priority over all others."

BULGARIA

NOTE¹

I. HOUSING

Pursuant to its Order No. 39 of 30 July 1966 (published in the *Official Gazette*, No. 61, of 5 August 1966), the Council of Ministers approved a Regulation concerning loans for housing construction (published in the *Official Gazette*, No. 96, of 9 December 1966), setting on foot a large-scale programme to expedite the solution of the country's housing problem and providing for the granting of long-term, low-interest loans for private housing construction on a more extensive basis than had been provided for by previous legislation.

The Order provides for housing construction to increase during the period 1966-1970 by 200-300 per cent over the 1961-1965 period.

II. PREVENTION OF EMPLOYMENT ACCIDENTS AND PROTECTION OF HEALTH

(a) Regulations respecting the registration of employment accidents were published in the *Official Gazette*, No. 37, of 10 May 1966.

(b) An Act to establish an Inspectorate for the Supervision of Occupational Safety, attached to the Council of Ministers, was published in the *Official Gazette*, No. 52, of 5 July 1966.

The newly established Inspectorate works in agreement with the departments concerned and the Central Council of Trade Unions. The provisions issued by the Inspectorate within its sphere of competence are binding on all ministries, departments, organizations and supervisory authorities. Disciplinary and administrative penalties (fines) are prescribed for infringements of the provisions respecting occupational safety, irrespective of any liability that may have been incurred in criminal law.

(c) The Regulations respecting State supervision of health and hygiene, superseding the 1952

Regulations respecting State health and hygiene inspection and the 1952 Instruction concerning penalties to be imposed by health authorities in cases of infringement of health and hygiene rules and standards were published in the *Official Gazette*, No. 68, of 30 August 1966. General supervision will be exercised through the agencies of the Ministry of Public Health and Social Welfare with a view to ensuring the application of the legal provisions designed to protect and strengthen the health and work capacity of the people.

III. OCCUPATIONAL STATUS OF WAGE AND SALARY EARNERS AND PERSONS ENGAGED IN PROFESSIONAL ACTIVITY

(a) Following Order No. 53 of the Council of Ministers and the Central Committee of the Bulgarian Communist Party, of 13 December 1965, concerning the raising of the people's level of living in 1966-1967 (published in the *Official Gazette*, No. 53, of 8 July 1966), General Rules were published concerning the application of the scale of wage and salary increments for the various labour categories. The General Rules maintain all the rights acquired under earlier labour legislation.

(b) A Decree amending the Decree concerning the settlement of certain matters relating to pensions (*Official Gazette*, No. 9, of 1 February 1966) sets forth the pension privileges of stage actors.

(c) A Supplementary List of categories of wage and salary earners employed in extremely unhealthy and dangerous occupations who are thereby entitled to supplementary paid annual leave, was published in the *Official Gazette*, No. 73, of 20 September 1966, together with the text specifying the length of such leave. The publication of this Supplementary List was necessitated by the development of the industrial sector of the Bulgarian economy.

(d) Circular No. 0-23 respecting the legal status of homeworkers, issued by the Labour and Wages Committee, the Central Council of Trade Unions and the Central Council of Production and Labour Co-operatives, was published in the *Official*

¹ Note communicated by Professor Anguel Angueloff of the University of Sofia, Legal Adviser to the Ministry of Foreign Affairs, correspondent of the *Yearbook on Human Rights* appointed by the Government of the People's Republic of Bulgaria.

Gazette, No. 70, of 6 September 1966. The purpose of this instrument is to extend to homeworkers employed under labour contracts all the provisions relating to labour protection laid down in Bulgaria's social legislation.

(e) Order No. 193 of the Council of Ministers of 18 October 1966, amending the Ordinance concerning the insurance of cultural workers, lawyers and private chauffeurs, makes some improvements in the pension insurance situation of the persons covered by the Ordinance (*Official Gazette*, No. 84, of 28 October 1966).

(f) An Amendment to the Regulations respecting the application of the Co-operative Farmers' Pensions Act (approved by the Ministry of Finance and the Ministry of Agriculture and published in the *Official Gazette*, No. 84, of 28 October 1966) likewise provides better protection for the interests of those concerned. Under this Amendment, co-operative farmers whose co-operative farms have become State farms or State enterprises receive an increase in their old-age pensions, provided that they have completed, since 1 July 1961, at least three years' service on the co-operative farm and the State farm or enterprise.

BURUNDI

BURUNDI LABOUR CODE

Promulgated by Legislative Order No. 001/31 of 2 June 1966¹

SUMMARY

The Code consists of 331 articles and is divided into thirteen parts dealing, respectively, with general provisions, contracts of apprenticeship, contracts of employment, regulations, wages, general conditions of work, occupational safety and hygiene, labour administration, means of supervision, labour disputes, labour relations, penalties, and final provisions.

Article 1 of the Code reads as follows:

"This Code shall apply to all workers and employers carrying on their occupational activity in any part of the territory of the Kingdom of Burundi, irrespective of the race, colour, sex or nationality of the parties, the type of services performed, the amount of

remuneration or the place of making of the contract.

"This Code shall not apply to:

"(a) members of the judiciary,

"(b) employees of the State, the subordinate authorities, para-State services, the Army and the Police when such employees are governed by special legislation."

Under Article 2, forced or compulsory labour is absolutely forbidden. That article also provides that the above-mentioned prohibition shall cover any labour or service demanded of an individual under threat of any penalty and which the said individual has not freely offered to perform.

General conditions of work, which are dealt with in Part VI of the Code, include the obligations of the parties, hours of work, weekly rest and public holidays, night work, employment of women, employment of children and young people, food and lodging, leave, travel and transportation, medical care, employment rules and disciplinary measures.

¹ *Bulletin officiel du Burundi*, No. 9 bis/66, 15 September 1966.

LEGISLATIVE DECREE No. 0001/34 OF 23 NOVEMBER 1966 RECOGNIZING UNITÉ ET PROGRÈS NATIONAL (UPRONA) AS THE SINGLE NATIONAL PARTY²

Art. 1. The people shall freely and democratically exercise their sovereignty within the single party, Unité et progrès national (UPRONA) (Unity and National Progress Party).

Art. 2. By its leadership UPRONA shall guide the work of the political organs of the State to ensure that their activities are consonant with the profound aspirations of the people.

Any decision affecting the nation taken outside the context of the government programme shall first be submitted to the executive committee of the party.

Art. 3. The party shall exercise supervision over youth movements and trade unions.

Art. 4. The statutes of the party shall guarantee freedom of discussion in each of its organs and

shall ensure that its leaders are chosen democratically.

Art. 5. The single party shall enjoy the status of a legal person.

Art. 6. All political associations established under ordinance No. 11/234 of 8 May 1959 are hereby dissolved.

Art. 7. Persons helping to establish or operate any other political association shall be liable to imprisonment not exceeding five years and a fine not exceeding twenty thousand francs.

Persons who were members of such associations shall be liable to imprisonment not exceeding two years and a fine not exceeding ten thousand francs.

Art. 8. This legislative decree shall enter into force on the day following its publication.

² *Ibid.*, No. 11a/66, 25 November 1966.

MINISTERIAL ORDER No. 020/183 OF 5 NOVEMBER 1966
ON THE RIGHT OF RESIDENCE³

Art. 1. Any person who, by his presence or conduct, seriously endangers or threatens to endanger public order, may be compelled, by an order issued by the Minister for the Interior and accompanied by a statement of reasons, to remove from particular places or from a particular region of the country or to reside in a prescribed part of Burundi.

Art. 2. The order shall include in its statement of reasons a precise account of the facts and circumstances justifying the residence restriction.

The order shall specify the period of time within which it is to be executed and, where applicable, the itinerary to be followed. If necessary, the Governor of the Province in which the order has been given may grant an extension of time and approve changes in the itinerary.

The order shall establish the duration of the residence restriction, within the limits laid down in Article 4.

The order shall be declared null and void unless it reproduce the text of Article 5 hereunder.

The order may prescribe special measures for the surveillance of the activities and correspondence of the person on whom the residence restriction is imposed.

Art. 3. The individual concerned shall be notified of the order in person by an official of the Administration, who shall prepare a record thereof.

A copy of the record of notification and of the order shall be given to the person notified.

Art. 4. The residence restrictions envisaged by the present order may not be imposed for a period of more than two years.

They may be revoked before the end of that period.

They may be renewed one or more times.

Art. 5. By a note appended to the record of notification or a letter addressed to the Prime Minister not later than the fifteenth day following the notification, the person notified may lodge an

appeal against the order imposing residence restrictions.

The appeal shall not be a stay of the execution of the order.

The Prime Minister shall decide not later than thirty days after receiving the appeal.

Art. 6. The Prime Minister shall make his decision after consultation with an advisory commission consisting of the Minister of Justice, as President, and the Minister with responsibility for Security and the President of the Appeals Court, as members.

The file relating to the case shall be transmitted to the President of the Commission by the Minister of the Interior.

The Commission may decide to grant a hearing, or cause a hearing to be granted, to the person on whom the residence restriction has been imposed.

The Commission shall submit its report to the Prime Minister as expeditiously as possible.

Art. 7. At intervals of eight months, a person subjected to a residence restriction may request the Minister of the Interior to review his case.

The Minister of the Interior shall give his decision not later than thirty days after receiving the request for review, after consultation with the Governor of the Province where the person concerned resides and, where appropriate, with the administrative authority of the place in which the presence of that person has been deemed undesirable.

The decisions of the Minister of the Interior regarding requests for review shall be notified to the person concerned in accordance with Article 3 and can be appealed in accordance with the procedure laid down in Articles 5 and 6.

Art. 8. Any person who, having received notification of an order imposing residence restrictions fails to comply with that order or evades the special arrangements for surveillance prescribed by the order, shall be sentenced from two weeks to six months in prison.

If a further offence is committed, the penalty shall be doubled.

...

³ *Ibid.*, No. 12/66, 1 December 1966.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC¹

FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1966

Report of the Central Statistical Board of the Council of Ministers of the Byelorussian SSR

(EXTRACTS)

In 1966, the first year of the new Five-Year Plan, the working people of the Byelorussian SSR, carrying out the decisions taken by the Twenty-Third Congress of the Communist Party of the Soviet Union, made further progress in the development of all sectors of the economy and further increased the prosperity of the people.

RISE IN THE PROSPERITY AND CULTURAL LEVEL OF THE PEOPLE

The average number of manual and non-manual workers employed in the national economy was over 2.5 million, an increase of 5 per cent over the previous year. The average monthly cash earnings of manual and non-manual workers in the Byelorussian economy was 5 per cent higher in 1966 than in 1965.

In 1966 the population of the Republic received out of social consumption funds, grants and benefits amounting to more than 1,400 million roubles, or 11.5 per cent more than in 1965, in pensions, allowances, students' grants, paid vacations, free education, free medical care and other services. This sum included pensions paid to manual and non-manual workers and collective farmers amounting to 356 million roubles, a rise of 15 per cent over the previous year.

Individual deposits in savings banks increased by 144 million roubles, or 29 per cent, and at 1 January 1967 amounted to 643.5 million roubles; the number of depositors increased by 11 per cent and by the end of the year had reached 1,679,000.

The volume of State and co-operative retail trade in 1966 amounted to 3,480 million roubles, an increase of 13 per cent over 1965 in comparable prices. The retail trade turnover of consumer co-operative trading in rural areas rose by 15 per cent.

The annual plan for retail trade turnover was fulfilled by 105 per cent; in particular, the Ministry of Trade fulfilled the plan by 103 per cent and the Byelorussian Co-operative Union by 106 per cent. Supplies of foodstuffs and many industrial

products to the population were considerably improved.

Further progress was made in the construction of housing and public amenities. A total of more than 57,000 new and well-equipped apartments, with a total floor space of more than 2.5 million square metres, financed both by the State and by manual and non-manual workers from their own resources and with the help of State loans, were brought into occupancy in towns and rural localities. In addition, more than 18,000 dwellings were built on collective farms (by the collective farms, the collective farmers and the rural intelligentsia) using their own resources and with the help of State loans.

During the past year more than 350,000 persons have moved into new apartments or got better accommodation in existing housing.

Large-scale capital investment has been made in the construction of educational, cultural and health institutions.

Household services increased by 23 per cent over 1965, and in rural localities by 71 per cent. The number of enterprises providing such services increased; workshops for sewing and repairing clothing, repairing metal goods, repairing and producing knitted goods, automatic laundries, baths, etc. were built.

Steps were taken to provide better amenities in towns and rural localities. The number of apartments supplied with piped or liquid gas in towns and workers' settlements increased by 68,000.

Further progress was achieved in public education, science and culture.

In 1966 more than 2.5 million persons received education of one type or another. One million eight hundred thousand persons attend general education schools, 115,900 people are receiving education in higher educational establishments and 134,800 persons in secondary educational establishments.

Enrolment in extended-day schools and groups and boarding schools totalled more than 145,000 or 22 per cent more than in 1965.

During the past year 141,000 persons completed ten or eleven years of schooling. Last year more than 34,000 specialists graduated from

¹ Texts furnished by the Government of the Byelorussian Soviet Socialist Republic.

higher and secondary specialized educational establishments in Byelorussia, approximately 13,000 of them from specialized higher educational establishments and more than 21,000 from specialized secondary educational establishments.

At the end of the year about 430,000 specialists with higher or specialized secondary education were working in the national economy. That number was 8 per cent higher than the 1965 level.

Enrolment in higher educational establishments in Byelorussian was 29,300 and in secondary specialized schools 42,500, giving a total of 71,800. Enrolment in higher educational establishments was 17 per cent higher than in 1965.

In the past year, 36,000 young skilled workers were trained in trade and vocational-technical

schools. By means of individual and group apprenticeship and course instruction given directly at enterprises and collective farms, over 460,000 persons improved their qualifications and learnt new trades. The number of scientific workers employed at scientific institutions, higher educational establishments and other organizations was over 16,000 at the end of the year.

The number of pre-school establishments increased and attendance at them was 14 per cent higher than in 1965. Medical services for the population were further improved. The number of doctors in all categories increased by 1,400 during the year, amounting to over 20,000. There was an increase in the number of beds in hospitals, sanatoria, preventive clinics and rest-homes.

The population of the Byelorussian SSR on 1 January 1967 was 8.7 million.

CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC FOR 1966

Adopted by the Supreme Soviet on 22 December 1965

The Supreme Soviet of the Byelorussian Soviet Socialist Republic hereby resolves:

Art. 1. To approve the State budget of the Byelorussian SSR for 1966 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the Budget Commission of the Supreme Soviet of the Byelorussian SSR, providing for total revenue and expenditure of 1,962,878,000 roubles.

Art. 2. To establish the revenue from State and co-operative undertakings and organizations—turnover tax, profits tax, income tax and other revenue from the socialist economy—under the State budget of the Byelorussian SSR for 1966 at the sum of 1,835,733,000 roubles.

Art. 3. To appropriate a total of 950,333,000 roubles under the State budget of the

Byelorussian SSR for 1966 for the financing of the national economy—continued development of heavy industry, construction, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Art. 4. To appropriate a total of 917,756,000 roubles under the State budget of the Byelorussian SSR for 1966, including 158,560,000 roubles under the State social insurance budget, for social and cultural development—general education schools, specialized secondary schools, higher educational establishments, scientific research institutions, industrial trade schools, libraries, clubs, theatres, the Press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

DECISION OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON THE FULFILMENT OF THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1965

Adopted on 23 June 1966

(EXTRACTS)

The Supreme Soviet of the Byelorussian SSR notes that in 1965, as a result of the fulfilment of the targets of the State plan for the development of the national economy, with regard to the most important indices and the improvement in the identification and utilization of internal reserves for the expansion of production, accumulation and payments to the budget in the ministries, departments and executive committees of the local Soviets of Working People's Deputies of the Republic, the budget revenues were collected in full, thus ensuring the uninterrupted financing of

the measures provided for in the national economic plan and budget for 1965.

The plan for revenues and the plan for expenditure under the State budget of the Byelorussian SSR for 1965, as amended, were fulfilled by 101.9 and 100.3 per cent respectively. As a result of the over-fulfilment of the plan for revenues under the State budget of the Byelorussian SSR for 1965, it was possible to invest a further 12.9 million roubles in agriculture and a further 9.8 million roubles in social and cultural measures.

DECISION OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON
ROYALTIES FOR THE PERFORMANCE OF DRAMATIC AND MUSICAL
WORKS

Adopted on 2 September 1966

(EXTRACTS)

In order to regulate the system now used for paying the authors of dramatic and musical works, the Council of Ministers of the Byelorussian SSR resolves:

1. To introduce, as from 1 January 1967, percentage deductions from the total takings from ticket sales by theatres and other entertainment enterprises for the performance of dramatic works (original plays, dramatizations, plays in translation) and for the performance of opera, ballet, musical comedies, concerts and circuses.

2. To establish the amount payable to the heirs of authors as 50 per cent of the amount of the royalties stipulated in article 1 of this Decision, within the time limits fixed by the law on the rights of an author.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELO-
RUSSIAN SSR AMENDING ARTICLE 7 OF THE ACT CONCERNING THE
ESTABLISHMENT OF A CLOSER CORRESPONDENCE BETWEEN EDUCATION
AND LIFE AND THE FURTHER DEVELOPMENT OF THE EDUCATIONAL
SYSTEM IN THE BYELORUSSIAN SSR

Adopted on 21 March 1966

In accordance with the Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics of 14 March 1966 amending article 4 of the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the USSR, the Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

1. To amend article 7 of the Act of the Byelorussian SSR of 8 April 1959 concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Byelorussian SSR to (*Sobranie Zakonov BSSR*, 1959, No. 4, item 88) to provide that those attending secondary general labour polytechnic schools shall receive secondary general and polytechnic education and labour training, and where appropriate vocational training.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR
CONCERNING ADDITIONS TO THE CODE OF CIVIL PROCEDURE OF THE BYELORUSSIAN
SSR

Adopted on 12 September 1966

(EXTRACTS)

The Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

To make the following additions to the Code of Civil Procedure of the Byelorussian SSR:

1. To add the following paragraphs after the seventh paragraph of article 116:

"An action for dissolution of marriage with a person duly recognized as missing, or incapable because of mental illness or imbecility, or condemned to long-term imprisonment (for a

period of not less than three years) may be brought at the place of residence of the plaintiff.

"An action for dissolution of marriage may also be brought at the place of residence of the plaintiff in cases when he has minor children with him or when because of his health travel to the place of residence of the respondent is difficult."

2. To add the following sub-paragraph to paragraph 5 of article 135:

"Shall decide whether the guardianship and trusteeship authorities shall participate in cases concerning dissolution of marriage with persons duly recognized as missing or incapable because of mental illness or imbecility, in order to ensure respect for the property rights of the respondent and for the interests of his children."

3. To add to article 138 the following paragraph:

"Cases concerning dissolution of marriage with persons duly recognized as missing or

incapable because of mental illness or imbecility shall be heard without summoning the respondent."

4. To add to article 152 a third paragraph reading as follows:

"In the event of a second failure to appear without valid reason by a plaintiff in a case concerning dissolution of marriage, unless he has sent a request that the case should be heard in his absence, the court shall abandon proceedings without a hearing."

DECISION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIAN AND THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR CONCERNING MEASURES FOR THE FURTHER DEVELOPMENT OF PHYSICAL CULTURE AND SPORT IN THE REPUBLIC

Adopted on 24 December 1966

(EXTRACTS)

The Central Committee of the Communist Party of Byelorussian and the Council of Ministers of the Byelorussian SSR note that in recent years certain positive results have been obtained in the expansion of the physical culture movement in the Republic. More than 20 per cent of the population engages in physical culture and sport, and this has made it possible for organizations concerned with physical culture to produce more Masters of Sport of the USSR and competitors of international class. There are 120 Byelorussian sportsmen in the combined national teams, including Olympic, world and European champions.

The Central Committee of the Communist Party of Byelorussian and the Council of Ministers of the Byelorussian SSR hereby decide:

...

To require the regional, urban and district committees of the Byelorussian Communist Party and the executive committees of the regional, urban and district Soviets of Working People's Deputies to adopt measures which will ensure complete fulfilment of the requirements of the programme of the Communist Party of the Soviet Union concerning the development of physical culture and popular sport by all possible means and their introduction as a permanent feature into the daily life of the Soviet people.

2. To require the Central Committee of the Lenin Young Communist League of Byelorussia to increase the responsibility of the Young Communist League organizations for the state of physical culture and sport among the youth of the Republic and to make wider and more active use of physical culture and sport as an important means of communist education of young people, constituting to their general physical development, improving their health and preparing them for work and for the defence of their country.

Together with physical culture organizations and tourist councils, to make wider use of such forms of physical culture as large-scale competitions, cross-country races, automobile and bicycle races, skiing and tourist trips to historic monuments, the establishment of prizes in memory of national heroes, etc.

3. To require the Ministry of Education of the Byelorussian SSR to improve the organization of physical education for school children and the development of young people's sports regarding these areas as an integral part of the over-all system of education for school children.

For these purposes the Ministry of Education of the Byelorussian SSR shall:

Increase its allocations for popular sport and for the purchase of sporting supplies and equipment for schools starting in 1967;

Establish, on the basis of the existing sports schools for children, not less than twenty specialized sports schools for children between 1967 and 1970;

Establish a physical education section within the central machinery of the Ministry of Education.

...

5. That the Council of the Union of Sports Societies and Organizations of the Byelorussian SSR, the Ministry of Education of the Byelorussian SSR, the Ministry of Higher and Specialized Secondary Education of the Byelorussian SSR, the Committee on Industrial Trade Training of the Council of Ministers of the Byelorussian SSR, and the regional, urban and district executive committees shall:

Draw up a list of the sporting equipment required by primary, eight-year and secondary schools and the industrial trade schools, in the light of the number of students attending them, and take steps to create within two to three years

sports centres and villages to ensure the implementation of the physical education programme in schools;

Provide for the construction of sports facilities for individual and joint use by higher educational institutions and of gymnasiums for general schools and encourage the construction of these facilities by students on a communal basis.

6. That the Council of the Union of Sports Societies and Organizations of the Byelorussian SSR, the Byelorussian Council of Trade Unions, regional, urban and district committees of the Communist Party of Byelorussian and executive committees of regional, urban and district Soviets of Working People's Deputies shall improve the use of sports facilities in order that all facilities, irrespective of the body under whose jurisdiction they come, may be open to the whole population for physical culture and sport and available for use free of charge during the day time for physical culture lessons and sporting activities for school children and students at industrial trade schools and specialized secondary schools. Favourable renting conditions shall be granted to higher educational institutions for the hire of facilities for curricular activities, and the organizations making use of the facilities shall participate in their maintenance.

7. That, in order to ensure that schools and secondary specialized and industrial trade institutions are provided with staff specialized in physical culture, the State Planning Committee of the Byelorussian SSR, the Ministry of Higher and Specialized Secondary Education of the Byelorussian SSR and the Council of the Union of Sports Societies and Organizations of the Byelorussian SSR shall make provision in the five-year plan for the training of specialists in physical culture and sport with higher and secondary specialized education by increasing enrolment at the existing educational institutions and establishing a department of physical education at one of the teachers' training institutes in the Republic.

8. That complexes of sports fields, stadia and other sporting facilities shall be built at collective farms, State farms and district centres, taking into account allocations by trade unions, executive committees of Soviets of Working People's Deputies and State farms and the annual contributions of consumers' co-operative societies and collective farms to rural sports associations. When villages and State farm settlements are planned and erected, sites shall be reserved for the construction of sports facilities. Village clubs shall normally be built with gymnasiums and sports grounds.

9. That the Ministry of Health of the Byelorussian SSR shall work out measures to ensure the wide use of physical culture in treatment at medical institutions and to improve the medical supervision of those engaged in physical culture and sport at enterprises, schools and higher and secondary specialized educational institutions and of members of combined sports teams, shall improve the servicing of sports activities and the management of medical physical culture centres

and the supply of equipment and instruments to them, extend the network of medical physical culture institutions, including offices at polyclinics, improve the training of medical students and raise the qualifications of doctors as regards the use of physical culture for curative and health improvement purposes, and organize consultation specialists and the publication of appropriate literature for parents, dealing with the physical development of children.

10. That the State Planning Committee of the Byelorussian SSR, the Ministry of Light Industry and other ministries and departments of the Byelorussian SSR which produce sports goods shall make provision in their plans for 1967-1970 for an expansion of such production, and shall also take steps to improve quality.

...

12. That the Ministry of Consumer Services of the Byelorussian SSR, the Ministry of Culture of the Byelorussian SSR, the Ministry of Trade of the Byelorussian SSR, the Byelorussian Co-operative Union, the Byelorussian Council of Trade Unions and the executive committees of urban and district Soviets of Working People's Deputies shall draw up measures to increase the number of centres and shops renting sports and tourist goods and equipment to the public, paying particular attention to creating conditions for the improvement of physical culture and health activities in places of public recreation.

The Central Municipal Services Board of the Council of Ministers of the Byelorussian SSR and the executive committees of Soviets of Working People's Deputies shall improve physical culture and health activities in the places of residence of working people, especially for young children and teenagers.

18. To adopt the proposal of the Council of the Union of Sports Societies and Organizations of the Byelorussian SSR to plan in 1967 a new set of buildings for the Byelorussian State Institute of Physical Culture.

...

20. To consider it appropriate to establish the title "Honoured Physical Culture Worker of the Byelorussian SSR" for award to physical culture workers, trainers, teachers and activists of the physical culture movement for distinguished service in the development of physical culture and sports in the Republic.

21. To instruct the Ministry of Culture of the Byelorussian SSR, the Committees on Radio and Television, Cinematography and the Press of the Council of Ministers of the Byelorussian SSR and the editors of republic and local newspapers to improve publicity for physical culture and sport; to increase the number of permanent lecturing bureaux and people's universities for physical culture and sports at cultural centres and clubs; to increase the output of feature and documentary films on sports subjects and to produce more posters and visual aids dealing with physical culture and sports.

DECISION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA
AND THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON IMPROVING THE
TRAINING OF SPECIALISTS IN HIGHER AND SPECIALIZED SECONDARY EDUCATIONAL
ESTABLISHMENTS

Adopted on 24 December 1966

(EXTRACTS)

The Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR note that significant progress has been made in the Republic in higher and specialized secondary education.

The network of higher and specialized secondary educational establishments has been expanded, the training of specialists has been organized in many new fields, and the number of students has increased.

The Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR resolve:

1. To accord the highest priority in the field of higher and specialized secondary education to the task of further improving the quality of the training of specialists in accordance with the present and anticipated future needs of modern production, science, technology and culture.

2. To direct that the State Planning Committee of the Byelorussian SSR, the Ministry of Higher and Secondary Specialized Education of the Byelorussian and other ministries and departments responsible for educational establishments to:

(a) Make provision, when drawing up plans for training specialists, for further priority development of daytime education in higher and specialized secondary educational establishments;

(b) Take account of the fact that in the enrolment of persons in higher and specialized secondary educational establishments for part-time study while working persons who have been sent by enterprises, collective farms, State farms and other establishments and organizations to study a specialized subject which corresponds to their work and who have passed the entrance examinations are entitled to priority.

4. With the aim of improving the practical training of students in higher educational establishments and pupils in specialized secondary educational establishments;

(a) To direct the Ministry of Higher and Specialized Secondary Education of the Byelorussian SSR to make proposals to the Ministry of Higher and Specialized Secondary Education of the USSR on the assignment of enterprises (institutions) under the direct authority of the ministries and departments of the USSR to higher educational establishments as permanent centres for practical work by students;

(b) To instruct the ministries and departments of the Byelorussian SSR, together with the Ministry of Higher and Specialized Secondary Education of the Byelorussian SSR, the Ministry of Health of the Byelorussian SSR, the Ministry of Culture of the Byelorussian SSR, the Ministry of Agriculture of the Byelorussian SSR, the Republic Council of the Union of Sports Societies and Organizations of the Byelorussian SSR and the Byelorussian Co-operative Union to assign enterprises (institutions) under the control of the ministries and departments of the Byelorussian SSR to higher educational and specialized secondary educational establishments as permanent centres for practical work by students and school children.

5. To instruct the Ministry of Higher and Specialized Secondary Education of the Byelorussian SSR and the ministries and departments of the Byelorussian SSR having higher educational establishments under their authority, to take steps together with the Academy of Sciences of the Byelorussian SSR to increase the recruitment of eminent specialists of the institutions of the Academy of Sciences of the Byelorussian SSR, scientific research institutes in the different branches, planning and design organizations and industrial enterprises for scientific and teaching work in higher educational establishments on a regular or part-time basis.

To instruct regional, urban and district committees of the Party to give all necessary assistance to this end to the ministries and departments of the Byelorussian SSR having higher educational establishments under their authority.

6. To instruct the State Planning Committee of the Byelorussian SSR, the Ministry of Higher and Specialized Secondary Education of the Byelorussian SSR, and the ministries and departments of the Byelorussian SSR, when planning scientific research work, to make provision for higher educational establishments with qualified scientific teaching staff to participate in scientific research activities, through economic agreements with enterprises and institutions, and to allocate the material, technical and financial resources necessary for this purpose.

7. In order to improve the quality of teaching and the training of the most capable young people for scientific teaching work, to instruct the ministries and departments of the Byelorussian SSR

having higher educational establishments under their authority to draw up and enact measures designed to increase the recruitment of students for scientific research work under the supervision

of professors and teachers of higher educational establishments and of scientific workers in scientific research institutes, plant laboratories and experimental agricultural stations.

DECISION OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR AND THE BYELORUSSIAN COUNCIL OF TRADE UNIONS CONCERNING MEASURES FOR THE FURTHER IMPROVEMENT OF WORKING CONDITIONS, SANITATION AND MEDICAL SERVICES FOR WORKERS EMPLOYED AT CONSTRUCTION SITES AND ENTERPRISES OF THE BUILDING MATERIALS AND CONSTRUCTION INDUSTRIES

Adopted on 7 October 1966

(EXTRACTS)

The Council of Ministers of the Byelorussian SSR and the Byelorussian Council of Trade Unions note that some work has been done in recent years in construction and at enterprises of the building materials and construction industries to introduce advanced technology, to improve techniques and means of mechanization and to improve sanitation services for workers.

With the aim of further improving working conditions, safety precautions and industrial sanitation and eliminating the causes of industrial injuries and occupational diseases at construction sites and enterprises of the building materials and construction industries, the Council of Ministries of the Byelorussian SSR and the Byelorussian Council of Trade Unions resolve:

1. That the Ministry of Construction of the Byelorussian SSR, the Ministry of Agricultural Construction of the Byelorussian SSR, the Ministry of Installation and Special Construction Work of the Byelorussian SSR, the Ministry of Land Improvement and Water Supply of the Byelorussian SSR, the Ministry of the Building Materials Industry of the Byelorussian SSR, the Ministry of Communications of the Byelorussian SSR, the Ministry of Trade of the Byelorussian SSR, the Ministry of the Peat Industry of the Byelorussian SSR, the Central Board of Municipal Services of

the Council of Ministers of the Byelorussian SSR, the Central Board of Highways of the Council of Ministers of the Byelorussian SSR, the Central Board of Power and Electrification of the Council of Ministers of the Byelorussian SSR, and the Byelorussian Co-operative Union shall:

(a) Ensure that safe working conditions are created at construction sites and enterprises of the building materials and construction industries;

(b) Examine questions relating to the organization or improvement of safety services in construction and installation organizations and at enterprises of the building materials and construction industries and to the establishment or expansion of the appropriate subdivisions (laboratories, departments and sections) in planning and design and other organizations to carry out planning and design work on safety measures and industrial sanitation in construction and installation organizations and at enterprises of the building materials and construction industries.

(c) Instruct the Ministry of Health of the Byelorussian SSR to provide specialized medical assistance at general health establishments of the health system to workers employed at construction sites and enterprises of the building materials and construction industries.

...

CAMEROON

DECREE No. 66-DF-157 OF 12 APRIL 1966

(Entry into force of Penal Code)¹

Section 1.—Law No. 65-LF-24 of 12 November 1965, introducing the Penal Code, shall come into force on 1 October 1966.²

Section 2.—Notwithstanding section 1 of this Decree:

(a) section 4 of Law No. 65-LF-24 aforesaid: and

(b) section 101 of the Penal Code

shall enter into force on the day of promulgation of this Decree.

¹ Text published in *Official Gazette of the Republic of Cameroon*, No. 1 (Supplementary), of 1 June 1966 and furnished by the Government of the Federal Republic of Cameroon.

² For a reference to Law No. 65-LF-24, see *Yearbook on Human Rights for 1965*, p. 38.

DECREE No. 66-DF-237 OF 24 MAY 1966

(Rules (Part I) under the Penal Code)³

Section 1.—The following shall be the First Part of the Rules governing the detailed application of certain provisions of Book I of the Penal Code:

Section 23. D1.—(1) The decision to reject a petition for pardon shall be forwarded by the Minister for Justice to the Procurator General at the Court of Appeal within whose jurisdiction the condemned person is in custody.

(2) Execution of the sentence shall, subject to section 22 (3) and (4) of the Penal Code, be carried out as soon as may be after receipt by the Procurator General of the decision to reject the petition for pardon.

Section 23. D2.—The Procurator General shall inform the Federal Inspector of Administration, who shall together with the Procurator General fix the place, date and time of execution, and shall take all necessary steps, to ensure execution of the sentence and, where so ordered, absence of publicity to the execution.

Section 23. D3.—(1) The condemned person shall be notified of the rejection of his petition for

pardon by the Procurator General or by his representative as shortly as may be before execution.

(2) The Procurator General, or his representative as the case may be, may without instructions, but subject to immediate report to the Minister for Justice, postpone execution in case of a revelation of exceptional importance or gravity.

Section 23. D4.—(1) Any execution shall be attended by:

(a) The Procurator General who may cause a member of the service under him to represent him;

(b) The Federal Inspector or his representative;

(c) A registrar designated by the Procurator General or by his representative;

(d) A minister of the religion to which the condemned man belongs, designated by the Procurator General;

(e) A medical practitioner whose attendance has been required by the Procurator General;

(f) Such staff as may be necessary for the execution and to ensure absence of publicity if so ordered.

(2) The condemned man's counsel, whether one or more, shall be notified of the execution by the Procurator General, and may attend whether the execution be or be not public.

³ Text published in *Official Gazette of the Republic of Cameroon*, No. 1 (Supplementary), of 1 June 1966 and furnished by the Government of the Federal Republic of Cameroon.

Section 23. D5.—(1) The registrar shall draw up, and shall sign with the Procurator General or his representative, and with the medical practitioner, a record of the execution, which shall mention, besides the name of the condemned person:

(a) The references of the sentence and of the decision rejecting the petition for pardon;

(b) The date, place and time of the notification of such rejection;

(c) The manner of execution;

(d) The date, place and time of execution.

(2) An office copy of the said record shall be notified by the registrar to the registrar of births, deaths and marriages whose duty it is to register the condemned man's death.

(3) An office copy shall be posted on the door of the prison where the condemned man was in custody for the space of eight days.

(4) Such declarations as the condemned man may make, and any incident that may have occurred during the execution shall be recorded separately over the signature of the registrar and of the Procurator General or of his representative.

Section 23. D6.—(1) Sections 23. D1 to 23. D5 of this decree shall be applicable to the execution of sentences passed by military courts.

(2) Notwithstanding the first subsection, the Minister for the Armed Forces shall have the functions conferred upon the Minister for Justice, and the Government Commissioner shall have the functions of the Procurator General.

Section 37. D1.—Until otherwise ordered:

(a) Preventive confinement shall be executed in East Cameroon in accordance with the regulations at present in force; and

(b) In West Cameroon preventive confinement shall be executed in like manner as imprisonment in such establishment or part thereof as may be appointed by the authority having jurisdiction over prisons.

Section 40. D1.—(1) The President of the District Court of the offender's residence at the time of his release shall superintend the offender's compliance with the obligations imposed on him, and shall in each case designate one or more supervisors.

(2) The President of the District Court may delegate his powers to a member of the bench of the same court.

Section 56. D1.—The President of the District Court of the offender's residence, or such member of the court as he may delegate, shall superintend probation.

Section 61. D1.—Every decree or release on licence shall be made after consulting:

(a) The consultative committee set up by section 61. D6 of this decree; and

(b) The Minister for the Armed Forces in the case of offenders convicted by the military courts; and

(c) The Minister for Justice.

Section 61. D2.—(1) The Governor of any prison may of his own motion recommend the release on licence of any prisoner not debarred by law and whose efforts to reform himself, whose work, and whose behaviour in custody have all been entirely satisfactory.

(2) Such Governor shall be bound to forward under section 61. D3 of this decree any application by a prisoner not debarred by law from release on licence, and may not refuse action on such an application on the ground that the applicant is debarred except in accordance with a written opinion from the Legal Department within whose jurisdiction the prison is situated.

(3) Such Governor, whether recommending of his own motion or forwarding an application, shall fill up at least in duplicate a form prescribed by the Minister for Justice.

(4) One copy shall be forwarded to the Minister for Justice, together with an extract from the register of disciplinary measures, the application if any, and in every case the Governor's opinion.

(5) The second copy shall be filed with the offender's prison file.

Section 61. D3.—Any matter to be forwarded by the Governor under section 61. D2 of this decree shall be forwarded by him directly to the Minister for Justice.

Section 61. D4.—On receipt the Minister for Justice shall order either that no action be taken or that a file be prepared under section 61. D5 of this decree, upon which he may invite the opinion of the proper consultative committee.

Section 61. D5.—(1) The file on which the opinion of the committee may be sought shall include the opinions of:

(a) The Governor of the Prison;

(b) The Legal Department at the Court of Appeal within whose jurisdiction the sentence was pronounced;

(c) The Prefect in whose Division the prison is situated;

(d) Wherever the interval between release and expiry of the sentence will be greater than one year, the Senior Divisional Officer of the place to which the offender proposes to proceed.

(2) The request for the opinion of the Senior Divisional Officers mentioned in subsection (1) shall be accompanied by a report on the facts out of which the conviction arose, on the offender's behaviour in custody, his efforts at reformation since his conviction, and the possibilities of his restoration to society.

(3) Any opinion to which this section refers shall be deemed favourable if not expressed within two months from the date in which it was requested.

Section 61. D6.—(1) The consultative committee shall be composed:

A.—For offenders in custody in East Cameroon, of:

(a) The President of the Court of Appeal at Yaoundé in the chair, who may delegate his duties to a member of his Court;

(b) A civil servant serving at Yaoundé designated by the Minister responsible for Federal Territorial Administration;

(c) A civil servant serving in Yaoundé designated by the authority responsible for prisons.

B.—For offenders in custody in West Cameroon, of:

(a) A member of the bench designated by the Chief Justice, in the chair;

(b) A civil servant serving at Buea designated by the Federal Inspector of Administration;

(c) A civil servant serving at Buea designated by the authority responsible for prisons.

(2) Any designating authority may also designate an alternate or alternates against the absence or impediment of the substantive member.

(3) The chairman of each committee may invite the attendance, without vote, of any person with special experience in welfare work or in assistance to persons in custody or released on licence.

Section 61. D7.—The opinion of the consultative committee shall be given on the basis of a file collected and forwarded by the Ministry for Justice and containing in respect of each offender:

(a) A report from the Legal Department or Departments concerned on the facts on which was based the sentence being served;

(b) An extract No. 2 of the Criminal Records, or in West Cameroon a statement by the Legal Department of his previous convictions;

(c) The opinions of the authorities mentioned in section 61. D5.

Section 61. D8.—(1) The committee shall forward to the Minister for Justice and, in any case which concerns him, to the Minister for the Armed Forces, an opinion with reasons on the action to be taken on the files laid before it.

(2) It may recommend:

(a) No action; or

(b) Postponement of decision for a further trial period of a duration which it shall suggest; or

(c) Release on licence; or

(d) Remission of sentence, wholly or in part, with or without conditions.

Section 61. D9.—(1) The committee shall meet when called by its chairman.

(2) No quorum shall be necessary, but invitations to all members must have been delivered at

least three days before the meeting; and the chairman shall have a casting vote.

(3) Together with the invitation shall be sent a short summary of the facts of which the offender has been found guilty, of his previous convictions, and of the various opinions previously collected.

Section 61. D10.—(1) An offender released on licence shall without more be subject to all the general obligations of section 41 of the Penal Code.

(2) The decree of release on licence shall prescribe the offender's residence, and may impose upon him all or some of the obligations of section 42 of the Penal Code.

(3) The released offender shall receive at the moment of his release a special identity booklet which shall bear, besides the dates of sentence, custody, release on licence and final release, such special conditions of residence, supervision or otherwise as may figure in the decree of release.

(4) The police at the place of the offender's residence shall superintend his compliance with the obligations, and shall stamp his identity booklet on his arrival there and thereafter, unless otherwise so prescribed in the decree of release, every six months until release becomes final.

(5) The conditions of a decree of release may not be varied except by decree after consultation of the committee set up by section 61. D6 of this decree: Provided that for grave reasons and on condition of referring immediately to the Minister for Justice, the Sub-prefect of the offender's residence may permit the offender to be absent from the residence imposed upon him for a period to be prescribed by him and which may not exceed three months.

(6) The detailed application of subsection (3) of this section shall be prescribed in so far as may be necessary by joint order of the Minister for Justice and of the Minister responsible for the Federal Territorial Administration.

Section 61. D11.—(1) Release on licence may not be revoked except after consulting the consultative committee, which shall give its opinion on the basis of a report from the Legal Department and from the Senior Divisional Officer of the offender's residence.

(2) In an urgent case, and on condition of reference to the Minister for Justice, the Legal Department may order the provisional arrest of the offender.

Section 61. D12.—Every decision granting or revoking release on licence shall be entered in the Criminal Records.

...

ACT No. 66/LF/18 OF 21 DECEMBER 1966 PRESS ACT⁴*Chapter I*

GENERAL PROVISIONS

Article 1. The freedom of the Press shall be guaranteed throughout the territory of the Federal Republic of Cameroon.

Such freedom shall be exercised in accordance with the provisions of this Act.

Chapter II

PRINTING AND BOOKSELLING

Article 2. Printing and bookselling shall not be subject to restriction.

Article 3. (1) Every published writing, with the exception of jobbing work, shall bear the name and address of the printer, failing which he shall be liable to a fine of 10,000 to 200,000 francs.

(2) The distribution of printed matter not bearing the information required under the preceding paragraph is prohibited and any violation of the prohibition shall be punishable by the aforementioned penalty.

(3) In addition, a penalty of imprisonment for one to six months may be imposed if the offence is repeated within twelve months.

Article 4. In the case of printed matter of whatever kind which is publicly offered for sale, distribution or hire, or the reproduction rights for which have been ceded, copies must be deposited in accordance with the procedures established by decree before it is published or offered for sale.

Any infringement of the provisions of this article shall be punishable by a fine of 10,000 to 200,000 francs.

In addition, the court may order the seizure or confiscation of copies unlawfully offered for sale.

Criminal proceedings shall be barred on the expiry of three years from the date of publication.

Chapter III

THE PERIODICAL PRESS

1. *Right of publication*

Article 6. Subject to the provisions of article 32 of this Act, any newspaper or periodical may be published without previous authorization and

⁴ Taken from report on freedom of information received from the Government of Cameroon under Economic and Social Council resolution 1074 C (XXXIX) and published in the Secretary-General's *Periodic Reports on Human Rights*, 1964-1967.

without the deposit of security after due declaration has been made in accordance with article 8 below.

Article 11. . . .

The Minister for Federal Territorial Administration may ban completely any publication which is seditious or contrary to public decency.

Article 12. Writers using a pseudonym shall be bound to communicate their real names to the director of publication, in writing, before the publication of their articles. In the event of proceedings against the author of an article which is unsigned or signed with a pseudonym, the director shall be released from the obligation of professional secrecy upon an application made by the public prosecutor, to whom he shall communicate the true name of the author.

Article 13. Each publication shall establish rates, for a three-month period, for its advertising and it shall not be lawful to apply rates other than those fixed for the period in question. All advertising in the form of copy shall be preceded by the indication "advertisement".

Violations of these provisions shall be punishable by a term of imprisonment for six days to six months and by a fine of 2,000 to 2 million francs, or by one of these penalties only.

Article 14. Any person who receives from abroad, whether directly or through an intermediary, sums of money intended to finance advertising must, within eight days of payment, make a declaration to that effect on unstamped paper at the Prefecture of the *département*, on pain of a fine of 240,000 to 2,400,000 francs.

Article 15. If the owner of a newspaper, or the director of publication or one of his collaborators receives, whether directly or indirectly, a sum of money or benefits from a foreign Government without express authorization from the Cameroonian Government with the exception of money in payment for advertising in accordance with articles 13 and 14 above, he shall be liable to imprisonment for one to five years and to a fine of 200,000 to 2 million francs, or to one of these penalties only.

2. *Press enterprises*

Article 16. Any commercial enterprise or any association, in whatever form it is legally constituted, whose principal object is the publication of any newspaper, magazine, review or news-sheet not of a strictly cultural, scientific, artistic, technical or professional character, published at regular intervals and not less than once a month, shall be deemed to be a press enterprise.

3. Corrections

Article 23. The director of publication shall be obligated to insert free of charge at the head of the next succeeding issue of the newspaper or periodical, any corrections communicated to him by a public official with regard to acts carried out in the exercise of that official's duties which have been incorrectly reported in the said newspaper or periodical.

Such corrections may not be more than double the length of the article to which they refer.

Contravention shall render the director of publication liable to a fine of 10,000 to 250,000 francs.

Article 24. The director of publication shall be obligated to insert within three days of receipt the reply of any person named or designated in the daily newspaper or periodical, on pain of a fine of 5,000 to 100,000 francs, without prejudice to any other penalties or damages.

In the case of newspapers or periodicals not published daily, the reply must be inserted in the issue immediately following the second day after receipt.

The insertion shall be made in the same place and in the same type as the article which gave rise to it and shall be printed as a continuous whole. Excluding the address, customary salutations and signature, the reply shall be no longer than the article which gave rise to it, and in any case may not exceed 500 words.

The above provisions shall also apply to further rejoinders where the first reply is accompanied by fresh journalistic comment.

Replies shall always be free of charge and the person requesting the insertion may not exceed the limit established in the third paragraph of this article by offering to pay for the excess length.

The right of reply may be claimed only with regard to the issue or issues in which the article appeared.

The publication of a special edition not containing the reply which the corresponding issue of the newspaper was required to publish shall be deemed a refusal to insert a reply.

Article 25. Actions for refusal to insert a reply shall be decided by the court within twenty days of the issuance of the summons. the court may decide that a judgement ordering the insertion of a reply shall take effect immediately, notwithstanding objection or appeal; but this shall apply to insertion of the reply only. If an appeal is entered, judgement shall be given within twenty days after it is lodged with the clerk of the court.

Article 26. During any electoral period, the three-day time-limit for insertion prescribed in article 24 shall for daily newspapers, be reduced to twenty-four hours. The reply must be handed in not less than six hours before the printing of the newspaper in which it is to be published. As soon

as the electoral period begins, the director of publication shall be required, subject to the penalties established in article 24, to notify the Public Prosecutor's Office of the hour at which his newspaper is to be issued during this period.

The time-limit for a summons on the charge of refusal to insert a reply shall be reduced to twenty-four hours and the summons may even be served without notice by special order of the president of the court.

Judgement ordering insertion shall take effect immediately, notwithstanding objection or appeal; but this shall apply to the insertion only.

If the insertion so ordered is not made within the specified period, the director of publication shall be liable to imprisonment for six days to three months and to a fine of 20,000 to 400,000 francs, or to one of these penalties only.

Article 27. The right of legal action to compel insertion shall lapse after four complete months from the day of publication.

Chapter IV

SUPERVISED AND PROHIBITED PUBLICATIONS

1. Juvenile publications

Article 28. All publications, whether periodical or not, which by their character, presentation or object appear to be intended mainly for children and adolescents shall be subject to the provisions of articles 29 and 30.

Official publications and school publications subject to the supervision of the Minister of Education and the Secretaries of State for Education shall, however, be excepted.

Article 29. The publications referred to in the preceding article shall not contain any illustration, commentary, narrative, report, item, insertion, advertisement or announcement which presents in a favourable light any act deemed to be a crime or an offence, or likely to corrupt the morals of children and young persons, such as banditry, lying, theft, idleness, hatred, debauchery, tribalism and racism.

Article 30. The procedures for the suspension of the publications mentioned in the preceding articles shall be laid down by decree.

2. Foreign and foreign-language publications

Article 31. The importation, circulation, distribution or sale, in the territory of the Federal Republic, of newspapers or other periodical or non-periodical writings published outside Cameroon, in whatever language, may be prohibited by decision of the Minister for Territorial Administration.

The importation, circulation, distribution, sale or reproduction of prohibited writings shall be punishable by the penalties prescribed in article 10.

The same shall apply to the republication of a prohibited writing under a different title.

Copies and reproductions of prohibited writings shall be seized by administrative order. They shall be destroyed on the order of the judicial authority.

Article 32. No newspaper or periodical in a language other than the official languages may be published in Cameroon without the authorization of the Minister for Territorial Administration. Such authorization may be revoked at any time by an official order. Any violation of this article shall be punishable by imprisonment for fifteen days to three months and by a fine of 5,000 to 50,000 francs, or by one of these penalties only.

3. Prohibited publications

Article 33. The publication, circulation, sale, distribution, exhibition or possession of any review or publication promoting magic, sorcery, divination, occultism or pornography shall be prohibited.

Violations of this provision shall be punishable by imprisonment for six months to one year and by a fine of 25,000 to 250,000 francs, or by one of these penalties only. In addition, the offending writings shall be seized by the administrative authority prior to any proceedings; the judicial authority may order them to be destroyed.

Article 34. The author of any writing whose purpose or aim is to provoke inter-communal strife shall be punishable by imprisonment for six months to one year and by a fine of 25,000 to 250,000 francs, or by one of these penalties only.

Chapter V

BILL POSTING, HAWKING AND SALE ON PUBLIC THOROUGHFARES

1. Bill posting

Article 35. In each *département*, the Prefect shall designate by order the places to be used exclusively for posting laws and other enactments of the public authorities. It shall be unlawful to post private notices in such places.

Article 36. Statements of opinion, circulars, electoral posters and any other bills which are not contrary to public policy and which concern cultural events, may be posted in designated places other than those referred to in the foregoing article and in Decree No. 66/DF/513 of 15 October 1966.

Such places shall be designated as stated in article 35.

Article 37. The following shall be punishable by imprisonment for fifteen days to six months and by a fine of 5,000 to 50,000 francs, or by one of these penalties only:

(a) Any person who removes, mutilates, covers or otherwise alters in such a way as to deface them or render them illegible, notices posted by administrative order in places reserved for that purpose;

(b) Any person who removes, mutilates, covers or otherwise alters in such a way as to deface them or render them illegible, bills posted by private individuals on property not owned by the person committing such mutilation or alteration.

If the act is committed by an official or a public servant, the penalty shall be imprisonment for fifteen days to six months and a fine of 10,000 to 100,000 francs, or one of these penalties only.

2. Hawking and sale on public thoroughfares

Article 38. Any person intending to engage in the occupation of hawking or distributing on public thoroughfares, or in any other public or private place, books, writings, pamphlets, newspapers, drawings, prints or lithographs shall be required to submit a declaration to that effect to the Prefecture of the *département* where he is domiciled.

In respect of newspapers and other periodicals the declaration may, however, be made at the Sub-Prefecture or district office and shall be valid for all communes in the *arrondissement* or district.

Occasional distribution and hawking shall not be subject to declaration.

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Article 41. Hawkers and distributors may be prosecuted under the ordinary law if they have hawked or distributed offensive writings, drawings or photographs.

Article 42. The distribution, sale, public exhibition and possession with a view to the distribution, sale or exhibition for propaganda purposes of tracts, pamphlets and leaflets of foreign origin or inspiration likely to harm the national interest shall be prohibited.

Any violation of this article shall be punishable by imprisonment for six months to two years and by a fine of 240,000 to 2,400,000 francs.

Chapter VI

PROSECUTION AND REPRESSION

1. Persons responsible

Article 43. The following, in the order named, shall be liable as principals to the penalties enacted for the repression of crimes and offences committed through the Press:

(1) the directors of publication or publishers, whatever their profession or description and, in

the case provided for in article 7, the co-directors of publication;

(2) failing these, the authors;

(3) failing the authors, the printers;

(4) failing the printers, the sellers, distributors and bill posters.

In the case provided for in article 7, secondary responsibility shall devolve upon the persons mentioned in sub-paragraphs (2), (3) and (4) of this article as if there were no director of publication where, contrary to the provisions of this Act, a co-director of publication has not been appointed.

Article 44. Where proceedings are instituted against the directors or co-directors of publication or publishers, the authors shall be prosecuted as accessories.

Proceedings may also be instituted on the same grounds and in all cases against persons to whom article 97 of the Penal Code applies. The said articles shall apply to printers in respect of offending printed matter only where there is no co-director of publication as provided for in article 7 above.

Proceedings may, however, be instituted against the printers as accessories if the courts have found that the director or co-director of publication is not criminally liable. In this case, the proceedings

shall be instituted within three months of the judicial finding that the director or co-director of publication is not liable.

Article 45. The proprietors of newspapers or periodicals shall be responsible for any pecuniary sentences imposed on the persons designated in the two preceding articles and payable to third persons.

2. Seizure by administrative order

Article 46. If the matter is urgent, the Prefect may, before the institution of judicial proceedings, order the confiscation, from the printer, the editor or the principal depositories, of any publication, whether periodical or not, which is contrary to public morality or likely to disrupt law and order or endanger State security. In such cases he must report to the Public Prosecutor of the Republic within forty-eight hours.

Article 47. In the case of Press offences, if the Prefect considers that the seizure by administrative order provided for in article 46 above cannot take place, he may submit the offending issues to the Public Prosecutor of the Republic with a view to judicial seizure.

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CANADA

NOTE¹

I. FEDERAL LEGISLATION INCOME SECURITY

In 1966, two important income security measures were passed by Parliament; the Guaranteed Income Supplement² for recipients of Old Age Security pensions and a comprehensive new public assistance measure, the Canada Assistance Plan³.

GUARANTEED INCOME SUPPLEMENT

An amendment to the Old Age Security Act, assented to 21 December 1966, provided for a Guaranteed Income Supplement for certain recipients of Old Age Security pensions who have little or no income other than the Old Age Security pension. The programme, intended as an interim measure to cover the period while payments under the Canada and Quebec Pension Plans⁴ mature, applies to pensioners born in 1910 or earlier.

The Act set the maximum supplement at \$30 a month for the first year (1967). Thereafter, the maximum supplement will be 40 per cent of the Old Age Security pension. By relating the supplement to the Old Age Security pension, the supplement will be escalated whenever an increase is made to the Old Age Security pension in accordance with changes in the Pension Index arising from increases in the cost of living.

Pensioners who have no income other than the Old Age Security pension or supplement may receive the full supplement, while pensioners who have income in addition to the pension or supplement may receive a partial supplement. Income for this purpose is defined by the Income Tax Act.

The Guaranteed Income supplement will be paid from the Old Age Security Fund, which is

financed through a 3 per cent sales tax, a 3 per cent tax on corporation income, and, subject to an annual limit of \$240, a 4 per cent tax on taxable personal income.

The programme is administered by the Department of National Health and Welfare. The Department of National Revenue is responsible for checking that income data received under this programme coincides with information obtained under the Income Tax Act.

The legislation provides for appeals from administrative decisions. Matters relating to the determination of income for purposes of the Guaranteed Income supplement may be appealed to the Tax Appeal Board and matters relating to the payment of the supplement or the amount of the supplement may be appealed to a tribunal established under the Old Age Security Act.

CANADA ASSISTANCE PLAN

The Canada Assistance Plan, effective from 1 April 1966, provides a single administrative framework for federal sharing, under agreements with the provinces, in the costs of assistance and welfare services. It is designed to replace the four existing federal-provincial programmes and extends federal sharing to the following costs not previously shared: assistance to needy mothers with dependent children, maintenance of children in the care of provincially approved child welfare agencies, health care services to needy persons, and the extension or improvement of welfare services that have a preventive or rehabilitative emphasis.

The only eligibility requirement under the Canada Assistance Plan is that of need, irrespective of the cause of need and without reference to employment status. Rates of assistance and conditions of aid are set by the provinces. The resulting flexibility enables the provinces to adjust rates to local conditions and to take account of the needs of special groups by providing a differential in benefits or conditions of eligibility. A province may not, however, require a period of residence as a condition of eligibility for assistance, and must establish appeal procedures against administrative decisions with respect to applications for or the granting of assistance.

¹ Note furnished by the Government of Canada.

² An Act to amend the Old Age Security Act, *Statutes of Canada*, 1966-1967, c. 65.

³ Canada Assistance Plan, *Statutes of Canada*, 1966-1967, c. 45; Canada Assistance Plan Regulations, SOR/67-62, gazetted 8 February 1967.

⁴ See *Yearbook on Human Rights for 1965*, pp. 39-40.

HEALTH PROGRAMMES

The Medical Care Act⁵, passed by Parliament in December 1966, provides for fiscal contributions to provinces undertaking approved insurance programmes beginning 1 July 1968 and thereafter.

Under the terms of the Act, the federal government is empowered to make contributions amounting to half the per capita cost of insured services furnished by participating provinces and in accordance with the average number for the year of insured persons covered. In order to benefit from this federal contribution, a provincial plan must meet the following criteria:

(1) The plan must be operated on a non-profit basis by a public authority set up by the provincial government, which must be subject in respect of its accounts and financial transactions to provincial audit;

(2) The plan must make available on uniform terms and conditions to all insurable residents of the province, insured services which are defined to mean all medically necessary services rendered by medical practitioners for whom the provincial law must provide reasonable compensation so as to ensure reasonable access to insured services by insured persons;

(3) The plan must give entitlement to all eligible residents of the province which is defined to mean not less than 90 per cent of the total number during the first two years and 95 per cent thereafter;

(4) The plan does not impose any minimum period of residence, although up to three months' waiting period for entitlement is permissible, and that "portability" is provided for so that persons retain coverage when temporarily absent in another province or during any three-month waiting period for benefits in another province on change of residence.

OCCUPATIONAL SAFETY

The Canada Labour (Safety) Code⁶ was adopted, to be brought into force on proclamation, to ensure safe working conditions and freedom from industrial health hazards for persons employed in the industries under federal jurisdiction. Subject to other federal legislation (such as the existing regulations dealing with the operation of ships, trains or aircraft), the Governor in Council is empowered to make regulations for the safety and health of persons employed in federal undertakings and for the provision of safety measures in the operation or use of equipment, materials or buildings. There is provision in the Act for agreements with the provinces for the use of provincial inspection services and for research

into accident prevention where appropriate in co-operation with a province or any organization undertaking similar research.

TECHNICAL AND VOCATIONAL TRAINING

In June 1966, the Canadian Government passed the Training Allowance Act, 1966.⁷ This Act authorizes a federal-provincial agreement with any province providing a programme of technical and vocational training. The province may be reimbursed 100 per cent of the costs incurred in providing persons being trained under the programme with basic allowances of \$35 per week for each trainee and up to 90 per cent of the costs incurred by the province in providing supplementary allowances to trainees in special cases related to the person's family circumstances and living costs.

In 1966, as well, the Manpower Mobility Program became operative. Under this programme, unemployed workers and their families are assisted to relocate to employment in a different community through a system of grants and loans.

II. PROVINCIAL LEGISLATION

SOCIAL ASSISTANCE PROGRAMMES

During 1966, major changes in social assistance programmes occurred in nine provinces as a result of new legislation or amendments to existing Acts or Regulations. A number of provinces made changes in administration designed to ensure more equitable, adequate and efficient programmes of assistance to needy persons. Coverage was extended in a number of provinces and rates of social assistance were increased in nine provinces. Appeal procedures were strengthened or extended in several provinces. New emphasis was placed on the provision of welfare services to take advantage of the increased federal aid available under the Canada Assistance Plan.

In Prince Edward Island⁸ and New Brunswick,⁹ the provincial government assumed complete responsibility for general assistance, which had formerly been administered by municipalities. As a result, local residence requirements have been abolished and assistance payments, which were formerly set by the municipal authority, are now determined in accordance with the provincial schedule.

⁷ Training Allowance Act, *Statutes of Canada*, 1966, c. 27.

⁸ The Welfare Assistance Act, *Statutes of Prince Edward Island*, 1966, c. 32, effective 26 October 1966; Welfare Assistance Regulations, 1966, gazetted 6 May 1967, effective 26 October 1966.

⁹ Social Welfare Act, *Statutes of New Brunswick*, 1966, c. 27; Social Welfare Regulations, gazetted 28 December 1966, and effective 1 January 1967.

⁵ The Medical Care Act, *Statutes of Canada*, 1966-1967, c. 64.

⁶ *Statutes of Canada*, 1966, c. 62.

New legislation in Nova Scotia¹⁰ and Manitoba¹¹ provided for improvements in the administration of short-term aid administered by the municipalities. In Nova Scotia, the provincial government set standards of assistance which municipalities are required to observe, and liberalized cost-sharing provisions to take into account the financial capacities of the municipalities. In Manitoba, municipal residence requirements were made more flexible and provincial contributions to the costs of municipal relief were increased. Saskatchewan set minimum staffing requirements for local welfare units.

Measures to discontinue categorical programmes were passed in several provinces. In Prince Edward Island and New Brunswick, mothers' allowances were discontinued as separate programmes and integrated with the general programmes of provincial allowances to needy persons. In Ontario, a number of provincial programmes of aid to families and individuals with long-term need were combined under The Family Benefits Act.¹² Saskatchewan also discontinued applications under the three federal-provincial categorical programmes and now grants aid to the needy aged, the disabled, and the blind under a general programme,¹³ under which assistance to all needy persons is administered by provincial or local units.

The use of the "needs" test has been extended, thus permitting greater flexibility in the assessment of individual need than was possible under the "means" test. This method is now in general use.

Coverage of assistance programmes has been extended in a number of ways. Nova Scotia, Ontario and Alberta raised the age limit to 21 years for payment of allowances on behalf of children attending school. In Alberta, this age limit was also set for children who are prevented from attending school because of mental or physical disability. Eligibility requirements for payment of allowances to foster parents were liberalized in Nova Scotia. Increases in allowable income and assets also had the effect of extending coverage of assistance programmes in a number of provinces.

Rates of assistance for items of basic need were raised in eight provinces — Newfoundland, Prince Edward Island, New Brunswick, Nova Scotia, Ontario, Manitoba, Saskatchewan and Alberta. In

Quebec, an amendment to the Needy Mothers Assistance Act¹⁴ increased the maximum monthly allowance for a mother and one child from \$85 to \$95 and the amount payable on behalf of each additional child from \$10 to \$20 and raised the allowable outside annual income from \$600 to \$1,000.

The right of appeal was extended. In Prince Edward Island, where formal appeal machinery had been lacking, appeal procedures were established, whereby applicants for or recipients of assistance may appeal decisions of welfare authorities. In Manitoba, the appeal provisions, which previously applied only to provincial allowances, were extended to municipal aid.

A significant new development in Alberta was the passage of a new Act¹⁵ designed to encourage the establishment of preventive social service programmes. Under this Act, the provincial government will reimburse a municipality for 80 per cent of the cost of administration of social assistance, and for 80 per cent of municipal expenditures in connection with the establishment, administration and operation of preventive social services. A preventive social service is defined by regulation as "one designed to develop community awareness and resources, to strengthen and preserve human initiative and to preclude individual and family breakdown. It is any activity which is available to all members of the community on a voluntary basis for the enrichment of their physical, mental and social well-being."

CHILD WELFARE PROGRAMMES

During 1966 a number of changes were made in child welfare legislation affecting religious considerations in the placement of children in the care of child welfare agencies, the protection of children, and the adoption of children.

Three provinces, Saskatchewan, Alberta and New Brunswick broadened the provisions pertaining to the religion of the child. In Saskatchewan,¹⁶ when a child born in wedlock is committed to the care of the Minister the mother may designate the religious faith if she has the custody and control of the child, and if the father of the child is dead or if the child's father and mother have not lived together for a continuous period of at least two years. In Alberta,¹⁷ a parent who surrenders a child for the purposes of

¹⁰ The Social Assistance Act, *Statutes of Nova Scotia*, 1966, c. 13; Regulations under the Social Assistance Act, Part I (Provincial Assistance), effective 1 August 1966, and Part II (Municipal Assistance), effective 22 September 1966.

¹¹ An Act to amend The Social Allowances Act, *Statutes of Manitoba*, 1966, c. 58.

¹² The Family Benefits Act, 1966, *Statutes of Ontario*, 1966, c. 54.

¹³ The Saskatchewan Assistance Act, 1966, *Statutes of Saskatchewan*, 1966, c. 32; The Saskatchewan Assistance Regulations, Saskatchewan Regulation 78/66, gazetted 22 April 1966.

¹⁴ An Act to amend the Needy Mothers Assistance Act, *Statutes of Quebec*, 1966, c. 12.

¹⁵ The Preventive Social Services Act, *Statutes of Alberta*, 1966, c. 72; Regulations under the Preventive Social Services Act, 1966, Alberta Reg. 271/66, gazetted 31 August 1966.

¹⁶ The Child Welfare Act, *Statutes of Saskatchewan*, 1966, c. 31, effective 1 May 1966.

¹⁷ The Child Welfare Act, *Statutes of Alberta*, 1966, c. 13, effective 1 July 1966.

adoption may state a preference as to the religion in which he wishes to have the child raised. All reasonable efforts are to be made by the provincial child welfare authority to comply with the parent's religious preference in placing the child. The parent may also state that he does not wish the statement of religious preference to prevent the earliest possible placement of the child for the purpose of adoption. If, after a year, a child who is a permanent ward of the Crown has not been placed for adoption, the statement of religious faith ceases to be effective and the child may be placed with a family of another religious faith.

In New Brunswick,¹⁸ the provision which restricted the placement of children committed by the court to the child welfare authority to homes of their own religious faith has been liberalized. A ward may now be placed with a family where the husband and wife are of different religious faiths if one of them is of the same religious faith as the child and if they agree in writing that the child will be brought up in his own religious faith.

A number of new provisions relating to the protection of children were included in the Child Welfare Acts of New Brunswick and Alberta.

In New Brunswick, the reasons for which a child might be found neglected by a court were extended to include emotional rejection or deprivation of affection by his parent sufficient to endanger his emotional and mental development. Also no person may publish the name of a child or otherwise identify a child or ward connected with cases heard under the Act.

In Alberta, the period of continuous temporary wardship under which a child may be kept under the care of the Government has been set at a maximum of 36 months. The authority who apprehended a child may, if necessary, and without the consent of the parent or guardian, and without an order of a court, authorize the provision of medical, surgical and psychiatric care. It has been made obligatory for anyone who has knowledge of the ill treatment of children to report this to the authorities. The informant is, however, assured of legal protection of his intention in providing the information was not malicious and not without reasonable cause. Also the Act authorizes for the provincial Director of Child Welfare, if he deems it in the public interest, to retain legal counsel to represent the interests of a child at any hearing to determine neglect.

Saskatchewan and Alberta also amended the provisions in their respective Child Welfare Acts relating to adoption. In Saskatchewan, the statutory period before an adoption order is issued was reduced from one year to six months. In Alberta, the surname of the child prior to adoption is not to be noted on the adoption order. The amendment makes it illegal to give or receive payment for procuring a child for the purpose of adoption

and penalties are provided for any person found guilty of such an offence.

ANTI-DISCRIMINATION LEGISLATION

The Province of Alberta adopted the Human Rights Act¹⁹ which prohibits discrimination in employment, in trade union membership, and in public accommodation, on grounds of race, religious beliefs, colour, ancestry or place of origin.

A Fair Practices Ordinance,²⁰ including provisions requiring payment of equal pay for equal work for male and female workers, was approved by the Territorial Council of the Northwest Territories.

Ontario passed the Age Discrimination Act, 1966,²¹ making it an offence for employers and unions to discriminate against persons between 40 and 65 years of age solely on grounds of age.

MATERNITY PROTECTION

A new Maternity Protection Act²² was passed in British Columbia. The Act, which is applicable to all employment except farming, horticultural operations and domestic service, provides that, upon receipt of a medical certificate indicating the probable date of delivery, the employer must allow the employee to be absent from work at any time or times chosen by her during the 6-week period immediately preceding the date specified in the certificate.

The Act provides for 6 weeks' compulsory leave after childbirth, or a longer period in certain circumstances. Upon receipt of a medical certificate giving the date of delivery, the employer may not allow the employee to work for 6 weeks following that date, or during the period recommended in the certificate, if longer.

An employer is forbidden to dismiss an employee or give her notice of dismissal because of her absence before or after childbirth, or for any reason arising out of maternity leave, until and unless she has been absent for a period of 16 weeks. If she is dismissed, the onus of proving that the reason for dismissal is not because of her absence rests with the employer.

STATUTORY SCHOOL-LEAVING AGE

In Alberta, an amendment to The School Act²³ raised the compulsory school attendance age from 15 to 16 years.

¹⁸ The Child Welfare Act, 1966, *Statutes of New Brunswick*, 1966, c. 3, assented to 10 June 1966, and proclaimed in force 1 January 1967.

¹⁹ *Statutes of Alberta*, 1966, c. 39, proclaimed in force 1 September 1966.

²⁰ *Ordinance of the Northwest Territories*, 1966, c. 5.

²¹ *Statutes of Ontario*, 1966, c. 35.

²² *Statutes of British Columbia*, 1966, c. 25.

²³ *Statutes of Alberta*, 1966, c. 90.

In New Brunswick, The Schools Act²⁴ brought uniformity with regard to statutory school-leaving age and made it compulsory for children from 7 to 15 years, inclusive, to attend school unless they have completed grade 12.

WOMEN'S AFFAIRS

The Alberta government passed an Act to Establish the Women's Cultural and Information Bureau.²⁵ The duties of the Bureau as stipulated in the Act, are:

(a) To collect and compile information, opinions and other material on matters of particular concern to women, including information, opinions and material on the cultural, social, legal, public and other rights, responsibilities, interests and privileges of women in Alberta;

(b) To make such information, opinions, and other matters available to women, women's organizations, and others;

(c) To provide such other services and perform such other functions as may be designated by the Minister.

YOUTH

The government of Alberta also assented to an Act Respecting the Department of Youth.²⁶ A member of the Executive Council appointed by the Lieutenant-Governor in Council shall preside over the Department and act as the Minister of Youth. The duties of the Minister are as follows:

(a) Administer those Acts the administration of which is charged to the Minister of Youth;

(b) Initiate, foster and encourage orderly development of all forms of constructive youth activities;

(c) Stimulate interest and participation in youth training for leadership in all spheres of social, recreational, cultural and business affairs;

(d) Encourage and promote activities to enable the maximum number of young people to actively participate in all forms of constructive sport, providing special assistance where warranted;

(e) Promote interest and participation in physical fitness programmes by groups, organizations and individuals;

(f) Work in co-operation with other departments concerned with youth activities, co-ordinating programmes desirable to carry out the intent and purpose of the Act;

(g) Promote and attend any conference or seminars in carrying out the duties under the Act;

(h) Perform such other functions as may be assigned by the Lieutenant-Governor in Council.

OTHER DEVELOPMENTS

Since 1 July 1966, a general minimum wage order in Alberta provided a \$1 per hour minimum rate throughout the province.

In Quebec, general minimum rates of \$1 an hour in zone I (the Montreal metropolitan region) and 90 cents an hour in zone II (the rest of the province) went into force on 1 November 1966.

III. JUDICIAL DECISION

In *Munro v. National Capital Commission*²⁷ the Supreme Court of Canada in its decision of 28 June 1966, upheld the constitutional validity of the National Capital Act, 1958 (Can.) c. 37 conferring powers of expropriation on the National Capital Commission for the purpose of establishing a Green Belt in the National Capital Region including and surrounding the City of Ottawa. It was argued before the Court that the power of expropriation granted by the Act was within the classes of subjects assigned exclusively to the Legislatures of the Provinces by the British North America Act and that consequently the National Capital Act was *ultra vires* of Parliament of Canada.

The Court noted that the full title of the contested legislation is "An Act respecting the Development and Improvement of the National Capital Region" and the purpose of its enactment was to establish a region consisting of the seat of the Government of Canada and of the defined surrounding area in order to form a unit to be known as the National Capital Region which is to be developed, conserved and improved "in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance".

Further, the Court noted that the subject matter of the National Capital Act is not referred to in either s.91 or s.92 of the British North America Act which sections are concerned with the distribution of legislative powers between the Parliament of Canada and Provincial Legislatures. "It was established by judicial authorities that where the subject-matter of any legislation is not mentioned explicitly in either s.91 or s.92 of the B.N.A. Act, such legislation falls within the general words at the opening of s.91 which assign to the federal Government the power to make laws "for the Peace, Order and Good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces". Further, it was held by judicial authorities that where a subject-matter of a legislation falls within the legislative competence of Parliament of Canada under the general words at the opening of s.91 then it matters not that the operation of the

²⁴ *Statutes of New Brunswick*, 1966, c. 24.

²⁵ *Statutes of Alberta*, 1966, c. 109.

²⁶ *Statutes of Alberta* 1966, c. 110.

²⁷ (1966) 57 D.L.R. (2d) 753.

legislation will affect civil rights in the Province. Considering the above the Supreme Court of Canada upheld the constitutional validity of the National Capital Act and the National Capital Commission's powers of expropriation with the right of the people concerned to submit all claims for compensation to be heard and determined by the Exchequer Court of Canada as provided in the Act.

In *Walter et al. v. Attorney-General of Alberta; Fletcher et al. v. Attorney-General of Alberta*²⁸ Alberta Supreme Court, Appellate Division, in its decision rendered on 5 December 1966, held that the Alberta Communal Property Act (R.S.A. 1955, c. 52) is valid provincial legislation under s.92(13) of the British North America Act as a matter of property and civil rights within the Province. The purpose of enacting the Communal Property Act was to restrict the acquisition of land by a "colony", which under the terms of the Act means "a number of persons who hold land or any interest therein as communal property" and includes "Hutterites or Hutterian Brethren and Doukhobors". The Act in question aimed at controlling the expansion of Hutterite colonies whose principal religious tenets are the living in colonies and holding land communally. The Court stressed that the true nature of the Communal Property Act was not to suppress the Hutterite religion but to prevent any group of people, the Hutterites in particular, from acquiring land as communal property without consent of the provincial government. This was done in line with the governmental policy to break (or prevent) large holdings of land, sometimes by governmental

intervention, in order to permit normal development of rural society and to facilitate the development of some economic and social amenities that make better rural living. In conclusion the Court held that the Communal Property Act in pith and substance is legislation relating to land tenure within the province and as such *intra vires* the Province of Alberta.

In *Hofer et al. v. Hofer et al.*²⁹ the Manitoba Court of Queen's Bench in a decision rendered on 15 November 1966, held that members of an unincorporated religious congregation who are excommunicated from the church by reason of their repudiation of the religious doctrines upon which the religious group was founded, are not entitled to share in any property. The case involved a split in the Interlake Colony of the Hutterian Brethren Church and a claim for a share of communal property by those who were expelled from the colony on religious grounds and joined a dissident group of the Church of God. The Court stressed the fact that one of the fundamental tenets of the Hutterian Brethren Church was that all members repudiated the concept of private property as ordinarily understood and the property of the group was held in common by its members. The Court held that following the departure of some members by reason of a division of religious opinion, the members who remained faithful to the original religious beliefs of the congregation were entitled to retain the property and all the assets of the congregation to the exclusion of those who seceded.

²⁸ (1967) 60 D.L.R. (2d) 253.

²⁹ (1967) 59 D.L.R. (2d) 723.

CEYLON

NOTE¹

I. Legislation

1. JUDICIAL PROCEDURE

(a) Rent Restriction (Amendment) Act No. 12 of 1966

This amendment provides for the restriction of the right to institute proceedings for ejection of a tenant from premises where the rent does not exceed R. 100/—.

(b) Offensive Weapons Act No. 18 of 1966

This Act prohibits the importation, manufacture, possession, sale, exposure for sale etc. of offensive weapons. Among other things, this Act provides for certain offenders to be indicted without the usual preliminary inquiry by a Magistrate's Court. The provisions relating to the conditional discharge of offenders are also not applicable.

2. PERSONAL AND ECONOMIC RIGHTS

(a) Maternity Benefits (Amendment) Act No. 1 of 1966

This Act amends the law in certain particulars in regard to the payment of Maternity benefits to women workers.

(b) Medical Wants (Amendment) Act No. 2 of 1966

This Act amends in certain particulars the law relating to the medical wants of labourers.

(c) Workmen's Compensation (Amendment) Act No. 4 of 1966

This amendment widens the scope of the Act and provides for enhanced compensation in certain cases.

(d) Shop and Office Employees (Regulation of Employment and Remuneration Amendment) Act No. 5 of 1966

This is an amendment to the provisions of the principal Act relating to maternity benefits.

(e) Indian and Immigrant Labour (Amendment) Act No. 9 of 1966

This amendment provides for the payment of certain charges from the Fund established by the Act for certain administrative matters.

(f) Control of Prices Amendment Act No. 16 of 1966

This is an amendment to the law providing for the regulation and control of the price of commodities.

(g) Higher Education Act No. 20 of 1966

This Act provides for the establishment of a National Council of Higher Education, for establishing and maintaining higher educational institutes. Section 38 of the Act specifically lays down that a University shall be open to all persons of either sex and of whatever race, creed or class who are lawfully in Ceylon, otherwise than under the authority of a passport or visa.

(h) Wages Board (Amendment) Act No. 23 of 1966

Wages Board (Amendment) Act No. 24 of 1966

This legislation amends the law pertaining to Wages Boards.

(i) Shop and Office Employees (Regulation of Employment and Remuneration) Amendment Act No. 26 of 1966

This Act amends certain penal provisions of the principal Act.

(j) Industrial Disputes (Amendment) Act No. 27 of 1966

This Act amends the Industrial Disputes Act.

(k) Paddy Lands Act No. 25 of 1966

This Act amends the principal Act by giving the landlord and persons aggrieved by a decision of the Commission certain rights of appeal.

(l) National Housing (Amendment) Act No. 36 of 1966

This Act amends the principal Act.

(m) Ceylon Broadcasting Corporation Act, No. 37 of 1966

This Act establishes a Corporation for the service of broadcasting. Section 3 prescribes, *inter alia*, that it is the duty of the Corporation to see that programmes do not offend against good taste or decency or make incitements to crime or disorder or offend any racial or religious susceptibilities and that the programmes are presented

¹ Note furnished by the Government of Ceylon.

with due accuracy and impartiality and with due regard to public interest.

II. Judicial Decisions

1. *Karunaratne v. The Queen*, 69, N. 10

An offence of bribery falling within section 19 of the Bribery Act is triable by a District Court even though the offence was committed prior to the date of the amending Act of 1965 which conferred jurisdiction on District Courts in consequence of the judicial decision that Bribery Tribunals established by the principal Act were invalid.

The admission of evidence of a wire-recorded speech is not repugnant to our law. Where evidence of a telephone conversation was led in the form of a document which purported to be a transcript of the tape-recorded conversation and the tape-recorder was itself played in court, the Court of Appeal held that the trial court should have considered the evidence of an expert who stated at the trial that —

- (i) There are dangers in attempting to identify speakers by their voice as relayed through tape-recorders; and
- (ii) The dangers attendant upon such identification are greater in a case where what is relayed is a telephone conversation.

2. *Madani v. Joseph*, 69 N. 21

The jurisdiction of a Rent Control Board to order a landlord to provide amenities for the benefit of his tenant cannot be challenged as an exercise of judicial power which can only be exercised by an authority appointed by the Judicial Service Commission.

3. *Hendrick Appuhamy v. John Appuhamy*, 69 N. 29

The Paddy Lands Act provides the sole machinery to which a landlord must resort if he wants to have his tenant cultivator evicted or his paddy field property cultivated. No other remedy is available to him since this Act was passed, for the Act takes away the jurisdiction of the courts.

4. *The Queen v. Anthonypillai*, 69 N. 34

In a trial for murder, by poisoning, it transpired that the deceased person died of pneumonia about 72 hours after the alleged administration of the poison. In the course of the trial the Crown sought to call a new medical witness not named in the indictment. Despite objection by the defence the Court allowed the Crown's application. The Court of Criminal Appeal held that before the new evidence was led, the defence should have been given adequate notice of the nature of the new evidence as well as sufficient opportunity for preparation to cross-examine the witness.

5. *Ratwatte v. Piyasena*, 69 N. 49

The appointment of an Election Judge nominated by the Chief Justice in terms of sec-

tion 78A(i) of the Ceylon (Parliamentary Elections) Order in Council to hear an election petition is not rendered constitutionally invalid by the fact that he is nominated from a panel of Election Judges appointed by the Governor-General with the advice of the Judicial Service Commission.

6. *Shanmugam v. Annamuttu*, 69 N. 63

On an application by a wife for maintenance under the Maintenance Ordinance, the husband is ordered to pay a monthly allowance to the children of the marriage, the wife is entitled to receive such allowance if she has custody of the children even if she is living in adultery.

7. *Thiagarajah v. Karthigesu*, 69 N. 73

The plaintiff instituted this action praying for a declaration that he was not married to the defendant. It was held that as the dispute was a legal dispute concerning the status and rights of parties the declaratory jurisdiction of the court could be invoked.

8. *Gunaseela v. Udugama*, 69 N. 193

The Constitution of Ceylon does not have the effect of invalidating the provisions of any pre-existing statute by virtue of which judicial power was exercisable by a person not holding judicial office. This rule applies equally in the case like the Army Act and, accordingly, a trial by a District Court Martial of an offence under section 129 of the Army Act does not constitute an usurpation or infringement of the judicial power.

9. *Xavier v. Wijekoon*, 69 N. 197

The imposition by executive officers of penalties under Revenue Statutes and similar cases, where penalties have "the remedial character of sanctions", does not involve the exercise of judicial power. Accordingly, where the Commissioner of Income Tax, acting under section 80 of the Income Tax Ordinance, imposes a money penalty against an assessee for making an incorrect return, he does not exercise judicial power.

10. *Ibrahim v. Government Agent, Vavuniya*, 69 N. 217

Where a licensing authority under the Licensing of Traders Act, No. 62 of 1961, acting under section 5 of the Act, made a "punitive order" ordering the trader to pay a sum of Rs. 5,000 to the Consolidated Fund for a contravention of the provisions of the Control of Prices Act, the Supreme Court held in appeal that in purporting to empower some authority other than a court to punish such contravention, by the infliction of a penalty which is nothing more or less than a fine, the Licensing of Traders Act constitutes an usurpation and infringement of the separate power of the Judicature.

11. *Weerasinghe v. Samarasinghe*, 69 N. 262

Successive applications can be properly made to different Judges for a Writ of *Habeas Corpus*.

12. *Durayappah v. Fernando*, 67 N. 265

of Section 277(i) of the Municipal Councils Ordinance, the Minister was bound to observe the rule of natural justice of giving the other side a hearing.

Before the Minister exercises his power to dissolve a Municipal Council under the provisions

CHAD

LABOUR AND SOCIAL WELFARE CODE

Promulgated by Act No. 7/66 of 4 March 1966¹

"Worker", as stated in section 2 of the Code, means any person, irrespective of sex or nationality, who has undertaken to place his gainful activities, in return for remuneration, under the direction and control of another person as defined in section 3. Section 2 does not apply to judges; members of the armed forces; permanent established officials of any branch of the public administration; and officers and assistants of the public administration of the state or local government authorities.

"Employer", as defined in section 3, means any person (including a public or private corporation)

who utilizes the services of one or more persons under his direction and control.

Section 4 provides that a worker enjoying advantages which are superior to those provided by this Code shall continue to enjoy such advantages by personal right.

Other provisions of the Code deal with labour and social welfare administration; labour and social welfare courts; trade unions; the National Council for Labour and Social Welfare; contracts of employment; wages; conditions of employment which include, *inter alia*, hours of work, night work, employment of women and children, and weekly rest and working days; health and safety; medical services; staff representation; training and promotion of workers; labour disputes; and social welfare.

¹ *Journal officiel de la République du Tchad*, No. 7, 24 March 1966 (Extraordinary). The text of the Act in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series 1966—Chad 1*.

CHILE

NOTE¹

ACTS

No. 16395 16 December 1965 (*Diario Oficial* No. 26351, 28 January 1966)

Sets out the revised text of the Acts governing the organization and functions of the Social Security Board.

No. 16424 20 January 1966 (*Diario Oficial* No. 26360, 8 February 1966)

Adds new articles to Act 15475 of 24 January 1966, and amends other existing articles, to amplify workers' social security and holiday entitlements so that these may be recognized and obtained more easily.

No. 16437 16 February 1966 (*Diario Oficial* No. 26373, 23 February 1966)

Establishes a Court of Appeal in the city of Antofagasta.

No. 16434 14 February 1966 (*Diario Oficial* No. 26376, 26 February 1966)

"Article 1. The following amendments are to be made to article 309 of the Labour Code:

"(a) Add the following second sub-paragraph: 'If the child's care makes it necessary, the Medical Service concerned shall extend the postnatal maternity grant by a further six weeks.'

"(b) The second sub-paragraph shall become the third: the new second sub-paragraph shall be as follows: 'This right cannot be waived and no woman shall be employed during pregnancy or the post-confinement period. Furthermore, notwithstanding any stipulation to the contrary, the employer shall keep her post or job open during the leave period.'

"Article 2. In the third sub-paragraph of article 310 of the Labour Code, the words 'the postnatal leave' shall replace the words 'the six weeks reckoned therefrom'."

¹ Note furnished by Mr. Julio Arriagada Augier, former Under-Secretary for Public Education, government-appointed correspondent of the *Yearbook on Human Rights*.

No. 16441 22 February 1966 (*Diario Oficial* No. 26378, 1 March 1966)

Establishes the Department for Easter Island and provides for the organization of its municipal, administrative and judicial services.

No. 16455 5 April 1966 (*Diario Oficial* No. 26409, 6 April 1966)

Establishes the rules for the termination of contracts of employment.

No. 16494 8 June 1966 (*Diario Oficial* No. 26465, 16 May 1966)

Grants to all female personnel in public administration and in semi-public services administered independently of the State the right to voluntary retirement on completion of twenty-five years of effective service. Their status as widows and as mothers of minors shall be taken into account for pension purposes.

No. 16526 6 August 1966 (*Diario Oficial* No. 26539, 13 September 1966)

Abolishes matriculation as an entry requirement for the faculties of State or State-recognized universities. The Ministry of Public Education shall authorize the issue of an "Intermediate Education Licence" to students who have completed the secondary, technical/professional or general teacher-training courses. The possession of such a licence is an entry requirement for higher university education.

No. 16581 17 November 1966 (*Diario Oficial* No. 26605, 1 December 1966)

Establishes working hours in coal mines.

SUPREME DECREES

No. 153 22 February 1966 (*Diario Oficial* No. 26387, 11 March 1966)

Ministry of Defence. Approves the general requirements for the registration of personnel employed on coastal, river and lake vessels.

No. 676 15 February 1966 (*Diario Oficial* No. 26410, 7 April 1966)

Ministry of Justice. Governs the issue of passports.

No. 202 19 March 1966 (*Diario Oficial* No. 26410, 7 April 1966)

Ministry of Labour. Governs the working day of agricultural labourers.

No. 216 11 April 1966 (*Diario Oficial* No. 26452, 31 May 1966)

Ministry of Foreign Affairs. Establishes the Immigration Board.

No. 137 23 February 1966 (*Diario Oficial* No. 26461, 11 June 1966)

Ministry of Foreign Affairs. Annuls Decree No. 651 of 1956, and amends Decree No. 521 of 1953, to foster and facilitate immigration under new and more liberal regulations.

No. 1540 20 May 1966 (*Diario Oficial* No. 26467, 18 June 1966)

Ministry of Justice. Governs the granting of legal personality.

No. 428 4 August 1966 (*Diario Oficial* No. 26533, 6 September 1966)

Ministry of Agriculture. College of Agricultural Engineers. Establishes the revised text of the provisions of Act No. 7758 of 1944, which created that College, in accordance with the provisions of the amending Act No. 16452.

No. 420 10 July 1966 (*Diario Oficial* No. 26540, 14 September 1966)

Ministry for Foreign Affairs. Promulgates a scientific and technical agreement between Chile and Israel.

No. 843 11 October 1966 (*Diario Oficial* No. 26587, 10 November 1966)

Ministry of Labour. Establishes the use of union cards for the Chilean actors' and artistes' union, for the social and professional convenience of such workers.

CHINA

NOTE¹

Major legislation and decrees relating to human rights promulgated by the Government of the Republic of China in 1966 are as follows:

I. REVISION OF ARTICLE 3 OF THE STATUTE ON COMPENSATION FOR WRONGFUL DETENTION AND PUNISHMENT

The revision was promulgated by an order of the President issued on 2 June 1966. The purpose of this revision is to raise the amounts of compensation to be paid to victims of wrongful detention and punishment. Article 3 of the Statute, as revised, reads as follows:

"Article 3. Compensation for wrongful detention, imprisonment or penal servitude shall be paid according to the period of detention or execution of sentence at the rate of not less than 15 *yuan* or more than 25 *yuan* per day.

"Compensation for wrongful execution of a pecuniary penalty shall be made by refunding an amount equal to the fine exacted.

"The provisions for payment referred to in paragraph 1 shall apply *mutatis mutandis* to compensation for wrongful execution of sentences commuted to penal servitude.

"Compensation for property confiscated shall be effected by returning that property, other than what has had to be destroyed, and compensation for property already sold by auction shall be effected by refunding an amount equal to that realized from the sale.

"Compensation for wrongful execution of a death sentence in addition to compensation for detention, which is to be reckoned in accordance with the provisions of paragraph 1 of this article, shall be effected by paying a solatium of not less than 80,000 *yuan* and not exceeding 120,000 *yuan*.

"The number of days of detention shall be reckoned from the date of arrest."

II. REGULATIONS GOVERNING COMPENSATION FOR DAMAGES SUSTAINED BY PASSENGERS AND CARGO RESULTING FROM ACCIDENTS TO CIVIL AIRCRAFT OF CHINESE REGISTRY

These Regulations were promulgated by the Ministry of Communications on 10 March 1966. According to the provisions of articles 77 and 78 of the Civil Aviation Law, an owner, a lessee or a borrower of an aircraft shall be liable for damages sustained by passengers and cargo resulting from an accident due to his negligence. The new Regulations further provide compensation for such damages, as a measure for safeguarding the life, person and property of passengers. These Regulations consist of eight articles, which read as follows:

"Art. I. Where compensation for damages sustained by passengers and cargo resulting from accidents to aircraft of Chinese registry are governed by special agreements referred to in article 80 of the Civil Aviation Law, such agreements must conform to the provisions of the present Regulations.

"Art. II. All civil air transportation carriers (hereafter referred to as civil air carriers) shall take out policies with insurance companies against possible damages sustained by passengers and cargo in accidents to aircraft of Chinese registry under their operation in the following manner:

"1. Domestic carriers shall carry liability insurance in accordance with the provisions of article 77 of the Civil Aviation Law; and

"2. International carriers shall carry liability insurance in accordance with the provisions of the Protocol, signed at The Hague in 1953, to Amend the Convention for Unification of Certain Rules Relating to International Carriage by Air.

"Art. III. Limits of insurance liabilities for damages sustained by passengers and cargo in accidents to aircraft of Chinese registry in domestic service shall be as follows:

¹ Note furnished by the Government of the Republic of China.

"1. Liability for the death of each passenger in an accident of an aircraft of Chinese registry shall be limited to a sum of NTC \$340,000 (based on the sum of 125,000 francs specified in the Convention for Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw in 1929).

"2. Liability for serious bodily injuries sustained by each passenger in an accident to an aircraft of Chinese registry shall be limited to two-thirds of the amount specified in paragraph 1.

"3. Liability for light bodily injury sustained by each passenger in an accident of an aircraft of Chinese registry shall be limited to one-third of the amount specified in paragraph 1.

"4. Medical expenses incurred in connexion with the hospitalization of a passenger injured in an accident shall be borne by the carrier, but the amount should not exceed the amount of compensation specified for light bodily injuries.

"5. Liability for loss of or damage to registered baggage or cargo in an accident to an aircraft of Chinese registry in domestic service and for loss of baggage jettisoned in flight under the provisions of article 58 of the Civil Aviation Law shall be limited to a sum of NTC \$680 per kilogramme (based on the sum of 250 francs specified in the Convention for Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw in 1929).

The expression "serious bodily injuries" as used in these Regulations shall be interpreted in accordance with the provisions of article 10, paragraph 4, of the Criminal Code. Any injury other than a serious bodily injury is considered as a light bodily injury.

"Art. IV. The amounts of compensation for damages sustained by passengers and cargo in an accident for which a domestic carrier is liable may, by agreement, be limited to the amounts of accident liability insurance it carries. In the case of an accident, the carrier shall pay compensation in accordance with the provisions of the various paragraphs of article III. If an aircraft of Chinese registry disappears and is not found within one month, the carrier shall pay compensation to the beneficiaries of the passengers in accordance with the provisions of article III, paragraph 1.

"Art. V. The liability for loss of and damage to mail and postal packages in an accident to an aircraft of Chinese registry shall be based on the liability carried by the Post Office for its mail.

"Art. VI. In the case of an accident in which deaths or injuries occur, the carrier shall take the following steps to inform the passengers or their beneficiaries of the procedures to be followed in claiming compensation:

"1. The carrier shall notify the passengers or their beneficiaries by written notification within fifteen days in a prompt and dependable manner after the date on which the deaths or injuries were ascertained and request them to present themselves at the main office or the ticket office where the tickets are sold to receive payment of compensation.

"2. In the case of an accident in which the passengers disappear and no information concerning their survival is forthcoming within one month, the carrier shall give notification to the beneficiaries of the passengers to receive payments of compensation in accordance with the provisions of the preceding paragraph. The amounts of compensation shall be calculated in accordance with the provisions of article III, paragraph 1.

"3. The injured passengers or the beneficiaries of the passengers who have lost their lives in the accident must present themselves at the place specified in the written notifications or contact the carrier by mail to receive payments of compensation. They must produce their identification cards or affidavits so as to obviate errors.

"Art. VII. In the event of the injured passengers or the beneficiaries of the passengers who have lost their lives in the accident failing to present themselves three months after despatch of the notifications, the carrier shall publish the notifications in three nation-wide newspapers and keep the compensation money in escrow.

The provisions of the preceding paragraph shall not apply if the injured passengers or the beneficiaries of the passengers who have lost their lives in the accident explicitly waive their claims to compensation.

"Art. VIII. The present Regulations shall come into effect on the day of their promulgation."

COLOMBIA

LEGISLATIVE DECREE No. 939 OF 20 APRIL 1966 TO MAKE CERTAIN PROVISIONS WITH REGARD TO LABOUR¹

1. (1) Where a strike lasts for 30 days without the parties finding any settlement to the dispute that caused the stoppage, the workers may apply within the next ten days to the Ministry of Labour, requesting that the dispute should be submitted to a compulsory arbitration board, in which case the legal provisions in force at the time shall apply.

(2) The decision to apply for arbitration shall be taken by means of a secret ballot by the absolute majority of the workers employed in the undertaking or by a general meeting of the union or unions to which more than half the workers belong. Notice of the meeting shall be given to the labour authorities before it is held, to enable them to be present and follow the conduct of proceedings.

(3) The legally recognized workers' federation or confederation to which the union is affiliated may request the parties, within the time limits laid down in subsection (1), to hold joint meetings for

the purpose of suggesting ways and means of settling the dispute.

An official of the Ministry of Labour shall be present at such meetings, if so requested by the federation or confederation concerned.

(4) Within the time limits laid down in subsection (1) the parties may hold direct negotiations for the settlement of the dispute or agree to request the establishment of the board mentioned in that subsection.

2. Where the establishment of the compulsory arbitration board referred to in the preceding section is not requested by mutual agreement between the parties, or by the workers, the Ministry of Labour may order such a board to be set up to decide, as in previous cases, on such of the grievances as have not been settled at any stage of the procedure prescribed by law.

3. Where the workers decide to resort to the compulsory arbitration board referred to in section 1 of this Decree or where the Ministry of Labour gives notice of its decision to set up a board, as prescribed in section 2, the workers shall be obliged to resume their normal activities in the undertaking within a maximum of three days.

¹ *Diario Oficial*, No. 31925, 6 May 1966. Translations of the Legislative Decree into English and French have been published by the International Labour Office as *Legislative Series*, 1966—Col. 1.

COSTA RICA

NOTE¹

Act No. 3667 of 12 March 1966 regulating the administrative courts contains the following provisions:

"Art. 1. The administrative courts established in article 49 of the Political Constitution² and regulated by this Act shall hear complaints challenging the legality of acts and decisions of the Public Administration under administrative law.

"2. Grounds for such complaints shall comprise any violation of legal provisions, including lack of jurisdiction or competence, failure to observe essential formalities and abuse of power.

"3. The exercise of administrative powers for ends different from those fixed by law shall constitute abuse of power.

"4. For the purposes of paragraph 1 above, the term "Public Administration" means:

"(a) The Executive Power;

"(b) The Legislative Power and the Judiciary, to the extent that, in exceptional cases, they perform administrative functions; and

"(c) The municipalities, autonomous agencies and all other public law institutions.

...

"Art. 10. (1) The following persons may apply for a declaration of illegality in respect of any act or decision of the Public Administration and for its annulment if it is declared illegal:

"(a) Persons legitimately and directly concerned; and

"(b) Public law institutions, corporations and agencies and all other bodies which represent and defend collective or corporate interests, where the object of the suit is the direct challenge of general decisions of the central or local administration directly affecting them, subject to the provisions of paragraph 2 below.

"(2) Nevertheless, the persons referred to in sub-paragraph (a) above may challenge general

decisions with which those directly subject to the administration are required to comply without a prior request or individual acceptance.

"(3) If, in addition, a claim is to be entered for the recognition of a particular legal situation and for the remedying of that situation, with or without damages, the plaintiff must possess a subjective right under the legislative provision which is held to have been violated by the act or decision impugned.

"(4) The Administration may bring an action against its own positive act creating a subjective right, where a higher body in the administrative hierarchy responsible for such act declares in an explanatory statement that the act is prejudicial to the public interest which it represents.

"(5) The following may not challenge the acts and decisions of a public entity in the administrative courts:

"(a) The organs of the public entity in question; and

"(b) Private persons acting for, or as ordinary agents or representatives of, that entity.

...

"Art. 22. The plaintiff may ask for the impugned acts and decisions to be declared illegal and annulled in consequence, in accordance with the provisions of the preceding chapter.

"Art. 23. In addition to what is provided for in the preceding article, the plaintiff referred to in article 10, paragraph 3 may apply for the recognition of a particular legal situation and the adoption of the necessary measures for its full restoration, including compensation for any damages and losses suffered.

"Art. 24. (1) Administrative courts shall adjudicate within the limits of the claims made and of the evidence adduced by the plaintiffs and the defendants.

"(2) Nevertheless, if the court, in pronouncing judgement, considers that the matters submitted for adjudication have not been thoroughly examined by the parties, because

¹ Note furnished by the Government of Costa Rica.

² For the text of article 49 of the Political Constitution, see *Yearbook on Human Rights for 1949*, p. 42.

there appear to be other grounds that might have been included in the plaintiff's suit or in its rebuttal, the court shall indicate those grounds to the parties without prejudice to its final decision, and shall grant them a period of eight days to submit whatever further arguments they may deem necessary and an extension of the time-limit for the handing down of judgement.

...

"Art. 61. (1) If the administrative act or decision challenged is found to be in accordance with law, the court shall dismiss the suit.

"(2) The suit shall be allowed if the administrative act or decision violates in any way the provisions of the law.

"Art. 62. Where the court recognizes the validity of the claim:

"(a) The administrative act or decision challenged shall be declared illegal and shall be wholly or partly annulled;

"(b) In the case of a claim under article 23, the particular legal situation shall be recognized and all necessary measures shall be adopted for full restoration and recognition thereof;

"(c) In the case of a claim for compensation for damages or losses, the judgement may specify the extent and amount of such damages and losses in accordance with the evidence; in the absence of such evidence, the judgement shall merely declare an entitlement to compensation and shall defer the determination of the amount until the date for the execution of the judgement."

CUBA

NOTE¹

Act 1173 of 17 March 1965. Gaceta Oficial, 19 March

Places the Registers of Associations under the authority of the Ministry of the Interior.

Resolution 74/65. G.O., 31 August, Ministry of the Interior

Establishes a special register for associations to be organized in future.

Act 1174 of 17 March 1965. G.O., 19 March

Provides that forensic medical services shall be provided by the Ministry of Public Health.

Act 1175 of 17 March 1965. G.O., 19 March

Substantially modifies articles 30 and 31 of the Civil Code relating to births and deaths.

International Convention for the Safety of Life at Sea, 1960. G.O., 29 January

Single Convention on Narcotic Drugs, 1961. G.O., 8 March

(In February 1967 the Ministry of Public Health issued Resolution 58 establishing a system of control in implementation of the Convention.)

Resolution 92 of the Ministry of Labour, 12 May 1965. G.O., 12 June

Provides that a worker called up for compulsory military service who is declared exempt, granted a deferment or completes his period of service is entitled to be reinstated in the job he held when he was called up or to be given another job at the same level and wages.

Resolution 100 of the Ministry of Labour, 24 May 1965. G.O., 12 June

Provides that the Review Board may consider cases involving a flagrant miscarriage of justice and may annul the decisions of Labour Councils and Appeals Boards, except in the cases indicated in the Resolution.

Resolution G-65020 of the Ministry of Transport, 22 February 1965. G.O., 8 March

Amends article 11 of the Motor Vehicle Driving License Regulations as regards the age requirements for obtaining a driver's license.

Discrimination (Employment and Occupation) Convention. G.O., 14 October. Act 1180 of 1 July 1965. G.O., 5 July

New provisions relating to Property Registers and General Archives of Property Deeds and entailing the establishment within the Property Registers of a section for the official registration of the acquisition of real property, in implementation of the Urban Reform Act which establishes the right of persons to their urban dwellings after completion of payment at the appropriate rate.

The Act also provides for a right of appeal up to the Ministry of Justice against decisions rendered by the Property Registrars in such matters.

Act 1181 of 1 July 1965. G.O., 5 July

Establishes the jurisdiction of the Correctional Court of the First Havana Section over traffic offences and violations committed at the Havana Municipal Terminal.

Act 1185 of 27 October 1965. G.O., 29 October
Establishes a Food Industry Ministry.

Proclamation, Protocol and Annex amending the International Agreement for the Suppression of the White Slave Traffic. G.O., 17 September

Proclamation and Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. G.O. 29 October

Ministerial Resolution of the Ministry of Public Health No. 403/65. G.O., 24 November

Broadens and elucidates the requirements laid down in the Sanitary Ordinances in respect of vehicles intended for the public transport of passengers.

Agreements Nos. 139, 140, 141 and 143 of the High Council for Urban Reform, 1965. G.O., 14 October, 29 October, 24 November and 31 December, respectively

¹ Note furnished by the Government of Cuba.

Regulations relating to pensions or life annuities for former owners and mortgagees of urban property affected by the Urban Reform Act.

Resolution 111 of the Ministry of Labour, 13 July 1965 *G.O.*, 23 July

Important new rules concerning paid vacations for workers.

Agreement 429 of the Supreme Court, 1965. *G.O.*, 23 July

Rules for the more effective implementation of Act 1181/65 concerning the jurisdiction of courts to hear cases of offences and misdemeanors in violation of the Havana traffic laws.

Act 1194 of 11 July 1966. *G.O.*, 22 July

Establishes the Cuban Civil Defence.

Act 1200 of 1966. *G.O. Extr.*, 30 September

Military Penal Act and related Regulations contained in Act 1201/66 which appears in the same issue of the *Gaceta Oficial*.

Proclamation and 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. G.O., 22 July

Resolution 166 of the Ministry of Labour, 1966. *G.O.*, 30 December

Regulations concerning employees temporarily deprived of liberty or serving a sentence for a term of more than one year.

Agreement 150 of the High Council for Urban Reform, 5 July 1966. *G.O.*, 22 July

Right of free usufruct for occupants of apartment houses, tenement-houses, rooming-houses or manor-houses under the conditions laid down in the Agreement.

Resolution 120-66 of the National Agrarian Reform Institute, 20 April 1966. *G.O.*, 29 April

Rules governing the voluntary sale of rural landholdings to the Institute.

CYPRUS

NOTE¹

1. AMENDMENT OF THE SOCIAL INSURANCE LAW (No. 2/64)

Early in 1966 the Social Insurance Law was amended. The following are some of the main amendments:

- (i) Payment of unemployment benefit and sickness benefit was extended to all married women who are the breadwinners of their family;
- (ii) The condition of retirement for the award of an old-age pension has been waived. An old-age pension is now payable at the age of 65 even if a person continues in employment;
- (iii) A constant attendance allowance of £1.500 mls a week was added to the weekly pension of a totally disabled person requiring constant help or attendance;
- (iv) The provision requiring residence in Cyprus for a dependant to be entitled to claim compensation for the death of his breadwinner, due to an employment injury, has been waived; and
- (v) The issue of medical certificates for incapacities due to employment injuries previously restricted to specially appointed Government medical officers has now been extended to cover all registered medical practitioners including those in private practice.

2. AMENDMENT OF THE PNEUMOCONIOSIS (COMPENSATION) LAW (No. 11/60)

The Pneumoconiosis (Compensation) Law which provides for compensation for persons suffering from pneumoconiosis due to their employment in a dust exposure occupation, mainly in the mines, has been amended towards the end of 1966. The main amendment was the increase of benefits by about 20 per cent and an equivalent increase for the payment of contributions payable by employers only.

3. APPRENTICES LAW No. 13 OF 1966

The Apprentices Law, enacted in April 1966, aims at the extension of the apprenticeship system

to the industry as a whole in accordance with industrial demands for skilled hands.

The main objectives of the Law are:

- (a) To enable decisions on training to be better related to the economic needs and the development programme of Government;
- (b) To improve the overall quality of industrial training and to establish minimum standards for craftsmen; and
- (c) To make possible the contribution of employers towards the costs of training, thus spreading the cost more fairly.

The Law provides for the establishment of an Apprenticeship Board, the main functions of which are:

- (a) To provide or to secure the provision of such courses and other facilities (which may include residential accommodation) for the persons employed or intended to be employed in the apprenticeable industry as may be required, having regard to any courses or facilities otherwise available to such persons;
- (b) To estimate the number of apprentices required to be trained from time to time in particular industries so as to ensure that sufficient skilled workmen will be available to satisfy the requirements of the industry, and to make recommendations regarding the ratio of craftsmen to apprentices for the industry;
- (c) To recommend to the appropriate authorities that such steps should be taken as seem desirable to ensure that young persons are guided into suitable vocations and that there are sufficient skilled workmen to satisfy the requirements of the industry;
- (d) To establish and recommend standards of training of apprentices; and
- (e) To apply or to make arrangements for the application of selection tests and of test or other methods for ascertaining the attainment of any standards recommended by the Board and may award certificates of the attainment of those standards.

The Board appoints Joint Apprenticeship Committees which are responsible for the preparation of the relevant syllabus for each trade and for the follow-up of the progress of the apprentices both at the place of work and at the technical schools.

¹ Note furnished by the Government of the Republic of Cyprus.

4. CENTRE FOR THE TRAINING AND REHABILITATION OF THE DISABLED

It is worth noting that in 1966 the Ministry of Labour and Social Insurance in the light of the results of an island-wide survey which aimed at

ascertaining the extent of various disabilities, put to Government the necessity for establishing a permanent Centre for the training and rehabilitation of the disabled. Government approved in principle the establishment of the Centre and it is expected that by late 1967 the Centre will become operational.

CZECHOSLOVAKIA

LEGISLATION RELATING TO HUMAN RIGHTS ADOPTED IN 1966¹

I. RIGHT TO MEDICAL CARE

Health Care of the People Act of 17 March 1966

The purpose of the Act is to concentrate efforts of the whole society, of all organizations and of all individuals in order to achieve, in implementation of the right to medical care which is one of the basic civil rights guaranteed by the Constitution of the Czechoslovak Socialist Republic, the optimum health of the people.² According to Article 1 of the Act, the socialist society and all its component parts systematically ensure the care of the people's health as an integral part of the economic and cultural development through economic, social, cultural, and medical measures. Medical care is granted to all citizens by the State free of charge. The continuity, consistency, availability and uniformity in contents of this care are guaranteed by an expedient organizational structure of the health services. The care of the people's health is aimed particularly at the preventive protection, the systematic improvement and the development of the physical and mental health of the people. Special care is devoted to the younger generation and to the protection of the health of the working people.

In order to put these principles into practice the Act regulates the creation and protection of healthy conditions and of a healthy way of life and work and of the securing of health services. It fixes the responsibility of all enterprises, co-operatives and other organizations in creating healthy conditions and a healthy way of life and work. It also defines the participation of citizens and the role of social organizations in care of the people's health.

The health services especially include preventive medical care which consists in the protection, restoration and improvement of the health of individuals and collectives and which is provided for the population both while in good health and during illness, in maternity and other conditions

requiring medical help. Preventive medical care comprises all kinds of out-patients' and hospital treatment including also spa treatment, free provision of medicaments, therapeutic and orthopaedic aids and other medical requisites and transportation of patients.

Health services are rendered by the State through its health institutions which are organized in a unified system. They include institutions of hygienic service, institutions of preventive medical care, educational institutions, organizations in charge of sanitary production, supplies of medicaments and other medical requisites and their control. The basic unit of preventive medical care consists of a hospital with an out-patients' division, district health centres and other district and factory institutions for out-patients' treatment; to these institutions belong also specialized medical institutions, chemist's shops and special facilities for children like nursery homes, children homes and nurseries looking after the all-round development of infants up to the age of three, etc.

II. RIGHT TO EDUCATION

1. *Universities and Colleges Act of 16 March 1966*

According to Article 1 of the Act, the purpose of universities and colleges is to serve as pedagogical, scientific and cultural centres of the highest level, which through their activities create the necessary prerequisites for a progressive growth of the socialist national economy, science and culture. The Czechoslovak Socialist Republic takes an all-round care of their development so that they may fulfil their mission in accordance with the needs of the socialist society and of the development of science and culture in the world.

According to Article 3, schools of higher education are divided into universities and schools of a technical, economic, agricultural and artistic character. Apart from regular, full-time day studies the law provides also for part-time studies, e.g. evening, extension or extramural courses or a combination of these forms of study.

Applicants for regular studies at schools of higher education are enrolled with an eye to their

¹ Note furnished by the Government of the Czechoslovak Socialist Republic.

² For extracts from the Constitution of the Czechoslovak Socialist Republic, see *Yearbook on Human Rights for 1960*, pp. 86-90.

individual abilities, talent and interests and in harmony with the society's needs. Only applicants having completed a secondary education can be enrolled.

The State provides material and medical care for the students. In particular they are granted scholarships and, in so far as possible, board in students' canteens. Students are covered by health and accident insurance and are socially secured to the extent stipulated by the regulations on health insurance and social security. Employed persons, engaged in part-time studies, are granted work easement and economic security by their employers (Article 10).

Graduates from schools of higher education, who have completed their studies by passing the final examinations, are awarded degrees listed in Article 14 of the Act.

The prospects of the development of university and college education, its material support and the securing of cadres are decided upon by the Government. Schools of higher education are centrally directed by the Minister of Education. The Act provides for an advisory body to the Minister for dealing with major issues with regard to schools of higher education. The body is called the State Committee for Schools of Higher Education. Its members are rectors of universities and colleges and other experts appointed by the Minister. Representatives of students and staff organizations from schools of higher education are entitled to participate in the sessions of the State Committee. Students have the right to take part in the management and activities of their school through their organization. Rectors are appointed by the President of the Republic for a period of three years on the basis of a recommendation

submitted by the school's scientific council which has decided on that recommendation by secret ballot. The detailed management, organization and activities of the individual colleges and university faculties and the work as well as procedure of the scientific councils are set forth in the statutes of schools of higher education and in the statutes of faculties which are issued by rectors and approved by the Minister.

2. Ministry of Education and Culture Decree of 11 November 1966

This decree contains detailed regulations on work easement and economic security of employed persons engaged in part-time studies at secondary and technical schools and schools of higher education.

Employed persons, engaged in part-time studies at universities or colleges, are granted the following work easement by their employer: 22-24 free working days annually with compensation of wages, 2 free working days for the preparation and passing of each examination and 16 weeks for the preparation of a final examination. Similar work easement is granted to part-time post-graduate students and to students at secondary, technical and factory schools. When students are taking additional time off without wage compensation, their employers grant them study allowance, the rate of which depends on their family situation (in the average it is about 60 per cent of the national average monthly wages and salaries). Employed persons, engaged in part-time studies, have a right to a suitable arrangement of working conditions, especially suitable working hours.

DAHOMÉY

ORDER No. 15 P.R./M.I.S.D.N./T. OF 21 MARCH 1966 ON THE INSTITUTION OF THE VILLAGE AND THE POWERS OF THE VILLAGE CHIEF¹

TITLE I

THE VILLAGE

Art. 1. The village is the administrative unit around which rural life is organized.

Anyone who does not belong to a commune automatically becomes part of a village.

...

Art. 4. Anyone who has resided in the territory of the village for one year or has his chief domicile therein shall automatically be enumerated as a member of the population. However, if he has already paid his taxes for the current financial year in another locality, he shall only be enumerated for the following financial year.

Art. 5. All the inhabitants of a village have the same rights and duties vis-à-vis the community.

Art. 6. The establishment, abolition, division and amalgamation of villages and changes in their boundaries shall be decided by decree in the Council of Ministers, after consultation with the small departmental councils concerned.

Art. 7. Each village is required to have a town hall, cemetery, public square and playing field, which shall be constructed and maintained by the inhabitants.

TITLE II

THE VILLAGE CHIEF

Art. 8. The village shall be administered by a Village Chief.

Art. 9. Candidates for the office of Village Chief shall be presented to the people, who shall designate the chief of their choice in the presence

¹ *Journal officiel de la République du Dahomey*, No. 8, 15 April 1966.

of an *ad hoc* Government Commission or delegation.

Art. 10. The Village Chief shall be appointed by order of the Minister of the Interior.

Art. 11. The functions of a civil servant, an administrative officer, in active employment, an assistant to a magistrate or a chairman of a conciliation tribunal are incompatible with those of a Village Chief.

Art. 12. The Village Chief shall represent the people in all of the administrative and social matters which affect the community.

Art. 13. In the exercise of his duties the Village Chief is a citizen empowered by the Ministry to perform public service, and as such, he is protected by the law. All inhabitants of the village, whether or not they are on the census rolls shall be subject to his authority.

Art. 14. The Village Chief shall be responsible in a general way for the maintenance of law and order in the village. He shall be responsible for the implementation of the laws, decrees, orders and directives of the administrative authorities, and is obligated at all times to assist the judicial authorities.

A. General Police Functions

He shall be responsible for maintaining law and order in the village and should take all necessary steps to that end. He shall, as a matter of urgency, inform the higher authorities of any disturbances.

The Village Chief shall be responsible for the protection of the property of the members of the village community and of public works and buildings. He shall exercise police and supervisory functions over aliens. He shall keep a check on the possession of firearms by the inhabitants of the village.

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DECREE No. 22 (*bis*) OF 12 JANUARY 1966 ON THE ESTABLISHMENT, FUNCTIONS AND ORGANIZATION OF THE OFFICE OF THE HIGH COMMISSIONER FOR INFORMATION²

Chapter I

ESTABLISHMENT AND FUNCTIONS

Art. 1. There shall be established an Office of the High Commissioner for Information, directed by a High Commissioner and under the authority of the President of the Republic, the Head of the Government.

Art. 2. The Office of the High Commissioner for Information shall be responsible for:

Devising, formulating and implementing the general information policy of Dahomey; ensuring and facilitating the necessary exchange of views between the various sectors of the population and the Government;

Co-operating with the Office of the High Commissioner for the Plan in finding ways and means of informing the public and enlisting its co-operation in the implementation of the National Development Plan.

Art. 3. The High Commissioner for Information shall be appointed by decree of the President of the Republic in the Council of Ministers. He shall be the spokesman of the Government and shall represent it in relations with national and international news media (written, spoken and filmed).

ORDINANCE No. 21 P.R. OF 26 APRIL 1966 CONCERNING THE COMPOSITION, ORGANIZATION, OPERATION AND JURISDICTION OF THE SUPREME COURT³

TITLE I

COMPOSITION, ORGANIZATION
AND OPERATION OF THE SUPREME COURT

Chapter I

COMPOSITION - ORGANIZATION

Art. 1. Act No. 65-35 of 7 October 1965 concerning the composition, organization, jurisdiction and operation of the Supreme Court is hereby rescinded and replaced by the provisions of this Ordinance.

Art. 2. There is hereby established a Supreme Court, which shall be the highest State authority in matters of constitutional, administrative, judicial and financial jurisdiction.

No appeal shall lie against its decisions to any authority whatsoever. They shall be binding on the public authorities, all courts and all administrative authorities.

It shall exercise surveillance over the regularity of electoral and referendum procedures and shall announce their results.

It shall be consulted by the Government on all bills, ordinances and regulatory acts. More gen-

erally, it may be consulted on all administrative and jurisdictional matters.

It may take no decision on the desirability of drafts submitted to it.

Art. 3. The Supreme Court shall be composed of:

A Constitutional Chamber;

An Administrative Chamber;

A Judicial Chamber;

An Audit Chamber (*Chambre des Comptes*);

A *Ministère Public*;

A Registry.

It shall sit at Cotonou.

...

TITLE II

JURISDICTION
OF THE SUPREME COURT

Chapter I

GENERAL JURISDICTION

Art. 29. The Supreme Court shall deliberate in plenary session in the cases specified in the last paragraph of article 2 of the Ordinance.

² *Ibid.*, No. 10, 15 May 1966.

³ *Ibid.*, No. 11, 1 June 1966.

It shall likewise deliberate in plenary session in proceedings relating to:

Transfers of cases from one court to another for reasons of public security or to ensure proper administration of justice, at the request of the Procurator-General, by order of the Keeper of the Seals, the Minister of Justice and Legislation;

Conflicts of jurisdiction;

Cases raising a question of principle or likely to result in a conflict of decisions, at the request of the President on the recommendation of the President of the Chamber concerned, after consultation with the Conseiller-Rapporteur.

Chapter II

JURISDICTION OF THE CONSTITUTIONAL CHAMBER

Art. 30. The jurisdiction of the Constitutional Chamber shall be determined at a later date.

Chapter III

JURISDICTION OF THE ADMINISTRATIVE CHAMBER

Art. 31. The Administrative Chamber shall be the ordinary-law court of original and final jurisdiction in administrative matters. It shall have cognizance of:

(1) Applications for the annulment of decisions of administrative authorities on grounds of abuse of powers;

(2) Applications, referred to it by the judiciary for the interpretation of acts of administrative authorities, or for an opinion as to their legality;

(3) All claims for damages against public corporations;

(4) Claims by private individuals in respect of damage caused by the personal acts of contractors or agents of the Administration;

(5) Tax disputes;

(6) Electoral disputes.

Art. 32. It shall also have appellate jurisdiction in respect of decisions rendered in original jurisdiction by administrative bodies having the character of tribunals.

Decisions rendered by such bodies as tribunals of final jurisdiction shall be subject to appeal on matters of law to the Supreme Court, deliberating in plenary session, with the exception of the Constitutional Chamber.

Art. 33. However, jurisdiction shall rest with the law courts in respect of the following:

(1) Compensation claims for damage caused by a vehicle of any kind, or for damage resulting from accidents occurring in the course of public works;

(2) Compensation claims for loss and damage of all kinds resulting from crimes and other offences committed with brute force or violence by armed or unarmed mobs or crowds;

(3) Disputes involving employees of local government bodies subject to the Labour Code.

The law courts shall also have sole jurisdiction with respect to civil liability claims accessory to criminal proceedings instituted in the law courts against the State or local government bodies.

Chapter IV

JURISDICTION OF THE JUDICIAL CHAMBER

Art. 34. The Judicial Chamber shall rule on appeals lodged on grounds of lack of jurisdiction, or of breach of the law or custom against:

Final decisions and judgements rendered by any court of law;

Decisions of collective labour disputes arbitration councils.

Art. 35. The Judicial Chamber shall also have competence to rule on:

Applications for review;

Requests for the transfer of a case from one court to another on grounds of legitimate suspicion;

Suits against a judge or court of law for denial of justice;

Conflicts between final judgements or decisions rendered down by different courts in proceedings between the same parties and on the basis of the same arguments;

Conflicts of jurisdiction.

Chapter V

JURISDICTION OF THE AUDIT CHAMBER

Art. 36. The Audit Chamber shall have:

(1) Judicial powers with respect to public funds accountants and accountants of private funds statutorily subject to supervision by a public accountant;

(2) Powers of administrative supervision over local government bodies and public establishments, State corporations, mixed corporations, social security agencies and agencies subsidized by a local government body or public establishment.

Art. 37. In the case of State accounts, it shall issue the general statement certifying as true and correct the accounts of the Chief Accountant and Paymaster-General and it shall issue corresponding certificates for other accounts.

Art. 38. It may be called upon to carry out investigations and studies of all kinds relating to the expenditure of appropriations and the use of public funds.

TITLE III
PROCEDURE
BEFORE JUDICIAL BODIES

Chapter I
PROCEDURE
IN THE CONSTITUTIONAL CHAMBER

Art. 39. The procedure to be followed in the Constitutional Chamber shall be determined later.

Chapter II
COMMON PROVISIONS CONCERNING PRO-
CEDURES TO BE FOLLOWED IN THE AD-
MINISTRATIVE AND JUDICIAL CHAMBERS

Art. 40. An appeal against a judgement on points of law or an application for the review of an administrative decision shall not suspend the execution of the judgement or decision attacked, except in the cases specified in article 82 below.

Art. 41. Proceedings in the Administrative and Judicial Chambers shall be in writing. The Procurator-General (*Procureur général*) may present his views in writing or orally.

Art. 42. All appeals or applications to the Supreme Court, with the exception of applications for the annulment of administrative decisions on grounds of abuse of powers, must be lodged through an attorney. An attorney appointed by a lower court shall represent his client in any appeal to the Supreme Court.

However, the respondent in an appeal or application shall not be obliged to appoint an attorney.

Art. 43. A party appointing an attorney shall be deemed to have elected domicile at the attorney's chambers.

A respondent domiciled abroad who has not appointed an attorney shall be required to elect domicile in Dahomey, by a statement to that effect addressed to the Registry of the Supreme Court. The same shall apply to persons applying for the annulment of an administrative decision on grounds of abuse of powers.

Art. 44. The parties, or the attorneys representing them, may be authorized to present their case orally at the hearing.

Art. 45. Applicants shall be required, subject to the penalty of default, to deposit with the Registry of the Court a sum of 5,000 francs not later than fifteen days after receiving a request therefor by registered letter or administrative notification, or to apply for legal assistance within the same time-limit. The receipt issued shall be accepted as proof that the sum has been deposited.

If the appeal or application is rejected, the sum shall be retained by the Treasury.

Art. 46. The following shall be exempt from the obligation to deposit the sum referred to in article 45:

Public corporations;

Parties granted legal assistance;

Persons sentenced to imprisonment for minor or police offences;

Persons sentenced to criminal penalties.

Art. 47. Legal assistance may be granted for all cases brought before the Supreme Court. Legal assistance granted for proceedings in lower courts shall be continued for appeal proceedings before the Supreme Court.

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Chapter III

PROCEDURE PARTICULAR
TO THE ADMINISTRATIVE CHAMBER

Art. 64. Cases are brought before the Administrative Chamber by application signed by the applicant or his attorney. When the application is made by a public corporation, it shall be signed by the authority competent to represent the State or the local government body concerned, or by an official duly authorized to do so.

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Chapter IV

PROCEDURE PARTICULAR
TO THE JUDICIAL CHAMBER

Section I

*Provisions common to civil
and criminal proceedings*

Art. 82. Notwithstanding the general provisions set forth in article 40 above, an appeal to the Supreme Court shall have the effect of suspending the execution of judgement in proceedings relating to:

Personal status;

The authenticity of documents in the case;

Registration of property;

Criminal proceedings, save as provided in paragraph 96 below.

Art. 83. Where the Judicial Chamber reverses a decision or judgement submitted to it, it shall refer the case to another court of the same level of jurisdiction or to the same court sitting with a different membership.

Where a decision or judgement is reversed on the ground of lack of jurisdiction, the case shall be referred to the court having jurisdiction.

Art. 84. Decisions rendered by the Judicial Chamber shall be binding on the court to which the case is referred.

Art. 85. Where an appeal to the Supreme Court is rejected, the appellant may not lodge a further appeal in the same case.

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Section II

Provisions particular to civil proceedings

Art. 93. In civil, commercial and social proceedings the time-limit for lodging an appeal with the Supreme Court shall be two months from the date on which the decision or judgement is notified to the person concerned direct or communicated to him at his domicile.

In the case of decisions and judgements rendered *in absentia*, the period shall run from the date on which the defendant's right to apply for reconsideration of his case lapses.

Section III

Provisions particular to criminal proceedings

Art. 94. An appeal to the Supreme Court may be lodged by the *Ministère Public*, by the convicted person, by a private plaintiff (*partie civile*) and by a party against whom damages have been awarded.

Art. 95. The time-limit for lodging an appeal to the Supreme Court in criminal proceedings shall be three clear days.

The *Ministère Public*, a private plaintiff and a party against whom damages have been awarded shall have the right to appeal to the Supreme Court in regard to the damages only, even if judgement was rendered *in absentia*.

A defendant in criminal proceedings against whom judgement was rendered *in absentia* shall not have the right to appeal to the Supreme Court.

A defendant in correctional or police proceedings, against whom judgement was rendered *in absentia*, shall not have the right to appeal to the

Supreme Court so long as he retains the right to apply for reconsideration of his case.

Art. 96. A person sentenced to a penalty involving deprivation of liberty shall not have the right to appeal unless he is in custody or has been granted provisional release.

His appeal shall be receivable as soon as he presents himself to the *Parquet* to place himself in custody.

Chapter V

SPECIAL PROCEDURES

Section I

Review

Art. 97. In criminal or correctional proceedings, application may be made for review whatever the court which tried the case or the sentence it pronounced:

(1) Where, after a conviction for homicide, documents are presented which furnish sufficient evidence that the alleged victim of the homicide is alive;

(2) Where, after a conviction for a crime or correctional offence, another defendant has been convicted by another decision or judgement for the same act and where, the two convictions being irreconcilable, the fact that they are contradictory is proof of the innocence of one of the two convicted persons;

(3) Where one of the witnesses who testified was, after the conviction, prosecuted for and convicted of perjury against the defendant, the witness so convicted may not testify at the new trial;

(4) Where, after a conviction, an act is done or disclosed, or documents unknown during the trial are presented of a kind to establish the innocence of the convicted person.

Art. 98. The following shall in all cases have the right to apply for review:

The Minister of Justice;

The convicted person, or if he is under a disability, his legal representative;

After the death or declaration of absence of a convicted person, his children, his parents, his universal legatees or legatees by universal title, and any person or persons expressly authorized by him to do so.

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ORDINANCE No. 26 P.R./C.R.N. OF 17 JUNE 1966 REPLACING ORDINANCES No. 3 P.R./C.R.N. OF 11 JANUARY 1966 AND No. 12 P.R./C.R.N. OF 16 MARCH 1966, RELATING TO THE FUNCTION, POWERS, COMPOSITION, ORGANIZATION AND OPERATION, OF THE COMMITTEE FOR NATIONAL RENEWAL⁴

Chapter I

COMPOSITION – ORGANIZATION

Art. 1. Ordinances No. 3 P.R./C.R.N. of 11 January 1966 and No. 12 P.R./C.R.N. of 16 March 1966, relating to the function, powers, composition, organization and operation of The Committee for National Renewal are hereby repealed.

Art. 2. A Committee for National Renewal is established. The Committee for National Renewal shall include:

- A commission on internal policy;
- A commission on foreign policy;
- An economic and financial commission;
- A commission for social and cultural affairs.

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Chapter III

POWERS

Art. 10. The Committee for National Renewal shall consider the fundamental principles relating to foreign policy, civil rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties;

The obligations imposed by the national defence upon the persons and property of citizens;

The status and legal capacity of persons, marriage contracts, inheritance and gifts;

Determination of crimes and offences as well as penalties imposed therefor;

The electoral system for the National Assembly and the local assemblies;

The general Statute of the Civil Service; the general organization of the Administration;

Legislation pertaining to employment, unions and social security;

The system of property, property rights, civil and commercial obligations.

Art. 11. The decisions taken by the Committee for National Renewal on the fundamental principles defined above shall be binding on the Government.

In the event of disagreement between the Committee and the Government, the Government shall request a second reading; the decision of the

Committee shall be given within fifteen days; in emergencies the time-limit shall be reduced to eight days at the request of the Government.

If the disagreement persists, the President of the Republic shall convene an arbitral tribunal within fifteen days from the date on which the Committee gave its final decision.

On expiry of the fifteen-day period, the President of the Committee for National Renewal shall convene the arbitral tribunal.

The arbitral tribunal shall be tripartite, each party having the same number of representatives. It shall consist of nine members: three members of the Government, appointed by the Head of the Government; three members of the Committee for National Renewal, appointed by its President; and three senior officers of the Dahomean Armed Forces, appointed by the Chief of Staff.

Decisions of the council may not be appealed to any authority. They shall be binding on all.

Art. 12. It shall be mandatory to consult the Committee for National Renewal on the following matters:

Draft bills on economic planning and programming;

The establishment of new levels of jurisdiction and the status of magistrates, lawyers and legal assistants;

The basis, the rate and the methods of collecting taxes of all kinds;

The establishment of categories of public institutions;

The free administration of local communities, their legal competence and their resources;

Education;

The sale and administration of State property;

Investment and savings;

The organization of production;

The system of transport and telecommunications;

The penal code.

Art. 13. The Committee may request the Government to supply information on its administration, and the latter is obliged to comply with that request within fifteen days.

The Committee may establish *ad hoc* fact-finding committees.

It may also request the President of the Republic to convene joint meetings of the members of the Committee for National Renewal, either with members of the Government or with senior of-

⁴ *Ibid.*, No. 15, 1 August 1966.

ficials, or with members of the Government and senior officials.

Art. 14. The Committee may be consulted on decisions of a statutory nature.

It shall advise the Government on political, economic and social reforms which it deems to be in the public interest.

Chapter IV

GENERAL PROVISIONS

Art. 15. The Government may convene the Committee at any time it considers necessary, and the latter is obliged to respond to that request.

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DENMARK

NOTE¹

I. LEGISLATION

1. Through amendments to the statutes on election (No. 116 of 30 March 1966) it has, *inter alia*, been made possible for persons living in Greenland to cast their votes *by mail* at elections for Parliament. Due to the fact that communications in Greenland were rather unstable in the past, this procedure had not been deemed practicable.

2. A number of changes regarding the local self-government of Greenland have been introduced in statute No. 441 of 22 December 1966. They include, *inter alia*, a change in the status of the President of the Council of Greenland, the private members of which are elected by a general election on the island. While formerly the President was the highest civil servant on the island, under the new rules he is now one of the members of the Council, chosen for the presidency by the Council itself.

3. In a new statute on the education of teachers (No. 235 of 8 June 1966) the education in religious knowledge has been restricted. The new rules aim at teaching the subject purely objectively. Accordingly it is no longer possible to be exempted from lessons in that subject. Based on present practice the Ministry of Education demands that those teachers in ordinary public schools, who want to teach religion or religious knowledge, be members of the State church or of a private congregation of the same faith. The Parliamentary committee which was seized of the above-mentioned bill, however, stated as its opinion that after the coming into force of the new statute the Ministry of Education no longer needs to uphold its demand but that at the municipal level local school authorities are not prevented from continuing the said practice.

II. COURT DECISIONS

The Copenhagen City Court has underlined that a convicted person cannot be obliged to pay the costs of an interpreter. The sentence referred to article 6, 3 (e) of the European Convention on Human Rights and Fundamental Freedoms. (Decision of 25 April 1966 (24472/1965 I).)

¹ Note furnished by Mr. Vilhelm Boas, Permanent Secretary of State, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights*.

DOMINICAN REPUBLIC

CONSTITUTION OF THE DOMINICAN REPUBLIC OF 28 NOVEMBER 1966¹

TITLE I

Section I

THE NATION, ITS SOVEREIGNTY AND ITS GOVERNMENT

Art. 1. The Dominican people constitute a nation organized as a free and independent State named the Dominican Republic.

Art. 2. National sovereignty is vested in the people, from whom emanate all the powers of the State, which are exercised through representation.

Art. 3. The sovereignty of the Dominican nation as a free and independent State is inviolable. The Republic is and shall always be free and independent of any foreign Power. Consequently, none of the authorities organized by this Constitution shall perform or permit the performance of acts which constitute direct or indirect intervention in the internal or external affairs of the Dominican Republic or interference with the personality and integrity of the State and of its functions as recognized and affirmed in this Constitution. The principle of non-intervention constitutes an invariable rule of Dominican international policy.

The Dominican Republic recognizes and applies the rules of general and American international law in so far as they have been adopted by its authorities; it declares itself in favour of the economic solidarity of the countries of America and will support any action designed to protect their primary commodities and raw materials.

Art. 4. The form of government of the nation is essentially civil, republican, democratic and representative.

The Government is divided into a Legislature, an Executive and a Judiciary. These three powers are independent of one another for the purpose of the exercise of their respective functions. The persons entrusted with the several functions are

answerable for their actions and may not delegate their authority, which is exclusively as specified in this Constitution and in legislative provisions.

Section III

THE ECONOMIC AND SOCIAL SYSTEM OF THE FRONTIER

Art. 7. The economic and social development of the territory of the Republic along the frontier, as well as the dissemination in that area of the culture and religious tradition of the Dominican people, are of supreme and permanent national interest. The use of the frontier rivers for agricultural and industrial purposes shall continue to be governed by the principles laid down in article 6 of the 1936 Protocol revising the Boundary Treaty of 1929 and in article 10 of the Treaty of Peace, Friendship and Arbitration of 1929.

TITLE II

Section I

INDIVIDUAL AND SOCIAL RIGHTS

Art. 8. The effective protection of human rights and maintenance of the means that enable progressive self-improvement under a system of individual liberty and social justice, compatible with public policy, the general welfare and the rights of all, are recognized as the principal aims of the State. In order to ensure that these aims are fulfilled, the following principles are established:

1. The inviolability of life. Consequently, the death penalty, torture, or any other penalty or procedure harmful to or entailing the loss or diminution of the physical integrity or health of the individual shall in no case be established, imposed or enforced.

2. Personal security. Consequently:

(a) No person shall be subjected to bodily restraint for a debt which does not arise from a violation of the penal laws.

¹ Text published in the *Gaceta Oficial*, No. 9014, 29 November 1966 and furnished by the Government of the Dominican Republic.

(b) Except in cases of *flagrante delicto*, no person shall be imprisoned or be restricted in his liberty unless a written order, stating the reasons, is issued by a competent judicial authority.

(c) Any person deprived of his liberty without cause or without due process of law, or in circumstances other than those for which the law provides, shall be released immediately at his own request or that of any other person.

(d) Any person deprived of his liberty shall be brought before the competent judicial authority within forty-eight hours of his arrest, or be released.

(e) A person who has been arrested shall be either released or committed to prison within forty-eight hours after he has been brought before the competent judicial authority, and shall be notified within that time-limit of the decision taken in his case.

(f) The transfer of any detained person from a detention establishment to another place without a written order, stating the reasons and issued by the competent judicial authority, is strictly forbidden.

(g) Any person who has custody of a detained person shall bring the latter before the competent authority as soon as this is required.

The *Habeas Corpus* Act shall determine the method of preliminary investigation to be used in implementing sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) above and shall establish the appropriate penalties.

(h) No person may be tried twice for the same offence.

(i) No person may be compelled to testify against himself.

(j) No person may be convicted without having been heard or summoned before the court in due form, and unless the procedures established by law to ensure an impartial trial and the exercise of the right of defence have been observed. Hearings shall be public, except in the cases prescribed by the law where publicity might be contrary to public policy or propriety.

3. The inviolability of the home. No house search may be carried out except in the cases provided for in the law and with the formalities prescribed by the law.

4. Freedom of movement, except for restrictions resulting from penalties imposed by a court, or from police, immigration and health laws.

5. No person may be compelled to do what the law does not require, or prevented from doing what the law does not prohibit. All are equal before the law, which cannot order more than is just and useful to the community, nor prohibit more than is prejudicial to the community.

6. Every person may freely and without prior censorship express his thoughts by means of the written word or by any other form of graphic or oral expression. If the thought expressed is prejudicial to the dignity and morality of individuals, to public policy or to propriety, the penalties provided by law shall apply.

All subversive propaganda aimed at inciting disobedience to the laws, whether anonymous or expressed by any other means, is prohibited, but this prohibition shall not restrict the right to analyse or criticize legal precepts.

7. Freedom of association and of assembly without arms, for political, economic, social, cultural, or any other purposes, provided that such purposes are not contrary or prejudicial to public policy, national security or propriety.

8. Freedom of conscience and of worship, subject to respect for public policy and propriety.

9. The inviolability of correspondence and other private documents, which may not be seized or examined except under legal procedures in connexion with matters which are being investigated by the courts. The secrecy of telegraphic, telephonic and cable communication is likewise inviolable.

10. All the information media shall have free access to official and private sources of news, provided that this is not contrary to public policy and does not endanger national security.

11. Freedom of labour. The law may, if it is in the public interest, make provision for a maximum working day, days of rest and vacation, minimum wages and salaries, mode of payment of wages and salaries, social insurance, participation of Dominican nationals in all types of work and, in general, all measures of State protection and assistance considered necessary for the benefit of manual or intellectual workers.

(a) Freedom of trade union organization is assured, provided that trade unions, trade associations and similar associations maintain, in their statutes and activities, a democratic organization compatible with the principles laid down in this Constitution and that their purposes are strictly related to labour matters and peaceful.

(b) The State shall make available the means at its disposal to enable workers to acquire the facilities and equipment essential for their work.

(c) The extent to which and manner in which permanent workers are to share in the profits of any agricultural, industrial, commercial or mining enterprise may be prescribed by law, in conformity with the nature of the enterprise, the legitimate interests of both the entrepreneur and the workers being respected.

(d) In private enterprise, the right of workers to strike and the right of employers to declare a lock-out are recognized, provided that they are exercised in conformity with the law to settle disputes relating strictly to labour matters. Any interruption, slow-down, paralysation of activities or deliberate reduction of productivity in the work of private or public enterprises is forbidden. Any strike, lock-out, interruption, slow-down or intentional reduction of productivity affecting the Administration, public services or public utilities shall be unlawful. The law shall prescribe the necessary measures to ensure observance of these rules.

12. Freedom of enterprise, trade and industry. Monopolies may be established only for the benefit of the State or State institutions. These monopolies shall be established and organized by law.

13. The right to own property. Consequently, no person shall be deprived of property except for a good and sufficient cause of public utility or social interest, after payment of its fair value as determined by the decision of a competent court. In cases of public disaster, the payment need not be made in advance. The penalty of general confiscation of property shall not be imposed for political reasons.

(a) The application of the land to useful purposes and the gradual elimination of large privately-owned estates (*latifundia*) is declared to be a cause of social interest. Lands belonging to the State and lands which the State acquires gradually or by expropriation in the manner prescribed in this Constitution and does not or should not intend to use for other purposes of general interest shall be included in the land reform plans. Encouragement and co-operation designed to ensure the effective participation of the rural population in the life of the nation, through the modernization of agricultural production methods and cultural and technological training, are also declared to be a major objective of the State's social policy.

(b) The State may convert its enterprises either to full co-operative ownership or to operation in accordance with co-operative principles.

14. Exclusive ownership, for the time and in the manner prescribed by law, of inventions and discoveries, and of scientific, artistic and literary productions.

15. The family shall receive the largest possible measure of protection from the State, in order to enhance its stability and well-being, and its moral, religious and cultural life.

(a) Mothers shall be protected by the public authorities and are entitled to official assistance in case of need, irrespective of their condition and status. The State shall adopt health and other measures to prevent infant mortality so far as possible and to ensure the healthy development of children. The institution of the family homestead (*bien de familia*) is also declared to be an objective of high social interest. The State shall encourage family savings and the establishment of credit, producers', distributors' and consumers' co-operatives and of any other co-operatives that may be useful.

(b) The establishment of every Dominican family on its own land (including any improvements) is declared to be an objective of high social interest. To that end, the State shall encourage the development of public credit in socially advantageous conditions, in order to enable all Dominicans to own a comfortable and hygienic dwelling.

(c) Marriage is recognized as the legal basis of the family.

(d) Married women shall enjoy full civil capacity. The law shall establish the means necessary to protect the patrimonial rights of married women, under any matrimonial property régime.

16. Freedom of teaching. Primary education shall be compulsory. It is the duty of the State to provide a fundamental education for all inhabitants of the national territory and to take the necessary steps to eliminate illiteracy. Primary and secondary education, and the education provided in agricultural, vocational, art, commercial, handicraft and home economics schools shall be free.

The State shall ensure the widest possible dissemination of science and culture, thus enabling all persons to benefit adequately from the results of scientific and moral progress.

17. The State shall encourage the progressive development of social security, so that eventually every person may enjoy adequate protection against unemployment, illness, disablement and old age.

The State shall protect and assist old people, in the manner prescribed by law, so that their health may be preserved and their well-being ensured.

The State shall also provide social assistance for the poor. This assistance shall consist of food, clothing and, so far as possible, adequate housing.

The State shall seek to improve food, health services and hygienic conditions, seek means to prevent and treat epidemic, endemic and all other diseases, and provide free medical and hospital care for needy persons requiring them.

The State shall combat social vices by appropriate means and with the help of international conventions and organizations. Specialized centres and bodies shall be established to correct and eradicate such vices.

Section II

DUTIES

Art. 9. Whereas the prerogatives recognized and guaranteed in the preceding article of this Constitution imply the existence of a corresponding code of legal and moral responsibility governing man's social conduct, the following are declared to be fundamental duties:

(a) To abide by and comply with the Constitution and the laws, and to respect and obey the authorities established by them;

(b) It is the duty of every able-bodied Dominican to perform the civil and military services necessary for the defence and preservation of the nation;

(c) The inhabitants of the Republic shall refrain from any act prejudicial to its stability, independence and sovereignty and, in the event of a public disaster, they shall undertake the services of which they are capable;

(d) It is the duty of every Dominican citizen to vote, provided that he has legal capacity to do so;

(e) To contribute to public expenditure in proportion to one's taxpaying capacity;

(f) It is the duty of every person to engage in the work of his choice in order to support himself and his family in dignity, develop his personality to the maximum and contribute to the well-being and progress of society;

(g) It is the duty of every person inhabiting the territory of the Dominican Republic to attend the educational establishments of the nation in order to acquire at least an elementary education;

(h) It is the duty of every person to co-operate with the State in the provision of social assistance and social security in accordance with his capacity;

(i) It is the duty of every alien to refrain from taking part in political activities in Dominican territory.

Art. 10. The provisions of articles 8 and 9 are not restrictive and do not therefore exclude other similar rights and duties.

TITLE III

POLITICAL RIGHTS

Section I

NATIONALITY

Art. 11. The following persons are Dominican nationals:

1. Persons born in the territory of the Republic, with the exception of legitimate children of aliens residing in the country as diplomatic representatives or passing through the country.

2. Persons who possess that status at present by virtue of previous constitutions and laws.

3. Persons born abroad of a Dominican father or mother, provided they have not acquired a foreign nationality in accordance with the laws of the country of birth or, if they have done so, declare that they opt for Dominican nationality by transmitting to the Executive a sworn statement made in the presence of a public official, after attaining eighteen years of age.

4. Naturalized persons. The law shall specify the requirements and procedure for naturalization.

Paragraph I. Dominican nationals are recognized to have the right to acquire a foreign nationality.

Paragraph II. A Dominican woman married to an alien may acquire the nationality of her husband.

Paragraph III. An alien woman who marries a Dominican national shall acquire the nationality of her husband, unless the laws of her country allow her to retain her own nationality, in which case she shall have the right to declare, in the marriage certificate, that she declines Dominican nationality.

Paragraph IV. Acquisition of another nationality implies forfeiture of Dominican nationality, unless there is an international agreement to the contrary.

Section II

CITIZENSHIP

Art. 12. Dominicans of both sexes over eighteen years of age and those who have not reached that age but are or have been married are citizens.

Art. 13. Citizens have the following rights:

1. The right to vote, in conformity with the law, to elect the officials referred to in article 90 of the Constitution;

2. The right to be eligible for the offices referred to in the preceding paragraph.

Art. 14. Citizens against whom an irrevocable sentence has been pronounced for treason, espionage or conspiracy against the Republic, or for having taken up arms, or having assisted or taken part in any attack upon it, shall forfeit their rights of citizenship.

Art. 15. The rights of citizenship are suspended in cases involving:

(a) Irrevocable sentence for a criminal offence, until rehabilitation;

(b) Legally pronounced judicial interdiction, until it is revoked;

(c) Acceptance of office or employment in Dominican territory with a foreign Government without prior authorization by the Executive.

TITLE IV

Section I

THE LEGISLATURE

Art. 16. Legislative power shall be exercised by a Congress of the Republic, comprising a Senate and a Chamber of Deputies.

Art. 17. Senators and deputies shall be elected by direct vote.

Art. 18. The duties of a senator and a deputy are incompatible with any other office or employment in the public administration.

Art. 19. When a vacancy occurs among the senators or deputies, the Senate or Chamber, as the case may be, shall choose a replacement from among three candidates whose names are submitted by the highest body of the nominating party.

Art. 20. The names of the three candidates shall be submitted to the house in which the vacancy has occurred within thirty days, if the Congress is in session, and if it is not, within thirty days after the opening of its next session. If the

competent body of the party concerned has not submitted the three names within that time, the house concerned shall be free to elect the replacement.

Section II

THE SENATE

Art. 21. The Senate shall consist of elected members, one for each province and one for the National District, whose term of office shall be four years.

Art. 22. In order to be eligible for election as senator, a person must be a Dominican national in full possession of civil and political rights, must have attained the age of twenty-five years and must be a native of the territorial district which elects him or have resided in it for at least five consecutive years.

Paragraph. A naturalized citizen may not be elected as senator until ten years after acquiring Dominican nationality, and unless he has resided in his electing area during the five years prior to his election.

Art. 23. The following are exclusive powers of the Senate:

(1) To elect the judges of the Supreme Court of Justice, the Courts of Appeal, the Land Court and the Courts of First Instance, the Examining Judges, the District Judges and their alternates and the Judges of any other judiciary courts established by law;

(2) To elect the President and other members of the Central Electoral Board and their alternates;

(3) To elect the members of the Accounting Commission;

(4) To approve or reject diplomatic appointments submitted by the Executive;

(5) To try cases of impeachment preferred by the Chamber of Deputies against public officials elected for a specific term on grounds of bad conduct or serious offences in the exercise of their functions. In impeachment cases the Senate shall impose no penalty other than that of removal from office. The person thus removed shall, however, remain subject to indictment and trial according to law, as appropriate.

The Senate cannot remove an official from office unless this is decided by a vote of at least three quarters of its total membership.

The provisions of this article shall not exclude the authority of the Supreme Court of Justice to suspend or remove from office members of the Judiciary.

Section III

THE CHAMBER OF DEPUTIES

Art. 24. The Chamber of Deputies shall consist of members elected every four years by the inhabitants of the provinces and the National District, with each deputy representing 50,000 inhabitants or a fraction exceeding 25,000 inhabitants. In no case shall an electoral district have less than two deputies.

Art. 25. The requirements for election as deputy shall be the same as those for election as senator.

Paragraph. A naturalized citizen may not be elected as deputy until ten years after acquiring Dominican nationality and unless he has resided, during the five years prior to his election, in his electing area.

Art. 26. It is an exclusive power of the Chamber of Deputies to exercise the right to prefer the impeachment of public officials before the Senate in the cases specified in article 23 (5). The impeachment may not be preferred except by a vote of three quarters of the total membership of the Chamber.

Section IV

PROVISIONS COMMON TO BOTH HOUSES

Art. 27. Both houses shall meet in National Assembly on the occasions specified in the Constitution, and for that purpose more than half of the members of each house must be present.

Decisions shall be taken by an absolute majority of votes.

...

Section V

THE CONGRESS

Art. 37. The following are powers of the Congress:

...

5. To adopt all measures concerning the preservation of ancient monuments and objects and the acquisition of the latter.

6. To create or abolish provinces, municipalities or other political divisions of the territory and to determine all matters relating to their boundaries and organization, on the basis of studies showing the social, political and economic advantages which justify the change.

7. To declare a state of siege, in the event of a public disturbance or public disaster, and to suspend, whenever such disturbance or disaster occurs, and for the duration thereof, the exercise of the individual rights proclaimed in article 8,

paragraph 2, sub-paragraphs (b), (c), (d), (e), (f) and (g), and paragraphs 3, 4, 6, 7 and 9.

8. Where the sovereignty of the nation is exposed to grave and imminent danger, the Congress may declare a state of national emergency and suspend the exercise of individual rights, with the exception of the inviolability of life as affirmed in article 8 (1) of this Constitution. If the Congress is not in session, the President of the Republic may take the same action and shall convene the Congress to inform it of the events which have occurred and the measures taken.

9. To adopt all measures relating to migration.

...

14. To approve or reject international treaties and conventions concluded by the Executive.

...

16. To declare in an Act the necessity of amending the Constitution.

...

21. To grant amnesty for political offences.

...

TITLE V

Section I

THE EXECUTIVE

Art. 49. The executive power is exercised by the President of the Republic, who shall be elected every four years by direct vote.

Art. 50. The President of the Republic must satisfy the following conditions:

1. He must be Dominican by birth or origin;
2. He must have attained the age of thirty years;
3. He must be in full possession of civil and political rights;
4. He must not have been in active military or police service for at least one year prior to his election.

Art. 51. There shall be a Vice-President of the Republic, who shall be elected in the same manner and for the same term as the President and jointly with him. The Vice-President of the Republic must satisfy the same conditions as the President.

...

Art. 55. The President of the Republic shall be the head of the public administration and the supreme commander of all the armed forces of the Republic and the police.

The duties of the President of the Republic are:

...

6. To preside over all official acts of the nation, to direct diplomatic negotiations, and to conclude treaties with foreign nations or international

organizations, which must be submitted to the Congress for approval in order to be valid and binding on the Republic.

7. If there is a public disturbance, and if the National Congress is not in session, to declare a state of siege, wherever the disturbance occurs, and to suspend the exercise of the rights which the Congress is empowered to suspend under article 37 (7) of this Constitution; in the event of grave or imminent danger to the sovereignty of the nation, he may also declare a state of national emergency, with the effects and requirements prescribed in article 37 (8). In the case of a public disaster he may also declare regions in which damage has been caused by meteors, earthquakes, floods or any other natural phenomenon, or by epidemics to be disaster areas.

8. In the event of any violation of the provisions of article 8 (10) (a) and (d) of this Constitution, which constitutes or threatens to constitute a public disturbance or which jeopardizes or threatens to jeopardize the security of the State or the regular operation of public services or public utilities, or which prevents the continuation of economic activities, the President of the Republic shall take whatever provisional police and security measures are necessary to end the emergency, and shall inform the Congress of the emergency and of the action taken.

...

16. To arrange for the arrest or expulsion of aliens whose activities, in his judgement, are or could be prejudicial to public policy or propriety.

...

20. To prohibit the entry of aliens into the national territory when he deems it advisable in the public interest.

...

TITLE VI

Section I

THE JUDICIARY

Art. 63. The judicial power is exercised by the Supreme Court of Justice and by the other judiciary courts established by this Constitution and the laws.

Judicial officials may not hold any other public office or employment, except as provided in article 108.

...

TITLE X

ELECTORAL ASSEMBLIES

Art. 88. It is mandatory for all citizens to vote. The vote shall be personal, free and secret.

The following shall not vote:

1. Persons who have lost their rights of citizenship and those whose rights of citizenship have been suspended under articles 14 and 15 of this Constitution.

2. Members of the armed forces and the police.

...

TITLE XII

GENERAL PROVISIONS

...

Art. 99. All usurped authority shall be invalid and all acts by such authority shall be null and void. Any decision taken through the intervention of armed force shall be null and void.

Art. 100. The Republic condemns any privilege or situation liable to impair the equality of all Dominicans, between whom the only differences shall be those deriving from their talents or virtues, and hence no body of the Republic shall confer titles of nobility or hereditary distinctions.

Art. 101. All artistic and historical treasures of the country, irrespective of ownership, shall form part of the cultural legacy of the nation and shall be protected by the State; legal provisions for their preservation and protection shall be enacted as appropriate.

Art. 102. Any person who, for personal gain, misappropriates public funds or takes advantage of his position in a State organ, a branch thereof or an autonomous body in order to obtain economic benefits shall be punished as prescribed by law. Persons who have accorded advantages to their associates, members of their families, relatives, friends or relations shall also be punished. No person may be held liable under penal law for the acts of others, either in these cases or in any others.

...

Art. 104. Political parties and associations may be organized freely, in conformity with the law, provided that their tenets conform to the principles laid down in this Constitution.

Art. 105. Without prejudice to the provisions of article 23 (5) of this Constitution, the President and Vice-President of the Republic, whether elect or in office, shall not be deprived of their liberty before or during their term of office.

Art. 106. Persons appointed to public office shall swear to uphold the Constitution and the laws and to perform their duties faithfully. This oath shall be taken before any civil servant or public official.

...

Art. 108. No public office or position referred to in this Constitution and the laws shall be incompatible with honorary or teaching posts, without prejudice to article 18.

Art. 109. Justice shall be administered free of charge throughout the territory of the Republic.

...

TITLE XIII

CONSTITUTIONAL AMENDMENTS

Art. 116. This Constitution may be amended if the proposal to amend it is submitted to the National Congress with the support of one third of the members of either house, or if it is submitted by the Executive.

Art. 117. The need for the amendment shall be proclaimed in an Act. This Act, which may not be binding on the Executive, shall order a meeting of the National Assembly, state the purpose of the amendment and specify the articles of the Constitution which are to be amended.

Art. 118. In order to take a decision with regard to the proposed amendments, the National Assembly shall meet within fifteen days following the promulgation of the Act proclaiming the necessity of the amendments, and more than half of the members of each house shall be present for that purpose. After the amendments have been adopted and proclaimed by the National Assembly, the full text of the amended Constitution shall be published.

In this case, notwithstanding the provisions of article 27, decisions shall be taken by a two thirds majority of votes.

Art. 119. No amendment may be made concerning the form of government, which shall always be civil, republican, democratic and representative.

Art. 120. The Constitution shall be amended only in the manner specified therein and shall never be suspended or annulled by any power or authority or by popular acclamation.

...

ECUADOR

AMENDMENTS TO THE CONSTITUTION

Promulgated by Decree No. 464 of 28 February 1966¹

The governing Military Junta...

Decreases the following amendments to the Political Constitution of the Republic as enacted by the National Constituent Assembly on 31 December 1946 and as subsequently amended,² in accordance with the text of the codification carried out by the Permanent Legislative Committee on 16 November 1960—eighth edition, promulgated in the Supplement to the *Registro Oficial*, No. 356 of 6 November 1961.

Art. 2. Article 5 shall be replaced by the following text:

"Art. ... Ecuador respects the rules of international law and repudiates wars of aggression and the acquisition of territory by force; it proclaims the principle of co-operation, interdependence and good neighbourliness among States and reaffirms its desire to settle international disputes by peaceful and juridical means."

Art. 3. The following text shall be inserted after article 12:

"Art. ... Save where no international reciprocity exists, natural-born citizens of Spain or a Latin American country shall not lose their original nationality upon becoming naturalized in Ecuador."

Art. 4. In article 25, the following paragraph shall be inserted after paragraph (a):

"To ensure that candidates in popular elections satisfy the conditions laid down in this Constitution and by law."

Paragraph (d) of the same article shall read:

"To count the vote as required of it by the electoral law, proclaim the candidates elected and to issue the corresponding election certificates."

¹ *Registro Oficial*, No. 701, 1 March 1966.

² For extracts from the Political Constitution of 31 December 1946, see *Yearbook on Human Rights for 1946*, pp. 92-96. Amendments appear in the *Yearbook for 1948*, p. 308 and the *Yearbook for 1960*, p. 97.

Art. 5. The following paragraphs shall be added to article 31:

"If a Senator or a Deputy is absent for more than ten consecutive days without a valid reason, he shall lose the status of Senator or Deputy, and his rights of citizenship shall be suspended for two years.

"If he is absent without its permission from the Chamber to which he belongs, he shall not receive his daily allowance."

Art. 7. Article 33 shall be replaced by the following text:

"Art. ... If on the day designated for the convening of Congress the number of Senators and Deputies prescribed in article 30 is not present, or if, thereafter, either of the Chambers is unable to continue in session for lack of an absolute majority, the members present, even if they are sitting as a *Comisión General*, shall compel the absent members to attend the Chamber concerned within a mandatory time-limit of two days. Upon the expiry of this time-limit and save in the case of duly verified serious illness or domestic emergency, the absent legislator shall lose his status and incur the penalty laid down in article 31; his Alternate shall be called and shall thereupon accede to the status of principal."

Art. 8. Article 34 shall be replaced by the following text:

"Art. ... Senators and Deputies shall not be liable for the opinions which they express during sessions, except where such opinions constitute insult.

"Senators and Deputies shall be granted immunity for thirty days before a session, during a session and for thirty days after a session and consequently may not be sued, arrested or prosecuted unless the Chamber to which they belong has previously authorized the suit, arrest or prosecution.

"If a Senator or Deputy is apprehended in the act of committing an offence, he shall be prosecuted, but the judge who hears the case

shall place him at the disposal of the Chamber to which he belongs, together with the record of the preliminary proceedings, so that the Chamber may decide, by an absolute majority, whether or not the proceedings should continue.

"Upon the expiry of the period of parliamentary immunity, and irrespective of whether the Chamber has adopted the necessary resolution, the judge shall be free to proceed with the trial of a Senator or Deputy who has committed an offence before, during or after the period of parliamentary immunity."

Art. 13. In article 46, the following paragraph, which shall be numbered, shall be inserted after paragraph 2:

"To elect Ministers of the Supreme Court when the constitutional terms of office of the incumbent Ministers expire and to hear actions brought against the said Ministers for compensation of damages; the votes of at least two thirds of the Senators present shall be required for a judgment in such action."

The following paragraph, which shall be numbered, shall be inserted after paragraph 7:

"To examine the official conduct of the Ministers of State, to summon them for questioning, notifying them at least forty-eight hours in advance of the questions to be asked, and to censure them, if appropriate. The motion of censure shall be submitted in advance to the Secretariat of the Chamber, and the votes of at least two thirds of the Senators present shall be needed for its adoption. The vote of censure shall be transmitted to the President of the Republic."

Art. 14. The second and third paragraphs of article 48 shall be replaced by the following text:

"One deputy shall be elected by each province having a population of up to 50,000; one additional deputy shall be elected if there is a remaining fraction of population in excess of 25,000 up to a total population of 100,000; one additional deputy shall be elected for each 100,000 inhabitants beyond the first 100,000; and one further deputy shall be elected if there is then a remaining fraction of population in excess of 50,000. One deputy shall be elected by the Colón Archipelago."

Art. 15. Article 50 shall be repaced by the following text:

"Deputies shall hold office for two years and may not be re-elected for the session immediately following their term of office. A person who has been First Magistrate of the Nation may not be a Deputy."

Art. 16. Article 51, paragraph 3, shall be replaced by the following text:

"To examine charges brought against the President of the Republic or the official in

charge of the executive function. If it considers such charges to be well-founded, it shall submit them to the Senate."

...

Art. 45. Article 129 shall be replaced by the following text:

"Art. ... Each province shall have a Governor, who shall be appointed by the President of the Republic, and a Provincial Council, the members of which shall be elected by popular and secret vote on a date prescribed by law.

"The primary functions of the provincial government shall be to encourage and protect local interests, to maintain the necessary contact with the central bodies and to serve as a co-ordinating agency between the central agencies and the local government."

...

Art. 46. Article 131 shall be replaced by the following text:

"Art. ... The municipal government shall consist of a Council and a Mayor. The Council shall be elected by popular and secret vote, as prescribed by law, and the Mayor shall be appointed by the Corporation, from among its members or from outside, as prescribed by law."

Art. 47. The following article shall be inserted after Article 134:

"Art. ... So-called strikes or slow-downs at the provincial, cantonal or sectional level are incompatible with the existence of the Ecuadorian State, and the instigators and leaders thereof shall be punished by law for committing the offence of sedition."

...

Art. 54. Article 160 shall be replaced by the following articles:

"Art. ... Members of the armed forces in active service and civilian personnel employed by the armed forces shall be subject to military command and to the jurisdiction of the military courts."

"The jurisdiction of the military courts and martial law shall also extend to persons committing any of the following offences: treason, espionage, acts of terrorism, organization of or participation in guerrilla activities, and attacks on military or police sentries, camps, bases, barracks, buildings or facilities."

"The jurisdiction of the military courts shall also include persons who act as accomplices or as accessories before or after the fact in the commission of military offences."

Art. 55. In title X the following section shall be inserted after section I:

"Section II

"THE NATIONAL SECURITY
COUNCIL

"Art. ... The National Security Council is the body responsible for the political planning of national security, that is, the general strategy of the Ecuadorian State which makes it possible to achieve the objectives of the nation.

"The National Security Council shall also advise the President of the Republic on the direction of foreign, military, domestic and economic policy in relation to national security as embodied in the National Security Plan.

"The National Security Council shall be headed by the President of the Republic and shall be composed of the President of the National Congress, the President of the Supreme Court of Justice, the Archbishop of Quito, the Ministers of State, the Chief of the General Staff of the Armed Forces, the General Manager of the Central Bank of Ecuador and other officials as provided by law."

Art. 56. The third paragraph of article 175 shall be replaced by the following text:

"Art.... The State shall subsidize free private primary education up to an amount equivalent to 50 per cent of the cost per pupil in comparable public institutions as provided by law. Free private education may be subsidized by the municipalities. Such municipal subsidies shall not exceed 20 per cent of the funds allocated to education in the municipal budget."

Art. 57. Sub-paragraph (r) of article 189 shall read:

"The State shall guarantee the administrative career of civil servants, which shall be based on the merit system and be regulated by law."

Art. 58. In article 192, the following paragraph, which shall be numbered, shall be inserted after paragraph 4:

"Communism and the activities of the Communist Party, similar organizations and those established for the same purposes of subversion directed against national and continental security shall be outlawed."

...

DECREE No. 16 OF 1 APRIL 1966³

Art. 1. The right to strike shall be restored.

...

³ *Registro Oficial*, No. 8, 7 April 1966.

ELECTORAL LAW FOR THE CONVENING, ELECTION AND FORMATION
OF THE NATIONAL CONSTITUENT ASSEMBLY

Promulgated by Decree No. 273 of 7 March 1966⁴

Chapter I

THE NATIONAL CONSTITUENT
ASSEMBLY

Art. 1. This Electoral Law shall govern the convening, election and formation of the National Constituent Assembly, which shall meet in the capital of the Republic on 3 November 1966.

Art. 2. The National Constituent Assembly, within the single chamber system, shall consist of sixty-seven deputies elected by direct popular vote, in proportion to the number of inhabitants of each of the provinces, and of twelve functional deputies representing special groups, chosen through indirect elections, in accordance with the provisions of this Electoral Law.

Art. 3. Each of the provinces shall, by direct popular vote, elect one deputy for every 80,000 inhabitants and another deputy for each fraction of 40,000 or more in excess of the basic figure of 80,000.

Each province shall elect at least two deputies to the Assembly, even if the province has less than 120,000 inhabitants, with the exception of the *Provincias Orientales* (Eastern Provinces) which, because of the size of the population, shall elect only one deputy in each case. One single deputy shall be elected from the Galapagos Islands.

Art. 4. The right of minorities to be represented in the National Constituent Assembly is hereby recognized and guarantees shall be established to make such representation effective.

Art. 5. Professional, educational, cultural and labour groups shall be represented in the Consti-

⁴ *Ibid.*, No. 35, 17 May 1966.

tuent Assembly by the following functional deputies:

- (a) One for public education, elected by the universities;
- (b) One for private education;
- (c) Two for the workers: one for the *Litoral* (coastal plain) and the other for the *Sierra* (uplands);
- (d) One for journalism and for cultural bodies recognized as having been bodies corporate for at least five years prior to the date of the elections;
- (e) One for agriculture, one for commerce and one for industry in the *Sierra*;
- (f) One for agriculture, one for commerce and one for industry in the *Litoral*;
- (g) One for the forces of public order.

Functional deputies shall be elected in accordance with the provisions of this Electoral Law and of the Special Regulations to be established for that purpose by the Supreme Electoral Tribunal, in compliance, wherever applicable, with the legal and statutory provisions which governed the election of the functional senators instituted under the Constitution of 1946.

Art. 6. Candidates for posts of functional deputy must be engaged in the activity or work which qualifies them to be regarded as members of the class or group they are to represent.

Before the election, the delegate of the Supreme Electoral Tribunal presiding over the respective electoral college responsible for electing functional deputies shall require the submission of credentials, certificates and other documents and records proving that the candidates are engaged in the particular work or activity which is to be represented and have been so engaged, without interruption, for at least the year immediately preceding the date of the election.

In the event of a dispute, the Supreme Electoral Tribunal shall decide within a period of forty-eight hours and without further recourse, whether the credentials, certificates and other relevant documents are sufficient proof that the candidate is at the present time effectively engaged in the activity or the work of the group he claims to represent. Otherwise, the candidacy will not be accepted.

Chapter II

ELECTORS

Art. 7. Direct and secret popular vote for the election of deputies is hereby recognized and proclaimed as a political right and indispensable civic duty of all citizens, in accordance with the provisions of this Electoral Law.

Art. 8. Voting shall be compulsory for men and optional for women.

Art. 9. Electors are required:

- (a) to be qualified to exercise their rights of citizenship, in accordance with the relevant pro-

visions of Title III: "Citizenship", of the Political Constitution issued on 31 December 1946; and

- (b) to be other than members of the forces of public order on active duty.

Each elector shall, in order to exercise the right to vote, produce his combined citizenship and identity card.

Chapter III

CANDIDATES

Art. 10. In order to be elected deputy to the National Constituent Assembly, candidates must:

- (a) Be qualified to exercise their rights of citizenship;
- (b) Be over thirty years of age;
- (c) Have been born in the province they wish to represent or must have resided in that province for the last two years; and
- (d) Fulfil any other requirements regarding eligibility laid down in this Electoral Law.

The requirement laid down in sub-paragraph (c) of this article shall not apply to the deputy for the Galapagos Islands.

Art. 11. The following may not hold the post of deputy or act as candidates for that post:

- (a) The President of the Republic, Ministers of State, the Controller-General, the Assistant Controller, the Attorney-General, the Superintendent of Banks, diplomatic and consular officials and, in general, any public officials and employees who may be freely appointed or dismissed by the Executive Branch, who work in permanently established public offices and who receive salaries;

- (b) Mayors and Chairmen of Cantonal Councils, Municipal Councillors, and Provincial Councillors, for the province in which they perform their duties;

- (c) Ministers of the Supreme and Higher Courts of Justice, those of the Fiscal Tribunal, ordinary and special judges, public attorneys and clerks of the Higher and Lower Courts of the Republic. This prohibition does not apply to Assistant Justices of the Higher Courts or to Probate Judges and Judge Arbitrators;

- (d) Managers of banks established by the State and of their agencies and branches;

- (e) Ministers of any faith and the members of religious orders and communities;

- (f) The voting members, secretaries and other officials and employees of the Electoral Tribunals, except when they have ceased to occupy their posts for at least sixty days prior to the elections, in the instance referred to in article 17, second paragraph;

- (g) Members of the forces of public order who are on active duty; and

- (h) Persons awarded State contracts or concessions for the development of national resources or the operation of public services, and the representatives of those persons or of foreign

companies in the same situation. This incompatibility does not include the legal representatives of bodies established under public law which have obtained the above-mentioned concessions.

In all the cases referred to in this article, with the exception of sub-paragraph (f), the incompatibility shall apply to the six-month period immediately preceding the date for which these elections are called; accordingly, persons who have performed the above-mentioned duties during that time may not be candidates for the post of deputy.

The incompatibility in the case of public officials and employees who may be freely appointed and dismissed by the Executive Branch, shall not apply to candidates to posts of functional deputy.

In addition, this incompatibility shall not apply to public or municipal teachers, unless they perform administrative duties for which they are directly responsible to the Ministry of Education or to the respective municipality.

Art. 12. Persons who are elected as deputies and, after the election, violate any of the principles of incompatibility set forth in the preceding article, shall lose their status as deputies.

Art. 13. Deputies who have been declared legally elected may be excused from performing their duties for only a valid reason accepted by the Constituent Assembly.

Chapter IV

ELECTORAL BODIES

Art. 14. The Electoral Tribunals and Boards shall be responsible for implementation of this law. Their nature and functions shall be determined subsequently, without prejudice to the competence of ordinary judges to hear cases of violations of the right to vote.

Art. 15. The electoral bodies shall be:

- (a) The Supreme Electoral Tribunal;
- (b) The Provincial Electoral Tribunals: one for each province;
- (c) The Directorate General for the Civil Registry and Registration of Identity, in matters pertaining to the issuance of cards and the preparation and delivery of electoral rolls;
- (d) The Electoral Boards for the voting: one board for every 600 electors shown in the corresponding electoral roll.

Art. 16. The competence of the electoral bodies shall include:

- (a) The preparation and holding of the elections;
- (b) Counting the votes and declaring the results;
- (c) The allocation of posts in the National Constituent Assembly; and

(d) Imposing penalties on persons who infringe the provisions of this law.

Only the Electoral Tribunals shall handle complaints submitted in connexion with matters with which they are empowered to deal under this Law.

Chapter V

THE ROLE OF THE POLITICAL PARTIES IN THE ELECTION OF DEPUTIES

Art. 27. All registrations of political parties in the appropriate Register of the Supreme Electoral Tribunal effected prior to 11 July 1963 are hereby recognized and confirmed.

Consequently, the parties so registered shall exercise the rights conferred on them by this Law in the election of deputies and shall enjoy every guarantee for the fullest and freest dissemination of their views.

Art. 28. In addition to the registered parties, the rights conferred under this Law shall be exercised by political or electoral groups and movements.

Art. 29. Freedom to conduct electoral propaganda through the radio, the Press, television, the cinema and other means of mass communication shall be guaranteed, provided that individual dignity, morality and the law are respected.

Dissemination of such propaganda in public places shall require the permission of the police authorities, which shall grant such permission in accordance with the usual rules.

The proprietor or representative of the enterprise owning the means of dissemination shall be held responsible for any infringement of the above provisions, without prejudice to any liability on the part of the offenders.

Art. 30. Officials and employees of the national, provincial and municipal administrations and those of institutions established under private law for public or social purposes shall be prohibited from engaging in electoral propaganda or using their influence or the means at their disposal in order to support or oppose any candidacy.

The same prohibition shall apply to ministers of all religious faiths and to the members of the secular and regular clergy, subject to the regulations of the *Modus Vivendi*.

Chapter VI

INVALID VOTES

Art. 50. Direct popular votes for the election of deputies shall be invalid in the electoral district concerned only in the following cases:

(a) If they have been cast on a day other than the one specified by the Supreme Electoral Tribunal;

(b) If they have been cast in the absence of the Chairman and the Secretary of the Electoral Board;

(c) If it is ascertained that the electoral roll has been altered illegally or that the records of the establishment of the polling station and the examination of the returns at each station have been falsified; and

(d) If the records of the establishment of the polling station and those of the examination of the returns at each station or the packets containing used, invalidated and blank ballot papers do not bear the signatures of the Chairman and the Secretary of the Electoral Board.

Persons responsible for making votes invalid shall be liable to a fine of 500 to 1,000 sucres by

the Provincial Electoral Tribunal and the loss of citizenship rights for one year.

Chapter VII

ALLOCATION OF POSTS

Art. 53. Representation of minorities is a principle of the democratic system and is guaranteed by this Electoral Law.

Art. 54. Accordingly, in the provinces in which not more than two deputies are to be elected, one deputy shall represent the majority and the other shall represent the largest minority, provided the latter obtains at least 75 per cent of the votes received by the former.

If the minority does not obtain the amount of votes mentioned, the two deputies for the province shall represent the majority.

ACT ON HIGHER EDUCATION

Promulgated by Decree No. 394 of 31 May 1966⁵

Chapter I

ORGANIZATION AND PURPOSES OF HIGHER EDUCATIONAL ESTABLISHMENTS

Art. 1. Higher education shall be provided by State universities, private universities, polytechnic schools and such other institutions as may be established in accordance with this Act.

Art. 2. Universities and polytechnic schools are autonomous legal entities having full authority to make such arrangements as they deem proper, along the general lines established in this Act, in order to provide education and conduct research in conditions of full academic and scientific freedom, to issue certificates, degrees and diplomas, to recognize those issued by other educational establishments, national or foreign, in conformity with existing agreements, and in general, to accomplish the purposes set out in article 4.

Art. 3. Save as otherwise provided in the Political Constitution of the Republic, the premises of universities and polytechnic schools shall be inviolable. Their supervision and the maintenance of order shall fall within the competence and responsibility of their authorities. No person shall enter the said premises except with the consent of those authorities or, in the case of an offence under the general law, with a warrant issued by a competent judicial authority.

Neither the executive power nor any of its organs, authorities or officials shall have the right

to close or reorganize universities and polytechnic schools or any of their faculties, schools or subsidiary establishments, to reduce their revenues or budgetary appropriations or delay the payment thereof, or, in general, to take any action impairing the normal functioning of those institutions or infringing their freedom or autonomy. Any persons who violate the premises referred to in this article shall be tried under the criminal law for trespass and for such other offences involving the use of force as they may commit. They shall be subject to the common jurisdiction (*fuero común*), except for the President of the Republic and the Ministers of State, in respect of whom the special jurisdiction attaching to their office shall be recognized.

Art. 4. Universities and polytechnic schools are communities of interests of the mind where teachers and students are brought together to seek the truth and to uphold the highest values of mankind. It is their responsibility to play a guiding role in education, science and culture and to contribute to the study and solution of national problems. To this end, they shall endeavour to create, assimilate and disseminate knowledge through research and teaching, to complete the process of comprehensive education of the individual begun at the lower educational levels and to train the body of professional and technical manpower required by the nation for its development.

Higher education shall be imbued with the ideals of democracy, social justice and peace and brotherhood among men and shall be open to all currents of world thought, which shall be taught and studied in a rigorously scientific manner.

⁵ *Ibid.*, No. 48, 6 June 1966.

Chapter V

GENERAL PROVISIONS

Art. 30. In the appointment of teaching and research staff and the granting of professorships no restrictions shall be imposed for reasons of

ideology or nationality, nor shall these be grounds for removal.

Art. 31. Private universities shall be subject to the provisions of this Act save as regards their system of direction and administration, which shall be governed by their own statutes and regulations.

...

REGULATION DATED 11 AUGUST 1966 GOVERNING THE ELECTION OF FUNCTIONAL DEPUTIES TO THE NATIONAL CONSTITUENT ASSEMBLY⁶

Chapter I

FUNCTIONAL DEPUTIES

Art. 1. Public education, private education, the Press and cultural bodies, agriculture, commerce, industry, the workers and the forces of public order shall be represented in the Constituent Assembly following the election of deputies pursuant to Article 5 of the Electoral Law and to this Regulation.

Art. 2. The Supreme Electoral Tribunal shall announce the day and time of meeting of the respective electoral colleges.

Art. 3. For election to posts of functional deputy candidates must have exercised, for at least one year immediately prior to the date of the election, the activity or work which would qualify

them as a member of the special group which they are to represent.

Art. 4. Documentary evidence that candidates have been continuously engaged in the work or activity relating to the election must be submitted no later than eight days prior to the date on which the electoral college is to meet. Candidates whose documentation has not been submitted within that time are ineligible.

Art. 5. The electoral colleges appointed to elect the functional deputies shall be presided over by the member nominated by the Supreme Electoral Tribunal.

Art. 6. The Supreme Electoral Tribunal shall settle, without further recourse, any disputes that may arise relating to the credentials, certificates and other documents submitted by the candidates for posts of functional deputy to show that their actual work or activity is appropriate to the body which they seek to represent.

...

⁶ *Ibid.*, No. 95, 11 August 1966.

DECREE OF 26 JULY 1966 CONCERNING THE HOLDING OF INDIRECT ELECTIONS FOR FUNCTIONAL DEPUTIES⁷

The Supreme Electoral Tribunal,

...

Hereby decrees

That indirect elections for functional deputies shall be held during the month of September and up to 15 October of this year.

The following deputies shall be elected: one for public education; one for private education; two for the workers—one for the *Litoral* (costal plain) and one for the Sierra (uplands); one for the Press and cultural bodies; one for agriculture, one for commerce and one for industry in the Sierra; one for agriculture, one for commerce and one for industry in the *Litoral*; and one for the forces of public order.

The Electoral Colleges which are to elect these deputies shall meet in the capital of the Republic on the respective dates to be announced by the Supreme Electoral Tribunal.

...

⁷ *Ibid.*, No. 96, 12 August 1966.

DECREE OF 26 JULY 1966 CONCERNING THE HOLDING OF DIRECT ELECTIONS
FOR DEPUTIES TO THE NATIONAL CONSTITUENT ASSEMBLY⁸

The Supreme Electoral Tribunal,

...

Hereby decrees

That direct elections for deputies to the National Constituent Assembly shall be held
on Sunday, 16 October 1966.

...

ACCESSION TO THE INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION

Promulgated by Decree No. 1037 of 15 September 1966⁹

...

Art. 1: To accede to the International Convention on the Elimination of All Forms
of Racial Discrimination, adopted by the United Nations General Assembly, at its
twentieth regular session, in resolution 2106 A (XX) of 21 December 1965;

Art. 2: To deposit the relevant instrument of accession with the Secretary-General
of the United Nations at that Organization's Headquarters in New York;

...

⁸ *Ibid.*, No. 96, 12 August 1966.

⁹ *Ibid.* No. 140, 14 October 1966.

AMENDMENT TO ARTICLE 178 OF THE LABOUR CODE

Promulgated by Decree No. 1361 of 18 October 1966¹⁰

Art. 1. Article 178 of the Labour Code is
hereby amended and replaced by the following:

"*Art. 178.* An employee who has served for
twenty-five years or more, continuously or
without interruption, shall be entitled to receive
a pension from his employer, in accordance
with the following rules:

"(a) The monthly retirement pension shall
be a sum equal to the coefficient ... multiplied
by the average monthly salary or wages received
in the five years of highest earning;

...

"(b) The monthly retirement pension shall in
no case be more than the salary or wages
received in the last year of service;

"(c) The employee shall apply for the
pension to his employer in writing, giving
fifteen days' notice of the date on which he
wishes the pension to commence; the employer
may in no case deny the employee this right;

"(d) In case of liquidation or the establish-
ment of a priority of creditors, persons in
receipt of pensions shall have a preferential
claim on the assets in liquidation or bankruptcy
and the sums owed to them shall rank among
the first-class preferential payments, having
priority over the claims of mortgages."

...

¹⁰ *Ibid.*, No. 145, 21 October 1966.

ETHIOPIA

LABOUR STANDARDS PROCLAMATION No. 232 OF 6 MAY 1966¹

SUMMARY

Article 4 provides that the Proclamation shall apply to industrial enterprises; agricultural enterprises; construction work; any other enterprise with respect to which legal arrangements are in force; and such other classes of enterprises as the Minister of National Community Development and Social Affairs may from time to time designate by regulation published in the *Negarit Gazeta*.

Under article 13 of the Proclamation, no person under 14 years of age shall be employed in industrial enterprises in which persons other than members of his immediate family are employed.

As stated in article 14, employees shall provide equal remuneration for work of equal quality regardless of the sex of employees.

Other provisions of the Proclamation deal with the powers and duties of the Minister; the establishment, composition and functions of the Labour Standards Advisory Board; the powers and duties of labour inspectors; the enforcement by labour inspectors; the restrictions or activities of labour inspectors; and the employer's responsibilities.

¹ *Negarit Gazeta*, No. 13, 6 May 1966. Translations of the Proclamation into English and French have been published by the International Labour Office as *Legislative Series* 1966-Eth. 1.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1966. A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS¹

CONTENTS

1. Protection of human dignity
2. Principle of equal treatment
3. Protection against arbitrary deprivation of liberty
4. Judicial and administrative guarantees of due process
5. Due process in criminal proceedings
6. Protection against interference with privacy
7. The right to freedom of movement and the right to leave the country
8. The right of asylum; deportation; extradition
9. The right to a nationality
10. Protection of the family
11. Protection of property
12. Freedom of belief, freedom of opinion and freedom of religious practice
13. Prohibition of political parties and associations
14. The suffrage and self-determination
15. The right to choose and exercise a profession or occupation
16. The protection of rights in labour legislation
17. State care for persons in need of assistance
18. The right to education
19. International instruments for the protection of human rights

DVBl

Deutsches Verwaltungsblatt (German Journal of Administration)

GBI

Gesetzblatt (der Länder) (Official Gazette (of Länder))

GVBl

Gesetz- und Verordnungsblatt (der Länder) (Journal of Legislative Provisions, Regulations, etc. (of Länder))

JZ

Juristenzeitung (Lawyers' Journal)

MDR

Monatsschrift für Deutsches Recht (Monthly Journal of German Law)

NJW

Neue Juristische Wochenschrift (New Weekly Journal of Law)

INTRODUCTION

In this report, as in those for previous years, statutes and judicial decisions relating to fundamental rights and freedoms are presented in the sequence in which they are arranged in the United Nations Declaration of 10 December 1948. In the case of judicial decisions, only those which, because of their subject-matter, bring to light aspects not previously discussed have been included in the report.

ABBREVIATIONS

<i>Bayer. Verw. Bl.</i>	<i>Bayerische Verwaltungsblätter</i> (Bavarian Journal of Administration)
<i>BGBI</i>	<i>Bundesgesetzblatt</i> (Official Gazette of the Federal Republic), parts I and II
<i>BVerfGE</i>	<i>Entscheidungen des Bundesverfassungsgerichts</i> (Decisions of the Federal Constitutional Court)
<i>BVerwGE</i>	<i>Entscheidungen des Bundesverwaltungsgerichts</i> (Decisions of the Federal Administrative Court)
<i>DÖV</i>	<i>Die Öffentliche Verwaltung</i> (Public Administration)

1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1)

Although the substance of the precept of respect for human dignity, which occupies first place in the Basic Law, appears to have been fully determined by fundamental judicial decisions now extending over a period of more than eighteen years, the courts nevertheless continue to be confronted with new and as yet unresolved problems. Pre-eminent among these is the recurrent question of the extent to which private tape recordings may be used as evidence in court. Contrary to earlier decisions, the courts are now tending to admit secretly recorded tapes as evidence in certain circumstances. For instance, the Land High Court at Frankfurt-am-Main, in its decision of 8 June 1966 (*NJW*, 1967, p. 1047),

¹ Report prepared by Dr. Alfred Maier, *Referent* at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg.

recognized a tape recording as admissible in a defamation case in which the offender had deliberately sought an occasion when no witnesses were present in order to utter his abusive remarks, with the intention of avoiding the risk of criminal proceedings. The Berlin High Court (*Kammergericht*), in a judgement pronounced on 19 September 1966 (*NJW*, 1967, p. 115), also admitted a tape recording as evidence. In the case to which this decision related, a husband who was suing his wife for divorce asked that another man, who was known to him by name, should be summoned to testify whether he was maintaining an adulterous relationship with the plaintiff's wife. He also asked that a woman friend of the defendant should be summoned to testify whether the defendant had divulged to her intimate details of her married life. When the plaintiff conceded during his own testimony that he had intercepted and tape-recorded his wife's telephone conversations, the two witnesses refused to give evidence, invoking both articles 1 and 2 of the Basic Law and article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. They based their refusal on the argument that the plaintiff, in listening to and recording their conversations, had violated their general right of personality. However, both the *Land* Court of Berlin and the Berlin High Court, to which an appeal was taken on the ground that the witnesses could not refuse to testify, held that they had no right to do so. Both courts acknowledged the relevance of the principle that secretly listening to and recording conversations violated the right of personality, which was protected by the Basic Law and the European Convention; at the same time, however, the protection of privacy, like everything else, had its limits. Thus, both courts held, conflicting interests were involved and must be weighed against each other. That might, of course, mean in specific cases that the right of personality must suffer some encroachment for the sake of another interest protected by law, and the two courts agreed that both witnesses must tolerate such an encroachment in the case in question. The High Court emphasized that the secret use of tape recordings was indeed inadmissible where the intention was to create grounds for suspicion where there had previously been none, but that it was admissible where the suspicion of conjugal infidelity already existed. In such a case, according to the judgement of the High Court, determination of the truth takes precedence over the witnesses' right of personality. The Federal Administrative Court held (9 February 1966, *DÖV*, 1966, p. 498) that the existence of adequate grounds for suspicion also justified the issue of warning notices by government authorities. The court arrived at this decision in a case in which a person entitled to benefits under the equalization of burdens system was suspected of having submitted applications simultaneously to a number of equalization offices with the aim of obtaining multiple payments. In stating the reasons for its judgement, the Federal Administrative Court indicated that such a warning did not violate the right of personality of the

individual concerned if it served the purpose of protecting other lawful interests, such as those of the exchequer, which defrayed the cost of equalization payments out of the general tax revenues. The Administrative Court at Frankfurt-am-Main had occasion to deal with a further case of infringement of the personality, which again resulted from advances in technology. A telephone subscriber whose surname included the modified vowel "ö" received telephone bills in which his name was always spelt with the letters "oe". The subscriber, invoking his right to the correct use of his name, which according to court rulings is regarded as forming part of the right of personality, demanded that the spelling should be corrected. The Federal Post Office, which has a monopoly of the telephone service in Germany, objected that the data-processing machine could not reproduce diacritical marks; this argument was rejected by the court, which stated, in giving the reasons for its judgement (1 March 1966, *DVBl*, 1966, p. 383) that the public interest in rationalizing the work of government departments did not entitle anyone to infringe rights of personality. The court went on to say that the results achieved through the use of a data-processing machine would hardly be impaired to any mentionable degree if a name which was mis-spelt by such a machine had to be corrected in handwriting. No result of rationalization was in the public interest if it could be achieved only through the use of machines the employment of which entailed violations of the rights of personality of the plaintiff and of a number of other persons. According to article 1, paragraph 1, of the Basic Law, the individual human being, in the full dignity of his personality, took precedence in the hierarchy of values over the State and its apparatus, over all material values, and even over the community. The court added that, in accordance with the basic concepts which governed the constitution, the purposes of articles 1 and 2 of the Basic Law included the protection of the individual against encroachments by machines.

On the question whether the wearing of so-called "Beatle haircuts" is permissible, which the *Land* High Court at Munich dealt with partly from the standpoint of the right to the free development of one's personality—a right protected by article 2, paragraph 1, of the Basic Law—see section 6 below.

2. PRINCIPLE OF EQUAL TREATMENT

(*Universal Declaration, articles 2 and 7*)

The fundamental right to equal treatment, which is set forth in article 3 of the Basic Law and has been the subject of numerous decisions in past years, presented the courts with no new problems during the year under review. As a result of the rulings on this question, the notion of equality as envisaged in the Basic Law now appears to have been established to such a degree that violations of this precept by the legislator and by government authorities are very seldom seen. When allegations

of offences against the principle of equality do occur in public-law disputes, the complainants are usually mistaken in their assumption that they have been unlawfully disadvantaged. One such case, relating to the income-tax laws currently in force, was taken all the way to the Federal Constitutional Court during the year under review. The complainants, a newly-married couple, had deducted the cost of purchasing their household furniture from their income tax because they had received no dowry from their parents. This was disallowed by the tax office, but the Finance Court, with which an appeal was lodged against this decision, recognized most of the cost as extraordinary expenses within the meaning of the income-tax laws and ordered that they should be taken into account for assessment purposes. Subsequently, however, the Federal Finance Court quashed the judgement of the Finance Court and reinstated the decision reached by the tax office. The complainants filed a constitutional complaint against this last judgement, invoking, *inter alia*, the precept of equality. In particular, they regarded as unequal treatment the fact that the dowry given to a daughter by her parents was tax-deductible under the laws currently in force. The Federal Constitutional Court, however, stated in its decision of 13 December 1966 (*NJW* 1967, p. 197) that it did not consider this to be a violation of the principle of equality in taxation, since there was a difference in law between the provision of a dowry by the parents and the purchase of the articles needed for setting up a household by the spouses themselves. The difference lay in the fact that, when parents gave a dowry, they received no valuable consideration and the dowry was thus a "dead loss" to them, whereas the newly-married couple acquired durable property to the value of the amount expended. The Court ruled that, although up to a certain point the two circumstances were economically similar, differential treatment for taxation purposes, based on the idea of consideration received, could not be regarded as arbitrary and therefore legally invalid.

3. PROTECTION AGAINST ARBITRARY DEPRIVATION OF LIBERTY

(*Universal Declaration, articles 4 and 9*)

A new Act for the protection of public safety and order was adopted in the Hanseatic City of Hamburg, which is a *Land* of the Federal Republic, on 14 March 1966 (*GVBl*, No. 16 of 22 March 1966, p. 77). This Act incorporates all the principles which have been developed by the courts in recent years in decisions relating to article 104 of the Basic Law. Under the Act, no one may be taken into provisional custody without authorization unless that is the only way in which a direct threat to public safety and order can be averted or a disturbance of public safety or order already caused by the person in question can be terminated. In such cases, the person taken into custody must be informed immediately of the reason for his detention and of the legal remedies against such detention available to him. In ad-

dition, provided that the purpose of the detention is not thereby frustrated, the detained person must be given an opportunity to notify relatives or a person enjoying his confidence. The Act also prescribes that a person taken into custody must, where possible, be lodged in separate quarters. Restrictions may be imposed on him only to such an extent as is necessary in order to secure the purpose of the detention. Furthermore, detention may continue into the following day only after a judge has so decided. The Act permits the searching of persons only where circumstances give cause to believe that articles which must be secured in order to avert an imminent threat to public safety or order will thereby be found. Dwellings may be entered without the consent of the occupant only where this is necessary in order to avert a public danger or a threat to the lives of individuals. The Act further provides that direct—i.e., physical—force may be used only after due warning. Fire-arms may be used only if other measures of direct force have already been applied without success or the applicants of such measures would manifestly be unsuccessful. Lastly, the Act provides that fire-arms may be used only to render the disturber of the peace incapable of attacking or of fleeing. Fire-arms must not be used if there is a high degree of risk that persons not involved will be endangered, except when dealing with a crowd or with an armed group.

The Federal Court of Justice had occasion during the year under review to resolve the question whether an entitlement to compensation for unlawful deprivation of liberty could be derived directly from the European Convention for the Protection of Human Rights and Fundamental Freedoms. In its decision of 10 January 1966 (*NJW*, 1966, p. 726; *DÖV*, 1966, p. 341), the court ruled that the Convention concluded by the States members of the Council of Europe did not merely bind the contracting parties to make provision in their municipal laws for the payment of compensation to, or the submission of claims for compensation by, any person wrongfully detained, but that it had directly established an entitlement to compensation. The court based its view on the wording of article 5, paragraph (5), of the Convention, the formulation of which was manifestly different from the corresponding clauses of international treaties whose sole intention was to establish an obligation, as between the contracting parties, to enact appropriate municipal laws conferring such an entitlement on the individual. In the specific case decided by the Federal Court of Justice, however, the plaintiff was denied a direct entitlement because the deprivation of liberty had been effected, not by authorities of the Federal Republic, but by East German authorities. The existence of a direct entitlement was reaffirmed by the Federal Court of Justice in its judgement of 31 January 1966 (*NJW*, 1966, p. 1021). In the case to which this decision related, some additional questions were raised, namely, whether the obligation to provide compensation was contingent on the blameworthiness of the authorities effecting the deprivation of liberty, and whether the person wrongfully

detained must be paid damages in full or only appropriate compensation. Since, however, the claim to compensation was rejected on other grounds in this case also, these questions were not conclusively resolved.

4. JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROCESS

(*Universal Declaration, articles 8 and 10*)

Where, as in the case in the Federal Republic of Germany, everyone—whether a national or an alien—is entitled to have any official act which adversely affects him submitted to a judicial test of its legality, the question of the extent to which the parties to legal proceedings must be granted a lawful hearing, in order that an effective judicial test may be guaranteed, necessarily acquires special importance. As in previous years, questions of this nature were again to the fore during the year under review. For instance, the Federal Constitutional Court, in its decision of 25 October 1966 (*NJW*, 1967, p. 31), stated that a court judgement must be based only on facts and evidence on which the party adversely affected by the decision had had a prior opportunity to comment. It was expressly ruled for the first time on this occasion—although in practice the courts have always followed the principle—that this requirement also held good in the case of applications for poor persons' legal aid, where the proceedings did not as yet involve a decision on the case itself but consisted merely of a summary examination of the question whether trial of the case offered the applicant such prospects of success that he could be allowed access to the court free of charge and, if necessary, have an attorney assigned to represent him at the expense of the public exchequer.

No right to a lawful hearing exists in matters of clemency, however. The Bavarian Constitutional Court ruled (23 February 1966, *DVBl* 1966, p. 757) that, consequently, where a convicted person petitioned for clemency, he was not entitled either to expect any reasons to be stated for the denial of his petition or to be informed of the comments made by the prosecuting authorities on his petition. Since the exercise of clemency was by its nature an act of benevolence, there could be no abstract legal right to clemency. In that connexion, however, the court observed that not even the discretion of the authority taking the decision on a petition for clemency was free from all legal bounds. Rather, that discretion, however broad it might be, was linked in the same way as any other official action to the Constitution and, in particular, to the unexceedable bounds which were set for the public authorities by the rights arising out of the whole body of positive law. The court noted that, accordingly, as an objective principle of justice, arbitrariness was prohibited. If, in the course of considering the petition for clemency, those bounds were exceeded, the constitutional rights of the petitioner were violated and he could seek legal remedies against the decision which was taken, as against any other official act which adversely affected him.

A case which came before the courts for decision during the year under review again provided an opportunity to delimitate the bounds of the right to a lawful hearing and thus to contribute to the further clarification of the material content of this right. In this case, which was decided by the Bavarian *Land* High Court on 4 May 1966 (*NJW*, 1966, p. 1981), the point at issue was whether a defendant who had been convicted in the lower court and had then failed, without adequate excuse, to attend the appeal proceedings which he had instituted had been denied a lawful hearing by reason of the fact that the appeal court had considered his defence only in the course of a free evaluation of the evidence and had then rejected the appeal without giving the defendant a further hearing. The Bavarian *Land* High Court did not regard this as a violation of the defendant's rights. It based this opinion on the consideration that it was incumbent upon any party to a case to avail himself of whatever occasions he had to take part in the proceedings. Since he had been given an opportunity to express his views, at the hearing, on the court's evaluation of the evidence but had not availed himself of it because of his failure to attend without adequate cause, the requirement to grant a lawful hearing, set forth in article 103, paragraph 1, of the Basic Law, had been observed by the court. The *Land* High Court nevertheless pointed out, in stating the reasons for its decision, that examination of the question whether the excuse which had in fact been offered but had been deemed inadequate by the appeal court was indeed inadequate must itself be regarded as a factual element of the case, concerning which a right to a lawful hearing existed. However, that question could only be settled through a resumption of the proceedings, which must be applied for within one week from the date of pronouncement of the judgement.

The Federal Administrative Court ruled (28 January 1966, *NJW*, 1966, p. 1286) that the decisions of the Federal Bureau for the Appraisal of Films were subject to a complete judicial review. Since this examination of films involves, not a censorship, but an artistic and educational appraisal with the aim of giving preferential tax treatment to meritorious films, some doubts arose as to whether decisions of this kind, which can be founded only partly on rational considerations, were susceptible to any judicial review at all. The Federal Administrative Court did not regard this argument as persuasive, however, on the ground that the primary purpose of a judicial review of decisions of the Bureau for the Appraisal of Films was to ensure that the right to the free expression of opinion and the right to free artistic activity set forth in article 5, paragraphs 1 and 3, of the Basic Law were not impaired.

5. DUE PROCESS IN CRIMINAL PROCEEDINGS

(*Universal Declaration, articles 10 and 11*)

The principles relating to due process in criminal proceedings, as they have been developed by

the courts in their decisions, were incorporated in a number of newly enacted statutes during the year under review. For instance, *Land* Baden-Württemberg, through its Act concerning complaints by prisoners of 8 February 1966 (*GVBl*, 1966, p. 13), now accords to any person who is serving a prison sentence or is detained pending investigation or is confined in a closed institution for preventive and correctional purposes a right to complain and, if necessary, to seek legal remedies against orders and instructions issued by the head of the institution. If the head of the institution does not act affirmatively on the complaint he must refer it to his superior authority for decision. The complainant may then bring an action in the *Land* High Court against the latter decision.

Juvenile detention procedures were also regulated anew during the year under review by a Federal Government Ordinance of 12 August 1966 (*BGBl*, I, p. 505), which took into account judicial decisions of recent years. Since the entry into force of this Ordinance, juvenile detention institutions may no longer be used simultaneously to house adult prisoners. A juvenile penal institution must in future be able to accommodate not more than sixty juveniles, but not less than ten. The Ordinance also prescribes that, during detention, the self-respect of the juvenile is to be preserved and strengthened and that he is normally to be addressed in the polite form of the second person. In addition, the Ordinance requires the sentence to be carried out in such a manner as to promote the physical, mental and moral development of the juvenile. The central feature of the educational process is discussion between the officer-in-charge and the juvenile, which must normally be conducted in private. The Ordinance allows the juvenile, except when performing required work in the detention institution, to wear his own clothing and undergarments. Lastly, the Ordinance requires the administration of the institution to make advance arrangements for appropriate welfare measures during the period after his release.

The courts also were once again concerned, during the year under review, with problems of due process in criminal proceedings. An outstanding example was the Federal Constitutional Court's elucidation of the principle *nulla poena sine culpa*. The occasion for this arose out of a temporary court order prohibiting a publishing house, under penalty of a fine in the event of contravention, from using certain advertising methods. However, its advertising was in the hands of an advertising agency which was independent of the publishing house. When the agency, against the express wishes of its principal, again used improper advertising methods, the court imposed a fine on the publishing house, in accordance with the penalty prescribed in the temporary order. The publishing house lodged a constitutional complaint on the ground that it had been punished in a manner incompatible with the principle of the rule of law, since it bore no guilt for the breach of fair competitive practices. The Federal Constitutional Court agreed with this view in its decision of 25 October 1966 (*NJW*, 1967, p. 195), pointing

out as its reason for doing so that, according to principles of the rule of law, guilt was a prerequisite for any punishment—in other words, not only for punishment in respect of criminal wrongdoing. Otherwise, the court noted, the punishment would amount to retribution, incompatible with the principle of the rule of law, for an act for which the person concerned was not accountable. Consequently, as the Federal Constitutional Court strongly emphasized, not only any punishment under the criminal laws, but also any analogous punishment, of an act involving no guilt on the part of the person concerned is unlawful and is a violation of one of his fundamental rights.

The *Land* High Court at Düsseldorf had occasion to deal with a question concerning the law relating to detention pending investigation in its decision of 19 August 1966 (*NJW*, 1967, p. 167). The point at issue was whether commercial advertising matter addressed to persons detained pending investigation must be delivered. The court ruled that it must, stating as its reason that a person detained pending investigation might be subjected only to such restrictions as were necessary for the purpose of the detention and for the maintenance of order in the detention institution. The right of a person detained pending investigation to a prompt hearing, which has repeatedly been upheld by the courts in the past, was again confirmed by the Federal Court of Justice, which, in its judgement of 12 July 1966 (*NJW*, 1966, p. 2023), referred to article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The court nevertheless stated in this judgement that a violation of this right did not vitiate the trial proceedings.

The *Land* High Court at Zweibrücken also had the requirement of due process in criminal proceedings in mind when, on 31 August 1966 (*NJW*, 1967, p. 364), it quashed a judgement in a criminal case relating to a traffic accident. The accused was a juvenile driver who had received a prison sentence of ten months. However, the trial court, in stating the reasons for its judgement, had used expressions phrased in a way such as to justify the assumption that the severity of the penalty had been influenced by emotion. In view of the possibility of such a judicial error, the *Land* High Court quashed that part of the judgement which related to the determination of the penalty and remitted the case for retrial to another juvenile court.

6. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(*Universal Declaration, articles 6 and 12*)

Cases of interference with privacy of the kind which have occupied the attention of many courts in recent years, usually in connexion with discriminatory press reports, did not lead in 1966 to any judicial pronouncements raising novel points of law. The *Land* High Court at Munich did, however, consider from the standpoint of interference with privacy the question of the permissibility of a

disciplinary fine which a juvenile court had imposed on a defendant who appeared before it with a so-called "Beatle haircut". In its decision of 14 July 1966 (*NJW*, 1966, p. 1935), the *Land* High Court quashed this disciplinary fine on the ground that, although such hair-styles were considered foolish and inelegant by a majority of the population, they were not immoral and therefore did not offend the dignity of the Court. Consequently, the *Land* High Court ruled, the courts had neither cause nor lawful authority to take coercive measures against that fad.

The Federal Court of Justice held (16 September 1966, *NJW*, 1966, p. 2353) that protection against interference with privacy in the form of the taking of photographs extended to persons whose conduct during the period of national socialist rule was open to criticism. An exception must be made, however, in the case of persons who were considered to be figures of contemporary history.

7. THE RIGHT TO FREEDOM OF MOVEMENT AND THE RIGHT TO LEAVE THE COUNTRY

(*Universal Declaration, article 13*)

The right to work and to live anywhere in the Federal Republic, which is guaranteed to all Germans under article 11 of the Basic Law, did not give rise to any legislation or judicial pronouncements in 1966. Similarly, the existing freedom to leave the country, which forms part of the constitutionally guaranteed general freedom of commerce, did not engage the attention of the legislator or the courts during this year.

8. THE RIGHT OF ASYLUM; DEPORTATION; EXTRADITION

(*Universal Declaration, article 14*)

Since the passage of the Aliens Act, which came into force in 1965, there has been a considerable decline in the number of disputes requiring settlement by the courts in connexion with matters of asylum, deportation and extradition, which in previous years engaged the attention of the courts to an extremely high degree. It cannot yet be stated with certainty whether this decline is attributable to the Act, which incorporates much of the new thinking elaborated by the courts in their decisions, because it has been in operation for so short a time. During the year under review, there were no fundamental decisions of the kind which further elucidate the present state of the law. However, the Berlin High Court did discuss, in its decision of 28 April 1966 (*NJW*, 1966, p. 1624), the circumstances in which a person may be detained pending deportation, which are governed by the provisions of article 16, paragraph 2, of the Aliens Act. The High Court concurred in the decision of the *Land* Court of Berlin that not every person to be deported could be detained simply in order to ensure his deport-

ation. Nor was a detention order permissible—the court further emphasized—for the sole reason that an alien who was to be deported had failed to report a change of address to the police, since that would be tantamount to imposing a punishment for a violation of police regulations. Only if it could be concluded from such conduct or from other conduct that the person concerned was attempting to evade police surveillance in order to escape deportation could the detention order be considered a legally permissible measure. Neither the mere refusal to obey an order to depart nor a statement by the alien that he would not leave the country voluntarily was sufficient ground for detention, nor was the fact that the arrangements for deporting him required extensive preparations which would take a considerable time. The High Court observed, however, that detention was necessary in order to ensure deportation if the alien had no fixed abode.

On the question of the effect on the expulsion of aliens of family ties in the Federal Republic, which came before the courts in 1966, see section 10 below.

9. THE RIGHT TO A NATIONALITY

(*Universal Declaration, article 15*)

In view of the legislation enacted in 1963, which was reported at the time, there was no occasion for legislative action with respect to nationality in 1966. However, the courts had occasion during this year to settle a question which comes within the sphere of the law relating to nationality only in a broader sense but which has been the subject of much contention in the past, namely, whether only persons who possess German citizenship are to be deemed "Germans" or whether certain other persons also fall into that category. The only reason why this question arose is, of course, that article 116, paragraph 1, of the Basic Law includes refugees or expellees of German ethnic stock in its definition of Germans and confers on them—even where they do not possess or have not yet acquired German citizenship—those civic rights which are withheld from aliens. The case which led to a ruling on this point was brought by a native of the Sudetenland, who had been expelled from there and was seeking to enjoy the legal status of a German. As his father had been an Italian however, he too possessed Italian nationality. From his mother, who was Austrian, he had learnt German as his mother tongue. Since, in addition, he had been brought up in a German-speaking area, he had been regarded as a person of German ethnic stock and had been expelled from Czechoslovakia after the Second World War. He had since been living in the Federal Republic, but his repeated attempts to gain recognition as a German within the meaning of article 116 of the Basic Law had always failed because, being an Italian, he was a national of a State which was not an "expulsion territory". The courts had consistently inferred that, as an Italian, he already enjoyed State protection, which was denied to

other expellees who were of Eastern European stock. The Federal Administrative Court, however, did not regard the entitlement to diplomatic protection as the decisive factor. In its judgement of 24 February 1966 (*BVerwGE*, vol. 23, p. 273; *DOV*, 1966, p. 498), it ruled that, although article 116 of the Basic Law primarily contemplated persons who were in need of legal protection by the Federal Republic because such protection was not granted to them by another State, that did not mean that other persons could not also be granted a status approximating to that of a German national. The Federal Administrative Court emphasized that such a rule did not violate the principles of international law, which, so far as the regulation of nationality by municipal law was concerned, only prohibited abuse of the law. The court pointed out that there could be no suggestion of any such abuse if the Basic Law recognized as "German within the meaning of the Basic Law" persons who had been expelled because of their attachment to the German way of life and granted them a status substantially equivalent to that of German nationals.

10. PROTECTION OF THE FAMILY

(*Universal Declaration, article 16*)

During the year under review, ordinances of substantially similar content concerning maternal welfare for women civil servants and women judges were promulgated in the Länder of Baden-Württemberg (*GVBl*, 1966, p. 197), Bavaria (*GVBl*, 1966, p. 315) and North Rhine-Westphalia (*GVBl*, 1966, p. 417). These ordinances reformulated the existing right to maternal welfare in the light of judicial rulings. All of them provide that the women concerned may be excused from their duties throughout the entire period of pregnancy if this is necessary on medical grounds for the protection of the health of mother or child. As in the past, a woman official may not be required to perform any duties for six weeks before and eight weeks after confinement, unless she expressly gives her consent.

In connexion with the protection of marriage and the family guaranteed under article 6 of the Basic Law, the courts had occasion in 1966 to deal with the hitherto unresolved question whether the provisional execution of an order prohibiting residence by an alien was permissible even if the alien married a German national after the order was issued. The Federal Constitutional Court, to which this question came for decision, ruled (1 March 1966, *Bayer. Verw. BL*, 1966, p. 162) that his expulsion was not permissible. The court based its decision on article 6 of the Basic Law, and noted in a detailed statement of its reasons, that immediate execution of the order might adversely affect the situation created by the marriage in ways which a favourable outcome of the subsequent court proceedings could not rectify. In the case of orders prohibiting residence which have become final, on the other hand, the courts have repeatedly ruled in the past that

marital status does not normally affect the issue. This standpoint was reiterated during the year under review by the Administrative Court at Mannheim. In its decision of 4 August 1966 (*NJW*, 1967, p. 218) in the case of a Swiss national who had been expelled and whose wife was of German stock, the Court took the view that both the wife and the children of her first marriage could reasonably be expected to settle in Switzerland. This view was shared by the Federal Constitutional Court, which refused on the ground of manifest lack of merit to consider the constitutional complaint that was lodged in this case.

11. PROTECTION OF PROPERTY

(*Universal Declaration, article 17*)

In *Land Rhineland-Palatinate*, an amended *Land Expropriation Act* was passed on 22 April 1966 (*GVBl*, p. 103). As in the past, expropriation is admissible only for the welfare of the community at large and only if the purpose of the expropriation cannot be accomplished in any other manner. In the case of expropriation of landed property, compensation must normally be in the form of other land; where, however, compensation can be made only in cash, the criterion is to be the market value. In the light of the principles developed by the courts in their rulings, the Act authorizes compensation even for property losses which are caused only indirectly by expropriation.

Although the number of suits involving the law relating to expropriation has declined and only a few cases involving fundamental points of law are nowadays adjudicated, the courts continue to be seized of questions of fact the clarification of which contributes to the further development of the law. In a case decided by the Federal Court of Justice (31 March 1966, *JZ*, 1966, p. 358), one of the five manufacturers of crispbread in Germany claimed damages against the Federal Republic, on the ground of encroachment analogous to expropriation, because the Federal Republic had assented to a reduction of the tariff on crispbread, with the result that Swedish crispbread had substantially increased its share of the German market and the sales of the German manufacturer who brought the action had declined considerably. His case, which was instituted after he had attempted in vain to obtain relief or subsidy from the Federal Ministry of Economic Affairs, was dismissed by the courts at all levels. The Federal Court of Justice, which ultimately had to rule on the alleged entitlement to damages, stated in its judgement that the reduction of a protective tariff, which in point of fact had led to a loss of sales in the case in question, did not constitute an encroachment on the sphere of commerce, since tariff changes must be regarded as measures extraneous to that sphere. Generally speaking, the court ruled, a manufacturer could not rely on the assumption that a tariff which had been introduced for the purpose of warding off foreign competitors would be continued on a permanent basis. Equally, therefore, he had normally no right

to expect that his sales would be maintained at the same level. The protective tariff simply offered him a prospect of being in a favourable competitive position vis-à-vis foreign competitors for such length of time as the tariff was in existence. The court noted, however, that the legal position was different in cases where a situation of trust had been created which justified a manufacturer's relying on the continued existence of the protective tariff. Such a situation of trust existed, for instance, if the Federal Government had induced the manufacturer to sizable expenditure and investment by drawing attention to the existence of a protective tariff. In a case of that kind, the court noted, an entitlement to compensation for expropriation existed.

12. FREEDOM OF BELIEF, FREEDOM OF OPINION AND FREEDOM OF RELIGIOUS PRACTICE

(Universal Declaration, articles 18 and 19)

Among these three freedoms guaranteed by articles 4 and 5 of the Basic Law, freedom of the Press, which is an essential part of freedom of opinion, received the greatest attention during the year under review. An important piece of legislation dealing with this subject was enacted in Land Hesse. On 22 February 1966 (*GVBl*, 1966, p. 31), a provision was incorporated into the Act concerning Freedom of the Press and the Law of the Press whereby editors, journalists, publishers, printers and other persons who participate in a professional capacity in the preparation, production or publication of a periodical have the right to refuse to testify to the identity of the author or contributor of, or the authority for, a report or concerning the latter's content.

Of central importance among the judicial decisions relating to freedom of the Press was the so-called "*Spiegel decision*" handed down by the Constitutional Court on 5 August 1966 (*DVB*, 1966, p. 684; *NJW*, 1966, p. 1603), in which the Court had to decide the question whether it was permissible under the Constitution to search the offices of an organ of the Press. The case arose as a result of an article published by the news magazine *Der Spiegel* in October 1962 which discussed the military position of the Federal Republic and of NATO. *Der Spiegel* asserted, on the basis of the result of a NATO military exercise, that at the present time the *Bundeswehr* had only "limited defensive readiness". The article reported not only on detailed aspects of the NATO exercise but also on the military planning of NATO and the *Bundeswehr*. In addition, it was accompanied by pictures of new weapons. On the basis of this article, the Federal state attorney instituted preliminary proceedings for treason against the publisher of *Der Spiegel* and the editor bearing legal responsibility under legislation relating to the Press. In order to determine whether a charge of treason was justified by the facts, the state attorney requested an expert opinion from the Federal Ministry of Defence. Following receipt of

the expert opinion and a detailed discussion with its author and with the Secretary of State of the Ministry of Defence, the state attorney obtained judicial search and arrest warrants against the publisher and the responsible editor. Since the search warrant specifically stated that a search could be carried out during the night, the police began the search of *Der Spiegel's* offices on the evening of 26 October 1962. The main editorial office in Hamburg was closed down and the staff sent home. The search continued until 25 November 1962. During the intervening period, various individual rooms were gradually returned to the staff. On 29 October 1962, a complaint was filed on constitutional grounds against these proceedings and against additional measures which are not of interest to us here. In a very carefully reasoned decision, the Federal Constitutional Court first dismissed a number of secondary petitions as inapplicable on formal grounds and then dealt in detail with the law relating to freedom of the Press. It began by observing that a free Press which was not controlled by the Government or subject to censorship was an essential element in a State governed by the principles of freedom and indispensable to a modern democracy. If the citizen was to make political decisions, the court continued, he had to be fully informed and had to be familiar with and able to weigh the opinions of others. The Press served as the instrument of this permanent discussion; it obtained information, reacted to it and thus provided the public with guidance. It was, said the court, the forum in which public opinion was articulated; in the give and take of debate, opposing arguments were clarified and sharpened, making it easier for the citizen to form a judgement and reach a decision. In a representative democracy, the Press served as a permanent communication and supervisory organ functioning between the people and their elected representatives in Parliament and in the Government. It brought together and subjected to critical examination the various opinions and demands constantly formulated by society and various social groups, presented them for discussion and brought them to the attention of the political organs of the State; which were enabled only in that way to measure their decisions, even in specific matters of day-to-day policy, against the standard of actual public opinion. The court held that, since this important "public function" of the Press could not be fulfilled by the organs of State authority, press enterprises must be permitted to develop freely within society. They operated in accordance with the principles of free enterprise and through organizations constituted under private law. They engaged in intellectual and economic competition in which the public authorities should not, as a matter of principle, interfere. Continuing to state the grounds for its decision, the Constitutional Court thereupon commented on the function of a free Press in a democratic State. That function was, the court said, reflected in the legal status which was conferred on the Press by the Constitution. Article 5 of the Basic Law guaranteed freedom of

the Press and thus afforded protection from State interference to persons and enterprises active in that field. At the same time, the court emphasized, the constitutional provision in question also had application in the sphere of objective law in that it guaranteed the "free Press" as an institution. "Wherever a principle of law affected the Press, the State was—quite apart from the subjective rights of individuals—bound to give legal effect to the principle of press freedom. That was expressed primarily in the freedom to found press organs, freedom of access to the various occupations connected with the Press and the obligation of the public authorities to provide information; it could also be argued, however, that the State had a duty to avert any threat which might be posed to a free Press by the formation of opinion-making monopolies. The independence of the Press guaranteed by article 5 of the Basic Law, the court went on to say, extended from the procurement of information to the circulation of news and opinions. Freedom of the Press therefore included a measure of protection for the confidential relationship between the Press and private informants. Such protection was essential, since the Press could not do without information from private sources, which could be readily obtained only if the informant could be certain, as a matter of principle, that secrets entrusted to an editor would be kept. In the further explanation of its decision, the court pointed out that it was possible for freedom of the Press to come into conflict with other values enjoying the protection of the Basic Law, such as the rights and interests of individuals or even of society itself. The Basic Law provided that such conflicts were to be resolved in accordance with the provisions of general law, to which the Press was also subject. Freedom of the Press must take account of legal rights and interests which were at least equal to it in importance. The in some respects privileged position of persons connected with the Press was granted only because of the function they performed and within the limits of that function. It was not a question of personal privilege. Accordingly, any exemption from the normally applicable rules of law must in all cases be justified, as to its nature and scope, in terms of the particular case involved. In that connexion, the court raised the question of the extent to which freedom of the Press could be restricted by general legislation. It concluded that all such legislation was to be drafted and interpreted with due regard to the freedom guaranteed by article 5 of the Basic Law. As applied to the penal provisions concerning treason under which freedom of the Press could be restricted, that meant, in the first instance, that the conflict in which the Press became involved if it published information which it might be advisable to keep secret in the interests of national defence must not be resolved *a priori* to the disadvantage of the Press on the grounds that freedom of the Press necessarily depended on the continued existence of the Federal Republic and would disappear if the latter was destroyed. The Court went on to explain that the continued existence of the Federal Republic, which must be protected,

implied the survival not merely of its organizational structure but also of its free, democratic system. It was a characteristic feature of that system that the business of government, including military matters, although it was conducted by the competent government organs, was nevertheless subject to continuing criticism by the people and to the latter's approval. Accordingly, said the Constitutional Court, the necessity of keeping military secrets in the interests of national security, on the one hand, and the requirements of freedom of the Press, on the other hand, were not mutually exclusive. It should, rather, be said that the two were brought into a co-ordinate relationship by the higher goal of ensuring the continued existence, in the proper sense of that term, of the Federal Republic of Germany. Conflicts between the two sets of national requirements must therefore be resolved with reference to that goal. In each individual case, the importance of the information communicated both from the standpoint of a potential enemy and from the standpoint of political public-opinion formation must be taken into account, and the danger to national security which might result from publication must be weighed against the people's need to be kept informed about important events in the sphere of defence policy just as in other spheres. In that respect, article 5, paragraph 1, of the Basic Law had a fundamentally restrictive effect in all judicial interpretation of the penal provisions referred to above. The court concluded by turning its attention to the search procedure itself, which it found to be constitutional even though only on the basis of a tie vote (which does not, under article 15, paragraph 2, fourth sentence, of the Federal Constitutional Court Act, suffice for the purpose of handing down a ruling of unconstitutionality). The procedural questions dealt with in this connexion require no further discussion here.

The question of a danger to the State arising from material published in the Press was also involved in a decision rendered on 27 October 1966 (*NJW*, 1967, p. 582) by the criminal division of the *Land* Court of Hamburg. The case concerned a petition by the state attorney for the confiscation of the 23 August 1966 issue of *Freie Presse*, a newspaper published by the Socialist Unity Party of East Germany. In its decision, the court began by pointing out that the confiscation of published material dangerous to the State was, under article 86, paragraph 1, first sentence, of the Penal Code, a matter for judicial discretion. Communist newspapers, the court went on, were unable to intensify political criticism and direct it into unconstitutional channels, since the reader was antagonized rather than won over by what was said in the Socialist Unity Party Press. Consequently, publications of that nature did not pose any threat to the free, democratic system. Past experience had shown that the insults and slander which the communists heaped upon the Federal Republic and its political system could not seriously diminish the authority of the State and its organs. The court therefore took the view that freedom of information was being subjected to an

inadmissible restriction if the citizen was denied all opportunity to form a first-hand opinion of the East German Communists' political views and methods of argument by reading their newspapers. Information which threw light on communist thinking provided a means by which the individual could come intellectually to terms with communism.

The problem of artistic freedom was also once again the subject of a judicial decision during the period under review. In its decision of 12 January 1966 (*NJW*, 1966, p. 2374), the Federal Administrative Court dealt with the question whether works of art could be listed as dangerous to youth. The case resulted from the publication in 1958 of a German-language paperback edition of James M. Cain's novel *The Postman Always Rings Twice*, which was listed as dangerous to youth by the Federal Board of Review for Publications Dangerous to Youth on the ground that the emphasis on sexuality which pervaded the book tended to have a morally unsettling effect on young people. The Administrative Court, which nevertheless found the book to be a work of art, took the position that, in considering the relative social importance of the protection of young people and the protection of artistic freedom, the legislator had given greater weight to the protection of artistic freedom.

By contrast, the Higher Administrative Court at Coblenz took a substantially more restrictive position on the question of artistic freedom. In a decision of 24 March 1966 (*DVB*, 1966, p. 576), the court held that artistic freedom, even though it was guaranteed by article 5, paragraph 3, of the Basic Law, was inherently subject to restriction whenever the exercise of that freedom infringed the rights of others or was inimical to constitutional order in the narrow sense or to moral law. When the proper bounds were thus overstepped, the court stated, police action could be taken even where a work of art was concerned. The case arose as a result of a local police order forbidding the showing of three scenes from the Swedish film *The Silence* which were felt to be grossly offensive to morals. Although a substantive decision had already been rendered in the case and the Administrative Court had to rule only on the matter of the costs and not on the question whether the three scenes were in fact offensive, it took the view that objectionable scenes in a film which qualified as a work of art were not covered by the constitutional guarantees of artistic freedom and that, if the showing of the scenes was offensive to public morals, the police were therefore entitled to take action under the general police power. The court emphasized further that the showing of obscene portions of a film could also constitute a threat to public order—a term which the court used to denote the sum total of all those rules whose observance was regarded, in accordance with the social and ethical views prevailing at any given time, as essential in order that the people residing within a given area of police jurisdiction might live together in harmony. These so-called "rules of order", the court explained, were not rules of law,

custom or morality but rather popular value judgements by which, it was felt, people must abide if they were to be able to live together as a community.

A disputed point relating to religious freedom was conclusively settled during the year under review by the Federal Constitutional Court. In its decision of 25 March 1966 (*BVerfGE*, vol. 24, p. 1), the Court made a definite finding that persons holding official positions in the congregations of Jehovah's Witnesses and having such positions as their main occupation were not exempt from military service. It thus adopted the view already taken by the Federal Administrative Court in its decision of 20 July 1962 that official positions in Jehovah's Witnesses were not to be placed on the same footing as the position of a clergyman of the Roman Catholic or Protestant faith.

13. PROHIBITION OF POLITICAL PARTIES AND ASSOCIATIONS

(*Universal Declaration, articles 20 and 23*)

On 28 July 1966, the Federal Government issued pursuant to article 19 of the Associations Act of 5 August 1964 an implementing ordinance (*BGBI* I, p. 457) concerning measures for the safe keeping of the property of prohibited associations. The ordinance provided that responsibility for such measures was in all cases to be entrusted to persons having no connexion with the association in question. It also contained provisions relating to associations of foreign nationals. Such associations were required to report and submit their articles of association, within two weeks after they were established, to the authority competent for the place where their headquarters were situated. In addition, associations of foreign nationals were placed under an obligation to submit information concerning their activities. If they engaged in political activity, they were required to give the competent authority particulars regarding the names and addresses of their members as well as the sources of their funds and the use made of them.

14. THE SUFFRAGE AND SELF-DETERMINATION

(*Universal Declaration, article 21*)

During the year under review, two *Länder*, Hesse (*GVBl*, 1966, p. 203) and Schleswig-Holstein (*GVBl*, 1966, p. 194), revised their electoral procedures without altering the existing legal situation in any fundamental sense.

The right to the free exercise of the suffrage protected by article 38 of the Basic Law was the subject of only one judicial decision, which related to the provisions governing communal elections in Hesse. The point at issue was whether the provision denying convicts the right to participate in communal elections constituted a violation of the

principle of universal suffrage embodied in the Hessian Constitution and the Basic Law. In a decision handed down on 25 May 1966 (*DVBl*, 1966, p. 825), the State Court of Hesse found that no such violation was involved in view of the constitutionally unexceptionable provision in force in Hesse to the effect that only persons who were present in their commune of residence on election day were entitled to participate in communal elections. Since most persons serving prison terms were not present in their commune of residence when elections were held, that provision alone had the effect of disfranchising them. The Court went on to state that, in order not to give preference to those convicts who happened to be serving prison terms in the commune in which they resided, the legislator had quite properly decided to suspend the right to vote in communal elections in the case of convicts. The fact that the suspension applied only to communal elections and not to elections to the *Land* parliament did not constitute a violation of the principle of equality since the communal and *Land* parliament elections were held for different purposes and the cases were not comparable, if only for that reason.

15. THE RIGHT TO CHOOSE AND EXERCISE A PROFESSION OR OCCUPATION

(Universal Declaration, article 23)

The right of every German freely to choose and exercise a profession or occupation, which is guaranteed by article 12 of the Basic Law, was again the subject of judicial decisions during the year under review. Thus, the Federal Administrative Court had before it an action brought by a student who was challenging the refusal of his university to permit him to continue his studies. The university had dropped him from its rolls on the ground that he was not qualified to remain since he had not yet taken the customary preliminary examination even though his medical studies had already gone on for fifteen semesters. The Administrative Court upheld the view of all the lower courts that the action taken against the student was proper since the right to choose a place of education, while not subject to statutory restriction, did not preclude an educational institution from adopting a system of selection which barred unqualified persons. The Administrative Court at Hanover handed down a similar decision on 24 November 1966 (*DVBl*, 1967, p. 166) in the case of a student of architecture who had been dropped from the rolls by the Technical University at Hanover after he had spent thirty-five semesters there without taking an examination.

The Constitutional Court of Bavaria was also called upon to decide a case involving the question of access to a profession or occupation. The court heard an appeal filed on constitutional grounds by a teacher of the Protestant faith who found himself unable to apply for a school superintendent's post advertised by the Bavarian Ministry of Education because the advertisement

specified that applicants must of the Catholic religion. The court upheld the appeal on the ground that access to civil-service posts must be granted without regard to religious affiliation. It went on to state that that requirement, which derived from article 107, paragraph 4, of the Bavarian Constitution, represented a specific application of the principle of equality. Hence, it was not permissible to set qualifications for a civil-service post which bore no particular relation to the nature and duties of the post in question. The prohibition against taking religious affiliation into consideration in connexion with civil-service posts was inapplicable only where exceptions were provided for in the Constitution itself. In addition, the prohibition could be disregarded when it was a question of filling a post which had some direct connexion with a particular denomination, so that the applicant's religious affiliation was a factor in his "suitability" for the post. The question of fixing qualifications should, the court emphasized, be approached in a concrete rather than an abstract manner, i.e. the nature and scope of the qualifications should depend on the duties the applicant would have to perform. No exception could be made to the general prohibition in the case of a school superintendent's post, since only supervisory duties were involved. It was also to be noted that the Church-State agreements did not impose religious qualifications of any kind for the post. The court concluded by pointing out that the situation was, of course, different in the case of the post of headmaster of a denominational school.

In a decision handed down on 7 July 1966 (*DVBl*, 1966, p. 746), the Federal Court of Justice ruled that the communal privileges previously enjoyed by pharmacists were incompatible with the principle of free access to a profession or occupation and were therefore invalid.

Finally, the courts also had before them, during the year under review, a case which provided an opportunity for thorough examination of the significance of subjective professional licensing requirements. The case arose from an action brought by an architectural designer who had maintained an office of his own since 1954. The individual in question had applied to have his name entered in the Architects' Register in accordance with the provisions of the Baden-Württemberg Architects Act of 1955, but the Registration Board had rejected his application on the ground that his artistic qualifications were inadequate. The Federal Administrative Court, before which the case finally came, took the view that the Board's refusal to enter the applicant's name in the register was unlawful since it was based solely on the finding that his artistic talents as a designer did not satisfy the requirements. In explaining its decision, the court observed that to require proof of artistic talent had the effect of making the right to choose the profession of architect contingent on the fulfilment of a subjective licensing requirement. However, the imposition of such a requirement was justified, as the Federal Constitutional Court had already laid

down, only if it was absolutely essential to the protection of some important social value and, in addition, bore some relation to the desired aim of ensuring the orderly exercise of the professional activity in question. Chief among the social values whose protection could properly be the aim of an architects act, continued the Administrative Court, were protection of the population against the possible harmful effects of defective design work, the protection of scenic beauty in urban and rural areas and the maintenance of a high level of performance in the profession so as to insure high standards in architecture. However, it was not necessary, in order to safeguard any one of those values, to make access to the profession of architect conditional on proof of the possession of adequate artistic talent as a designer. The protection against defective design work required by potential housebuilders did not have to do with artistic quality but only with the technical and economic usefulness of the work, which could not be determined by the layman. The task of protecting the population against either its own bad taste or that of the architect was, under the liberal legal system created by the Basic Law, not one to be performed by the State. Furthermore, the court pointed out, to deny an architect his professional title simply on the ground of insufficient artistic competence would mean infringing the artistic freedom guaranteed by article 5, paragraph 3, of the Basic Law. If a person engaging in an artistic activity within the meaning of that provision of the Basic Law was prevented from doing so or from continuing to do so under the professional title customarily used in his field of artistic endeavour because his artistic ability was regarded as inadequate by a governmental authority, the result was, in the opinion of the court, to limit his ability to express himself artistically and engage in artistic activity. The exercise of artistic freedom could not be confined to the privacy of the artist's home if the constitutional guarantee was to be other than a dead letter. Artistic freedom must, rather, afford the artist an opportunity to reach the public and must therefore not be subject to any infringement. However, such an infringement did take place, the court went on, if an authority was empowered by the provisions of the above-mentioned Architects Act to refuse someone the customary professional title merely because it did not regard him as possessing adequate artistic qualifications. If the architectural designer who had brought the action was not permitted to describe himself as an architect, he would have less prospect than before of being permitted to compete for assignments and would therefore have less opportunity to give expression to his creative aspirations.

16. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(*Universal Declaration, articles 23, 24 and 25*)

Since the principles which underlie existing labour legislation are ideally suited to present-day

labour requirements, there is little reason for any basic new enactments. Accordingly, the only action taken by the *Bundestag* during the year under review consisted in the addition of several provisions relating to medical care for juvenile workers (Act of 29 July 1966, *BGBI* I, p. 445) to the Juvenile Workers Protection Act of 1960. The Government of Baden-Württemberg also enacted legislation relating to labour protection for young people, namely the Ordinance of 1 February 1966 concerning Labour Protection for Juvenile Civil Servants (*GVBl*, 1966, p. 7). Under the provisions of the Ordinance, employees between the ages of sixteen and twenty-one may not work more than forty-four hours a week and those under fourteen years of age may not work more than forty hours a week. In addition, a juvenile may not be required to work longer than four-and-one-half hours without a rest period of at least fifteen minutes. After completing his day's work, the juvenile must have an uninterrupted free period of at least twelve hours. He may not work on Sundays or holidays, and his work-day must end not later than 2 p.m. on Saturdays.

The Federal Labour Court, in a decision of 25 February 1966 (*DVBl*, p. 936), also dealt with a matter falling within this area of legal protection. In the case in question, an employee of the Federal Post Office, who had been subjected to a disciplinary penalty by the Postal Administration because he had assaulted a fellow worker, brought an action to have the penalty rescinded on the ground that the Postal Administration had had no basis for its action under existing law. The court upheld that view, explaining that the provision in the 1938 service regulations for employees of the German *Reich* Post Office which permitted the Post Office to impose disciplinary penalties and was the basis for the penalty imposed in this particular instance was inseparably bound up with the National Socialist conception of the employer's position as head of the administrative body or business establishment and was therefore no longer valid today. In its further discussion of the grounds for its decision, whose implications went far beyond the specific case which was being decided, the court turned to the question whether existing laws required participation by the staff council in decisions concerning the imposition of disciplinary penalties by a governmental authority. Taking a position contrary to that of the Federal Administrative Court, which the Federal Labour Court regarded as incorrect, the Labour Court held that such participation was essential not only in the case of private enterprises—a point which was not disputed—but also in the civil service. Since the imposition of disciplinary penalties and fines for the purpose of upholding service regulations was first and foremost a matter affecting the employees subject to those regulations, the employees must, the court concluded, be permitted to participate through their representatives in the fixing of penalties.

17. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(*Universal Declaration, articles 22 and 23*)

By official notice of 3 January 1966 (*Bundesanzeiger* (Federal Bulletin) No. 1, 4 January 1966), the Compensation Scheme for Traffic Accident Victims established in 1965, which pays compensation to persons to whom damage or injury is caused by an unidentified or illegally uninsured motor vehicle, was turned over for purposes of administration to a specially created "Traffic Assistance Corporation". The corporation has its head office in Hamburg.

Apart from certain cost-of-living increases in social benefits, there was no legislative action in the field of public assistance during the year under review. Similarly, no new ground was broken by judicial decisions, although numerous routine cases were dealt with by the courts.

18. THE RIGHT TO EDUCATION

(*Universal Declaration, article 26*)

During the year under review, the Federal *Länder* of Bavaria (*GVBl*, 1966, p. 402), Hamburg (*GVBl*, 1966, p. 257), Hesse (*GVBl*, 1966, p. 323), Lower Saxony (*GVBl*, 1966, p. 127), Rhineland-Palatinate (*GVBl*, 1966, p. 243) and Berlin (*GVBl*, 1966, p. 1485) enacted new elementary-school legislation incorporating provisions on a number of matters which had hitherto been dealt with in only a fragmentary manner. All the legislation in question gives broad scope to the rights of parents. On 12 July 1966, Bavaria also enacted a Gifted Children's Assistance Act (*GVBl*, 1966, p. 230) which makes generous provision for assistance to children of above-average ability.

In the course of the year, occasion arose for the courts to deal with a hitherto largely unresolved question relating to the law as it affects private schools. In a case decided by the Federal Administrative Court on 13 March 1966 (*Recht der Jugend* (Law in its Relation to Youth), vol. 6, 1966, p. 160) in which a private school for gymnastics and creative dancing requested State assistance, the point at issue was whether private schools have a legal claim to State subsidies. Contrary to the view of the lower courts, which had denied that the schools had any such right, the Federal Administrative Court held that the right did exist in principle. Since, however, the facts of the case had not yet been brought out by the lower courts in accordance with the principles formulated in this decision by the Federal Administrative Court, the latter referred the case back to the Higher Administrative Court for a further ruling. In taking this action, the Federal Administrative Court explained that the fundamental right to establish private schools guaranteed in article 7, paragraph 4, of the Basic Law did not itself give rise to any obligation on the part of the State to subsidize private schools but that, at the same time, the

constitutional guarantee prevented the State from compromising the freedom to establish private schools and the continued existence of such schools through acts of omission on its part. Accordingly, the question whether measures should be taken to meet the particularly pressing financial needs of private schools was one which must be taken into account by the courts. In a situation where, as the Court pointed out, the public schools offered advantages which the private schools could not provide because their financial resources were usually insufficient, the private school system would inevitably be destroyed and the constitutional principle of the freedom to establish such schools would thus be undermined. Among the inducements for parents to enrol their children in public schools was the fact that those schools charged no tuition fee or at most a reduced fee and made no charge for school materials, as well as the existence of such other benefits as study allowances. Developments since the war had resulted in a steady expansion of those benefits. The State now spent substantially more per public-school pupil for educational staff and plant than it had before, and it effected a correspondingly large saving when a child attended a private rather than a public school. The private schools had to bear all such costs themselves unless the parents of their pupils could afford to pay higher tuition fees. What had thus developed was a situation in which the private schools had seen their ability to attract students substantially reduced while, at the same time, the enrolment of a child in a private school served to relieve the State of the necessity of providing the benefits which the child would have received in a public school. Since it was thus apparent that the principle of equality of opportunity was being violated and that public tasks in the sphere of education were being performed by private schools, it followed, the court held, that the right of private schools to claim State assistance could not be denied on grounds of principle. The right in question derived from article 3 of the Basic Law, taken in conjunction with article 7, paragraph 4, and did not depend on the enactment of specific legislation by the *Länder*.

Among the matters dealt with in the courts during the year under review was once again a case relating to the promotion of a student to the next higher class. In the case in question, which was decided by the Administrative Court at Würzburg on 8 February 1966 (*Recht der Jugend*, vol. 6, 1966, p. 157), the court set aside as unlawful a retroactive change in the marking regulations which had been made in the course of the school year to the disadvantage of the students.

19. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(*Universal Declaration, article 28*)

With effect from 1 July 1966, the Federal Republic recognized the competence of the

European Commission of Human Rights for an additional five years pursuant to article 25 of the Human Rights Convention and once again accepted the jurisdiction of the European Court of Human Rights for the same period (*BGBI* II, p. 773).

During the year under review, the Federal Republic also concluded agreements concerning the promotion and reciprocal protection of investments with Ceylon, Ecuador, the Republic of Korea, the Philippines, Sierra Leone, the Sudan and Tanzania.

FINLAND

NOTE¹

I. LEGISLATION

1. *General Principles Governing the Administration of Justice*

(a) Act No. 176, of 25 March 1966, amending Chapter 17, Articles 24 and 34, of the Code of Procedure (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK*—Official Statute Gazette of Finland—No. 176/66) intends to remove a gap in the law of evidence. According to this amendment, publishers, chief editors, book printers and persons in their service, when heard as a witness, may refuse to answer the question as to who is the author of a writing or an announcement or who has given the information on which the writing or announcement is based. The same applies to questions the answer to which might reveal the author or the source of information. Similarly, the author himself and the person who has given the information are not obliged to reveal themselves.

However, in criminal cases for which the maximum punishment is six years of hard labour or more, or involving the giving of information in contravention of the law on secrecy, the persons mentioned above may be obliged to answer such a question. The hearing shall then take place behind closed doors.

(b) Act No. 196, of 1 April 1966, amending Chapter 3, Article 5, of the Penal Code (*AsK* No. 196/66).

Previously, the court had the power in certain criminal cases concerning minor traffic offences or involving juvenile delinquents to leave the cases without sentencing the persons found guilty. Through this amendment such a power of the court has been made generally applicable. Thus, if the offence under trial is of a minor nature and if it, taking the circumstances into consideration, has been caused by a venial inattentiveness, thoughtlessness or ignorance, and if public interest does not require a punishment for the offence, the court may leave the case without sentencing the person found guilty.

(c) Act No. 197, of 1 April 1966, amending Articles 15 and 18 of the Act on the Implementation of the Penal Code (*AsK* No. 197/66).

This amendment is closely linked to that contained in Act No. 196 summarized above. According to it, public prosecutors may leave a case without bringing an action against a person suspected of an offence if the offence is of a minor nature and if it is obvious that it, taking the circumstances into consideration, has been caused by a venial inattentiveness, thoughtlessness or ignorance, and that public interest does not require an action to be brought. Previously, public prosecutors had such a power only in certain cases concerning minor traffic offences or involving juvenile delinquents.

2. *Right to Adequate Standard of Living, Social Security and Social Service*

(a) Act No. 243, of 15 April 1966, on the Improvement of the Economy of Developing Areas (*AsK* No. 243/66).

In order to improve the production and the standard of living in parts of the country where economic development is lagging behind essentially as compared with other parts, the State shall take appropriate measures, such as granting tax reduction and giving special economic support for the promotion of sources of livelihood and vocational training.

(b) Act No. 247, of 22 April 1966, on Housing Production (*AsK* No. 247/66).

In order to promote housing production and to improve housing facilities, special loans, guarantees and reimbursements of interest, as well as research allowances shall be granted in accordance with the provisions of this Act.

(c) Act No. 280, of 20 May 1966, on State Pensions (*AsK* No. 280/66).

By this Act the system of granting pensions to persons in Government service either on the ground of old age or disability for work has been completely revised.

The general pension age, if not otherwise provided by decree for certain cases, is 63. In no

¹ Note prepared by Mr. Voitto Saario, Justice of the Supreme Court of Finland, government-appointed correspondent of the *Yearbook on Human Rights*.

case should it be less than 55. As regards the entitlement to pension, the Act contains detailed provisions as to how the length of service has to be counted and as to how the amount of pension has to be determined both in the case of old age and that of disability for work.

In order to develop further the pension system, an advisory body, the Consulting Board of Pension Matters, has been established. The members of this body shall represent the Ministry of Finance, on the one hand, and the central organizations of Government officials and workers, on the other.

(d) Act No. 660, of 16 December 1966, on the Linking of Certain Alimonies to the Cost of Living (*AsK* No. 660/66).

Alimonies which are to be paid at certain intervals on the ground of a court decision or an agreement in accordance with the provisions of the Marriage Act or the Act on Children Born out of Wedlock shall be increased correspondingly to the rising of the index of the cost of living which eventually will take place after 1 January 1967.

A similar rule shall be applied to alimonies paid by employers to their employees in accordance with the provisions of the Welfare Act and to alimonies based on court decisions in criminal cases.

The computation of the index of the cost of living is entrusted to the Ministry of Social Affairs which shall determine the eventual rise of the index in November every year.

This Act has as its purpose to keep the amount of alimonies on the actual level of the value of currency and makes unnecessary the regulation of the matter from time to time as has been the case so far.

3. Cultural Rights

When the Constitution of UNESCO was signed on behalf of Finland on 10 October 1956, a particular body, the Finnish UNESCO Commission was established by Decree No. 85, of 8 February 1957, to be a liaison organ between the Finnish Government and UNESCO. The Commission functioned under the supervision of the Ministry of Education and consisted of a chairman and eleven members. Three of the members represented the Ministry of Education, the Ministry for Foreign Affairs and the Ministry of Finance, and eight the various fields of education, science and culture. Both the chairman and the members of the Commission were appointed by the Council of State for a term of three years. In addition, the

Commission had an advisory body, the UNESCO Consultation Board, consisting of twenty-five members and appointed by the Ministry of Education.

After ten years of experience, this organization was revised by Decree No. 163, of 11 March 1966, on the Finnish UNESCO Commission (*AsK* No. 163/66)

According to the new Decree, the composition of the UNESCO Commission is the same as before, but instead of the Consultation Board, the Commission itself will be supplemented by thirty-four auxiliary members (appointed by the Council of State), who together with the ordinary members constitute the Expanded UNESCO Commission. The auxiliary members shall participate in the handling of matters which require a contact with the representatives of the various fields of UNESCO on a wider base than usual.

The UNESCO Commission shall give the Ministry of Education and the Council of State advisory opinions concerning:

(1) Measures to be taken in Finland pursuant to the decision and recommendation made by the General Conference or the governing bodies of UNESCO or by international meetings or conferences arranged by UNESCO;

(2) The representation of Finland at the General Conference or the governing bodies of UNESCO or other such meetings or conferences;

(3) The making known of the purposes and activities of UNESCO in Finland and the arousing of interest in them;

(4) Applications regarding scholarships and vacant posts of UNESCO;

(5) Other far-reaching questions or matters of principle adhering to the activities of UNESCO; and

(6) Other matters related to the participation of Finland in international cultural co-operation which are entrusted to it by the Ministry of Education.

II. INTERNATIONAL AGREEMENTS

1. Decree No. 87, of 11 February 1966 (*AsK* No. 87/66), brings into force the amendments made by the 18th World Health Conference on 12 May 1965 to Articles 73, 96, 97, 102 and 105 of the International Sanitary Ordinance No. 2.

2. Decree No. 462, of 9 September 1966 (*AsK* No. 462/66), brings into force the Convention among Finland, Denmark, Norway and Sweden concerning the inter-nordic recruitment of members of the medical profession.

FRANCE

NOTE¹

I. CIVIL LAW

(1) Act No. 64-187 of 14 December 1964 concerning the guardianship of minors and emancipation.

This Act recognizes the role of the parents and, in the event that one of them dies, the role of the surviving spouse in guardianship matters. It allows more flexible and dynamic administration of a minor's property. The Act also puts an end to the inequality which existed in guardianship matters between natural children and legitimate children: the Act grants to the father or the mother of a natural child the legal administration of his property and recognizes that a natural child can have a family council whereas the former laws placed him under the authority of the guardianship council, an administrative body. Lastly, emancipation is radically altered: henceforth it confers full civil capacity on an emancipated minor.

(2) Act No. 65-570 of 13 July 1965 providing for reform of matrimonial property systems.

This law enlarges the rights of women by permitting them, *inter alia*, freely to administer their separate property and by assuring them of judicial review of the husband's administration of community property. It modernizes the legislation concerning matrimonial property systems to take account of the changes which have occurred in the structure of property.

(3) Act No. 66-500 of 11 July 1966 providing for reform of the adoption law.²

This Act has two aims—to develop the institution by permitting the adoption of certain children who were not subject to adoption under the former rules, and to avoid disputes between the persons adopting the child and his blood relations.

II. PENAL LAW

(1) Act No. 63-1255 of 21 December 1963 concerning "certain conditions of fulfilment of the

obligations imposed by the Army Recruitment Act". This Act accords a special status to those persons who "before their induction declare that they are opposed, by reason of their religious or philosophical convictions, to the personal use of arms in all circumstances".

It reconciles the freedom of thought and conscience proclaimed in article 18 of the Universal Declaration of Human Rights with concern for the interests of national defence.

The Act provides that if those persons make application to the Minister of the Armies and if the application is accepted by a commission under the chairmanship of a judge, they shall be assigned either to an unarmed military unit, or to a civilian unit doing work of general interest in which they shall perform, for a period twice that of normal service, work or missions which may be of a dangerous character.

It is also provided that objectors may at any time, on their request, be inducted into an armed unit.

At the same time any propaganda in any form whatsoever tending, apart from all philosophical considerations, to incite another to take advantage of the above-mentioned provisions solely for the purpose of evading his military obligations is made subject to criminal penalties, which may be as much as three years of imprisonment and a fine of 10,000 francs.

(2) Act No. 64-1326 of 26 December 1964 providing that crimes against humanity are not subject to any period of limitation. It contains a single article which reads as follows:

"Crimes against humanity as defined by the resolution of the United Nations of 13 February 1946, which takes note of the definition of crimes against humanity contained in the Charter of the International Military Tribunal dated 8 August 1945, are by their nature not subject to any period of limitation."

This text, which is intended to deprive persons committing crimes against humanity of the benefit of periods of limitation, is in conformity with the spirit of articles 4 and 5 of the Universal Declaration of Human Rights which provide that no one shall be held in slavery or subjected to torture or

¹ Note communicated by the Government of France.

² For a more comprehensive treatment of the Act of 11 July 1966, see below, p. 140.

to cruel, inhuman or degrading treatment or punishment.

It should be recalled, that according to the resolution of the United Nations of February 1946, which refers to the Charter of the International Military Tribunal dated 8 August 1945, crimes against humanity are: "murder, exter-

mination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connexion with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".

DEVELOPMENT OF HUMAN RIGHTS IN 1966³

There was little legislation in 1966.

The progressive revision of the major provisions of the Civil Code is continuing, with a drastic reform of the legislation on *adoption*.

The development of family law has resulted in an expanded commentary on the institution of guardianship judge contained in a memorandum from the Keeper of the Seals (Minister of Justice).

In the field of social rights, there is only one *Act* amending the institution of Works Committees.

Extracts from the text of the latter are given in the appendix.

I. CIVIL AND INDIVIDUAL RIGHTS

1. *Amnesty*

Two amnesty laws of limited scope have been passed. Under the Act of 17 June 1966⁴ amnesty was granted to persons sentenced to fines, conditional imprisonment or actual imprisonment for crimes, misdemeanours and offences committed in connexion with the events in Algeria in 1958 and 1960, or constituting an individual or collective attempt to prevent the State from exercising its authority, provided that they were released before promulgation of the Act. Amnesty was also granted for similar acts liable to summary punishment or occupational penalties (strike activities, for example).

Under the Act of 18 June 1966⁵ amnesty is also granted for various offences under the general law committed prior to 8 January 1966. Breaches of tax laws, fraud in connexion with housing construction and crimes and acts of criminal complicity are specifically excluded from the amnesty.

This Act is applicable to the overseas territories of France.

2. *Nationality*

An ordinance of 31 July 1962 provided that persons of Algerian origin enjoying civil status under local law, who had transferred their domicile to France, might be granted French national-

ity for three years by making a declaration expressing their desire to be granted that nationality. In view of the fact that the majority of those wishing to take advantage of this ordinance had already done so, an Act of 20 December 1966⁶ repealed it as from 22 March 1967, and fixed at 1 July 1963 the date when, having failed to make a declaration to accept French nationality, the person(s) concerned are considered to have forfeited that nationality. Nevertheless, to avoid cases of statelessness those who have not accepted another nationality (in practice, that of Algeria) since 1962 are permitted to retain French nationality. That regulation notwithstanding, complementary measures maintain the right of persons who have been kept in Algeria against their will to claim French nationality, and preserve the rights of certain categories of minor children raised or given refuge in France prior to the Act.

3. *New Legislation on Adoption*

The Act of 11 July 1966,⁷ supplemented by the decree of 2 December 1966,⁸ made certain basic and procedural changes in the institution of adoption which the lawmakers of 1963 never dreamed of making (cf. *Yearbook on Human Rights for 1963*, pp. 126-127).

The new system reduces to two the forms of adoption; abolishing the concept of "adoptive legitimation", it leaves only "full adoption", with severance of the original family ties, and "simple adoption", without severing those ties.

The new Act definitely seeks to make the interests of the child the paramount consideration in cases of adoption; however, there is no doubt that it is also concerned with facilitating the adoption of certain categories of children when there are many children available. This may indicate a reaction against the old and instinctive tendency to give preference to the natural family, even if it is unable to raise the child decently, and to discourage to a certain extent abandonment of children when there is a prospect of adoption.

Even more, the law seeks to prevent and resolve painful conflicts between the natural and the adoptive family such as have occurred in the last

³ Note prepared by Mr. E. Dufour, Master of Requests in the Conseil d'Etat, Paris, appointed by the French Government as correspondent to the *Yearbook on Human Rights*.

⁴ Act 66-396, *Journal officiel*, June 1966, p.4915.

⁵ Act 66-409, *Journal officiel*, June 1966, p.5147.

⁶ Act 66-945, *Journal officiel*, December 1966, p. 11171.

⁷ Act 66-500, *Journal officiel*, July 1966, p. 5956.

⁸ Decree 66-903, *Journal officiel*, December 1966, p. 10755.

few years. In this area, it is intended "to guarantee the rights of the natural family" by establishing certain precise legal pre-conditions for adoption, but also "to ensure by provisions relating to civil status the *de facto* break between the adopted child and his family of birth", and thereby the stability and the security of the adoption.

The eligibility requirements for the person adopting a child have definitely been eased; a couple must have been married for more than five years, at least one of the foster parents must have reached the age of thirty and they must not yet have a legitimate child of their own. However, the Act also authorizes adoption by an unmarried person over the age of thirty-five. The minimum difference in age between the adopter and the adopted is still fifteen years.

The following categories of children may be adopted; those whose mother and father or family council have given their valid consent to adoption; those who are wards of the State (i.e., various categories of abandoned infants); those who have been declared abandoned by a court decision establishing their *de facto* abandonment.

Only children under fifteen years of age (instead of seven years as previously) are subject to full adoption unless before that age a child has been taken into the home of persons who do not yet meet the legal requirements. Simple adoption is allowed irrespective of the age of the adopted child.

The Act strengthens the condition relating to the consent of the "natural" family, making that consent a declaration of abandonment, as definite as possible. The consent of both parents is required and may be given without the simultaneous designation of the adopting party. In that case, it is a simple statement of intention, but it must be authenticated before the judge or a notary. It must be accompanied by actually handing over the child to the child welfare service or to an authorized adoption agency. It can only be retracted within the brief period of three months.

When a court intervenes to pronounce the *de facto* abandonment of a child, it must determine whether the parents "have clearly taken no interest in it for more than a year". It may declare "abandoned" a legitimate child whose mother, after asking that the birth be kept secret, has consented to abandonment, if the presumptive father has not claimed the child for a year.

The effect of full adoption is to integrate the adopted child completely into the family of the adopting parents, including substituting their surname for his own and possibly changing his given name. It confers on the adopted child in the family of the adopting parents the same rights and the same duties which a legitimate child has. Moreover, the break is complete (except for the restrictions on marriage which are still in force) with regard to the natural family. Full adoption is irrevocable.

Simple adoption does not break the ties with the family of birth and, in particular, the adopted child keeps his rights of succession in it, while acquiring the same rights (except for the status of an heir who cannot be totally disinherited) in his adoptive family. It confers the name of the adopting parent upon the adopted child. Only the adopting parents may exercise all the rights of paternal authority. Simple adoption may be rescinded for serious reasons.

This new body of legislation also helps to modernize the Civil Code; it amends Title VIII of Book I and complements the reforms already mentioned in the previous issues of the *Yearbook on Human Rights for 1964* (see p. 116) and *1965* (see p. 104).

4. Guardianship of Minors, Guardianship Judge

After a year's experience with the Act of 14 December 1964 mentioned in the *Yearbook on Human Rights for 1964* (see p. 116), and with the reform of Title X of the Code of Civil Procedure (*Yearbook on Human Rights for 1965*, p. 104) dealing with the institutions of guardianship judge and family council, a long memorandum from the Keeper of the Seals (Minister of Justice) dated 1 July 1966⁹ commented upon these new texts and developed certain considerations which should govern their application. The main ideas which are developed correspond to the five chapters of this document: the role of the guardianship judge, the respective fields of competence of guardianship and legal administration, the rights and duties of the guardian and the legal administrator, the management of the ward's patrimony, and emancipation. Properly speaking, this text does not have the weight of a regulation, but should nevertheless give direction to the application of the new law and facilitate its interpretation.

5. Individual Freedoms

Two jurisdictional decisions merit attention.

Although rulings imposing administrative confinement in accordance with the decision of the President of the Republic of 24 April 1961 (under special powers he assumed to deal with the events in Algiers of April 1961) do not have to be justified, the administrative judge has the authority, in cases of serious challenge, to review the reasons for acts which restricted individual freedoms and notably the authority to establish whether they were materially accurate. When the Minister in the course of a jurisdictional inquiry does not bring any evidence to support the reasons that he gives for his order, whereas the plaintiff adduces much evidence in support of his case against the order, the administrative judge shall consider that the order in question is based on materially false premises.¹⁰

⁹ Circular, *Journal officiel*, July 1966, pp. 5786 and 6464.

¹⁰ Conseil d'Etat, 22 April 1966, 65723, *Minister of the Interior v. Mr. Mony. Recueil des Arrêts du Conseil d'Etat 1966*, p. 280.

The military administration which causes seals to be affixed on the lodging occupied by an officer outside of any military building and refuses to permit him to enter this lodging in order to look for certain personal belongings, seriously jeopardizes the inviolability of domicile and commits an "act of violence".¹¹

II. SOCIAL LEGISLATION

1. Foreign Workers

The presence on French territory of numerous foreign workers of very diverse nationalities and origins (North Africa, various nationalities of Sub-Saharan Africa, Spain and Portugal, Italy, Poland, etc.) has for many years justified action by the public authorities to protect their welfare. A decree of 14 September 1966¹² was passed extending the powers of the "Social Welfare Fund for Migrant Workers" and strengthening its means of action. This body henceforth shall have authority to carry out "social welfare programmes" established each year and covering, *inter alia*, "the reception and housing of migrant workers and their families, pre-training and vocational training, adult and youth education and social assistance to help these workers adjust to their new environment".

2. Works Committees

Instituted by an ordinance of 22 February 1945 in industrial and commercial enterprises employing more than fifty persons, Works Committees have an advisory function in economic matters and their task is to administer the social budget of the enterprise. An Act of 18 June 1966¹³ attempted to make some improvements in this institution by extending it to large agricultural enterprises, by suggesting the possibility (or the obligation in the largest undertakings) of dividing the staff into three categories instead of two, i.e., separating the engineers and the administrative and technical staff (*personnel supérieur*) from the foremen (*personnel moyen*) with whom they have been hitherto grouped in one single category, in contradistinction to the manual workers (*personnel subalterne*); by improving the Committee's information in areas where it exercises its advisory function, by establishing a more precise enumeration of the matters which require its advice and finally, by improving union representation by including a union representative appointed directly from each union organization recognized as representative in the enterprise. This union representative shall attend meetings and be authorized to give an advisory opinion. He shall enjoy the same

protection as that given to the elected members of the Committee in case of an attempt to dissolve the Committee.

In undertakings with more than 500 employees, the representative shall also enjoy free time, up to twenty hours per month paid by the undertaking, in order that he may effectively fulfil his functions (the preparation and study of dossiers, consultations and so forth).

Furthermore, the penalties for wilfully impeding the establishment of Works Committees, the free selection of their members or their regular operation are strengthened by the new Act.

III. INTERNATIONAL CONVENTIONS

The amendments to articles 23, 27 and 61 of the United Nations Charter, adopted 17 December 1963, have been published in the *Journal officiel de la République Française* by decree of 21 January 1966.¹⁴

An Act of 6 July 1966¹⁵ authorized the ratification of the European Convention on International Commercial Arbitration and the approval of arrangements for its implementation instruments which were opened for signature on 21 April 1961 and 17 December 1962 respectively, and signed on the same dates by France.

Following a decree of 1 June 1966¹⁶ the *Journal officiel* published the regulation dated 12 May 1965 supplementing the International Sanitary Regulations.

¹⁴ Decree 66-78, *Journal officiel*, January 1966, p. 797.

¹⁵ Act 66-480, *Journal officiel*, July 1966, p. 5780.

¹⁶ Decree of 1 June 1966, *Journal officiel*, June 1966, p. 4619.

APPENDIX

Extract from the provisions of Act 66-427 of 18 June 1966 amending certain provisions of ordinance 45-280 of 22 February 1945, which instituted Works Committees:

Extract from the new articles 2 and 3 as amended:

"The Works Committee shall co-operate with the management in the improvement of the general employment and working conditions of the employees and their living conditions in the undertaking: all regulations dealing with such matters shall be submitted to it for advice.

"The Committee shall be consulted on the use to be made of the product of the contribution of 1 per cent on wages for the promotion of building and construction operations, irrespective of the objects to which the money is to be applied.

"The Committee shall also be consulted on general problems concerning occupational training and advanced training and their adaptation to employment, taking into account the evolution of techniques.

"In undertakings employing more than 300 persons the Works Committee shall set up a sub-committee for the purpose of studying the questions referred to in the preceding paragraph and all questions concerning the employment and work of young persons and women.

¹¹ Tribunal des Conflits, 27 June 1966, case 1889.

¹² Decree 66-674, *Journal officiel*, September 1966, p. 8137.

¹³ Act 66-427, *Journal officiel*, June 1966, p. 5267 and Decree of Implementation 66-697, *Journal officiel*, September 1966, p. 8367.

"It shall investigate every measure envisaged by the management or suggestion made by the employees with a view to improving the output and productivity of the undertaking, and shall make proposals for the adoption of the suggestions approved by it.

"It shall be consulted on questions concerning the organization, management and general running of the undertaking, in particular as regards measures such as they affect the number of staff members or the structure of the staff, hours of work or conditions of employment and work of the staff. It may make known its wishes on these various points.

"It shall be compulsory to give suitable notice to the Works Committee of any laying off of staff envisaged; the Committee shall state its views on the operation envisaged and its mode of implementation. The same view shall be transmitted to the labour inspector or to the inspector of social legislation in agriculture.

"In the course of each calendar quarter the head of the undertaking shall provide the Works Committee

with information concerning the carrying out of production programmes, general trends as regards orders and the employment situation in the undertaking. He shall inform the Committee of measures envisaged as regards the improvement, renewal or transformation of the plant or methods of production and management and their impact on conditions of work and employment. He shall give a detailed account, accompanied by the reasons for decisions taken, of action taken on advice given and wishes expressed by the Committee.

"At least once a year the head of the undertaking shall make a general report to the Works Committee on the activities of the undertaking, the profit-and-loss account, the aggregate results of production and management, the changes in salary structure and salary levels, investments, and his plans for the next financial year. In particular he shall submit to the Committee a report showing the levels of average hourly and monthly remuneration during the financial year and in relation to the preceding year."

GAMBIA

THE EMPLOYMENT ACT 1966

Act No. 19 of 1966, assented to on 28 October 1966¹

SUMMARY

Section 2 provides that the provisions of this Act shall apply to and be carried into effect by public and local authorities and by all persons in the employment thereof in the same manner as if they were private employers or workers, as the case may be, and that they shall not apply to persons in the service of the Government of the Gambia; persons in the naval, military or air services; members of the police force; members of the fire brigade; or members of the prison service.

As stated in section 7, no worker shall be prohibited from being or becoming a member of any trade union or other organization representing workers, or be subject to any penalty by reason of his membership of such trade union or organization. Section 7 also provides that any term or condition, whether express or implied, in any contract of service (whether such contract was entered into before or after the enactment of this section) that any worker shall not be or become a member of any trade union or other organization representing workers shall be void and of no effect.

Other provisions of the Act deal with oral contracts of service; written contracts; remedies, jurisdiction and procedure of courts; and offences.

¹ *Gambia Gazette*, No. 53, of 23 December 1966, Supplement C. The text of the Act in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series* 1966-Gam.1.

GUYANA¹

THE CONSTITUTION OF GUYANA²

Whereas the People of Guyana:

(a) Acknowledge that reverence for the Deity and respect for the inherent dignity and the equal and inalienable rights of all men are the foundation of freedom, justice and peace in society;

(b) Affirm the entitlement of all men to the fundamental rights and freedoms of the individual;

(c) Recognise that the said rights and freedoms are best established and secured in a democratic society founded upon the rule of law;

Now, therefore, the following articles, which make provision for the government of Guyana as such a democratic society, shall have effect as the Constitution of Guyana:

Chapter I

THE STATE AND THE CONSTITUTION

1. (1) Guyana shall be a sovereign democratic State.

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3. Whereas every person in Guyana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the following provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law of Guyana of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

5. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(a) In execution of the sentence or order of a court, whether established for Guyana or some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of an order of the High Court or the Court of Appeal or such other court as may be prescribed by Parliament punishing him for contempt of any such court or of another court or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

¹ Guyana became an independent State on 26 May 1966.

² Published as Schedule 2 to the Guyana Independence Order 1966, in *Statutory Instruments*, 1966, No. 575, by Her Majesty's Stationery Office, London, 1966.

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Guyana;

(f) In the case of a person who has not attained the age of twenty-one years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Guyana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Guyana or for the purpose of restricting that person while he is being conveyed through Guyana in the course of his extradition or removal as a convicted prisoner from one country to another;

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Guyana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Guyana in which, in consequence of any such order, his presence would otherwise be unlawful;

(k) Subject to the provisions of the next following paragraph, for the purposes of his preventive detention.

(2) (a) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless a tribunal established for the purposes of this paragraph has reported before the expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention.

(b) The references in subparagraph (a) of this paragraph to a period of three months include references to any lesser periods that amount in the aggregate to three months:

Provided that no two such lesser periods shall be aggregated for this purpose if the period between the expiration of the first and the commencement of the second is more than one month.

(c) A person who has been detained by virtue of the provisions of any law providing for preventive detention and who has been released from detention in consequence of a report of a tribunal established for the purposes of this paragraph that there is, in its opinion, insufficient cause for his detention shall not be again detained by virtue of such provisions within the period of six months from his release on the same grounds as he was originally detained.

(d) For the purposes of subparagraph (c) of this paragraph a person shall be deemed to have been

detained on the same grounds as he was originally detained unless a tribunal established as aforesaid has reported that, in its opinion, there appear, *prima facie*, to be new and reasonable grounds for the detention (but the giving of any such report shall be without prejudice to the provisions of subparagraph (a) of this paragraph).

(e) A tribunal established for the purposes of this paragraph shall be established by law and shall consist of persons who are Judges of the Supreme Court of Judicature or who are qualified to be appointed as Puisne Judges of the High Court.

(3) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal adviser of his own choice, being a person entitled to practise in Guyana as an advocate or solicitor, and to hold communication with him.

(4) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed or being about to commit a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(6) Nothing in the provisions of paragraphs (3) and (4) of this article shall apply to any person arrested or detained by virtue of the provisions of any law providing for preventive detention except in so far as the provisions of the said paragraph (3) require that he shall be permitted to retain and instruct a legal adviser and to hold communication with him.

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this article, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(d) Any labour required during any period when Guyana is at war or in the event of any hurricane, earthquake, flood, fire or other like calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that calamity, for the purpose of dealing with that situation.

7. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorises the infliction of any punishment or the administration of any treatment that was lawful in the former Colony of British Guiana immediately before 26th May 1966.

8. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law and where provision applying to that acquisition or taking of possession is made by a written law:

(a) Requiring the prompt payment of adequate compensation; and

(b) Giving to any person claiming such compensation a right of access, either directly or by way of appeal, for the determination of his interest in or right over the property and the amount of compensation, to the High Court.

...

9. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, town or country planning, the development or utilisation of mineral resources, or the development or utilisation of any other property in such manner as to promote the public benefit;

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) That authorises an officer or agent of the Government of Guyana, or of a local government authority or of a body corporate established directly by law for public purposes to enter on the

premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, duty, rate, cess or other impost or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) That authorises, for the purpose of enforcing the judgment or order of a court in any proceedings, the entry upon any premises by order of a court.

10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and, except with his consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or nature than the most severe penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court of a criminal offence and either convicted or acquitted shall again be tried

for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other tribunal prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other tribunal, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other tribunal, including the announcement of the decision of the court or other tribunal, shall be held in public.

(10) Nothing in the preceding paragraph shall prevent the court or other tribunal from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other tribunal:

(a) May by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of decency, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) May by law be empowered or required so to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(a) Paragraph (2)(a) of this article to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) Paragraph (2)(e) of this article to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) Paragraph (5) of this article to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention, the provisions of paragraph (1), paragraph (2)(d) and (e) and paragraph (3) of this article shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in paragraph (2)(d) of this article shall be construed as entitling a person to legal representation at public expense.

(14) In this article "criminal offence" means a criminal offence under the law of Guyana.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this article the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community, whether or not that community is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) Except with his own consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision:

(a) Which is reasonably required:

- (i) In the interests of defence, public safety, public order, public morality or public health; or
- (ii) For the the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion: or

(b) With respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places.

(7) References in this article to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

12. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure on information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) That imposes restrictions upon public officers.

13. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests.

14. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Guyana, the right to reside in any part of Guyana, the right to enter Guyana, the right to leave Guyana and immunity from expulsion from Guyana.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this article.

15. (1) Subject to the provisions of this article:

(a) No law shall make any provision that is discriminatory either of itself or in its effect; and

(b) No persons shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.

(3) Paragraph (1)(a) of this article shall not apply to any law so far as that law makes provision:

(a) With respect to persons who are not citizens of Guyana;

(b) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(c) Whereby persons of any such description as is mentioned in the preceding paragraph may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable.

(4) Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1) (a) of this article to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinion, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, or any office in the service of a local government authority or of a body corporate established by any law for public purposes.

(5) Paragraph (1)(b) of this article shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in either of the two preceding paragraphs.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision:

(a) Whereby persons of any such description as is mentioned in paragraph (2) of this article may be subjected to any restriction on the rights and freedoms guaranteed by articles 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorised by article 9(2), article 11(6), article 12(2), article 13(2), or article 14(3) other than subparagraph (c) thereof, as the case may be;

(b) For the appropriation of revenue or other funds of Guyana; or

(c) For the protection, well-being or advancement of the Amerindians of Guyana.

(7) Paragraph (1)(b) of this article shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

16. (1) This article applies to any period when:

(a) Guyana is at war; or
 (b) There is in force a proclamation (in this article referred to as a "proclamation of emergency") made by the Governor-General declaring that a state of public emergency exists for the purposes of this article; or

(c) There is in force a resolution of the National Assembly, in favour of which there were cast the votes of not fewer than two-thirds of all the elected members, declaring that democratic institutions in Guyana are threatened by subversion.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of article 5, 6(2) or 9, any provision of article 10 other than paragraph (4) thereof or, any provision of articles 11 to 15 (inclusive) of this Constitution to the extent the law in question makes in relation to any period to which this article applies provision, or authorises the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

...

17. (1) Where any person is lawfully detained by virtue of such a provision as is referred to in article 16(2) of this Constitution, or the movement or residence within Guyana of any person or any person's right to leave Guyana is (otherwise than by order of a court) lawfully restricted by virtue of such a provision as aforesaid, his case shall be reviewed by a tribunal established for the purposes of this article not later than three months from the commencement of the detention or restriction and thereafter not later than six months from the date on which his case was last reviewed as aforesaid.

(2) On any review by a tribunal in pursuance of the preceding paragraph of the case of any person the tribunal may make recommendations concerning the necessity or expedience of continuing the detention or restriction to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation.

(3) A tribunal established for the purposes of this article shall be so established by law and constituted in such manner as to secure its independence and impartiality and presided over by a person appointed by the Chancellor from among the persons entitled to practise in Guyana as advocates or solicitors.

18. (1) Except in proceedings commenced before 26th November 1966 with respect to a law made under the British Guiana (Constitution) Orders 1961 to 1965, nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any provision of articles 4 to 15 (inclusive) of

this Constitution to the extent that the law in question:

(a) Is a law (in this article referred to as "an existing law") that had effect as part of the law of the former Colony of British Guiana immediately before 26th May 1966, and has continued to have effect as part of the law of Guyana at all times since that day;

(b) Repeals and re-enacts an existing law without alteration; or

(c) Alters an existing law and does not thereby render that law inconsistent with any provision of the said articles 4 to 15 in a manner in which, or to an extent to which, it was not previously so inconsistent.

(2) In subparagraph (c) of the preceding paragraph the reference to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof and to modifying it; and in the preceding paragraph "written law" includes any instrument having the force of law and in this and the preceding paragraph references to the repeal and re-enactment of an existing law shall be construed accordingly.

(3) In relation to any person who is a member of a disciplined force raised under a law in force in Guyana, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than articles 4, 6 and 7.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Guyana, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

19. (1) Subject to the provisions of paragraph (6) of this article, if any person alleges that any of the provisions of articles 4 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(a) To hear and determine any application made by any person in pursuance of the preceding paragraph;

(b) To determine any question arising in the case of any person which is referred to it in pursuance of the next following paragraph,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of articles 4 to 17 (inclusive) of this Constitution:

Provided that the High Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of articles 4 to 17 (inclusive) of this Constitution, the person presiding in that court shall refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of paragraph (3) of this article, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under this Constitution to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this article as may appear to Parliament to be necessary or desirable for the purpose of enabling the High Court more effectively to exercise the jurisdiction conferred upon it by this article.

(6) Parliament may make provision with respect to the practice and procedure:

(a) Of the High Court in relation to the jurisdiction and powers conferred upon it by or under this article;

(b) Of the High Court and the Court of Appeal in relation to appeals to the Court of Appeal from decisions of the High Court in the exercise of such jurisdiction;

(c) Of subordinate courts in relation to references to the High Court under paragraph (3) of this article;

including provision with respect to the time within which any application, reference or appeal shall or may be made or brought; and, subject to any provision so made, provision may be made with respect to the matters aforesaid by rules of court.

Chapter III

CITIZENSHIP

21. (1) Every person who, having been born in the former Colony of British Guiana, is on 25th May 1966 a citizen of the United Kingdom and Colonies shall become a citizen of Guyana on 26th May 1966.

(2) Every person who, having been born outside the former Colony of British Guiana, is on 25th May 1966 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but for his death have become a citizen of Guyana in accordance with the provisions of the preceding

paragraph, become a citizen of Guyana on 26th May 1966.

22. (1) Any woman who, on 25th May 1966, is or has been married to a person:

(a) Who becomes a citizen of Guyana by virtue of the preceding article; or

(b) Who, having died before 26th May 1966, would, but for his death, have become a citizen of Guyana by virtue of that article,

shall be entitled, upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Guyana:

Provided that, in the case of any woman who on 26th May 1966 is not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Guyana under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any person who, on 25th May 1966, is a citizen of the United Kingdom and Colonies:

(a) Having become such a citizen under the British Nationality Act 1948, by virtue of his having been naturalised in the former Colony of British Guiana as a British subject before that Act came into force; or

(b) Having become such a citizen by virtue of his having been naturalised or registered in the former Colony of British Guiana under that Act, shall be entitled, upon making application before 26th May 1971, to be registered as a citizen of Guyana.

(3) Any person who, on 26th May 1966, is a Commonwealth citizen (otherwise than by virtue of being a citizen of Guyana) and is ordinarily resident in Guyana and has during the period of ten years preceding that day been so resident in the former Colony of British Guiana for a period of, or periods amounting in the aggregate to, five years shall be entitled, upon making application before 26th May 1971, to be registered as a citizen of Guyana.

(4) Any woman who on 25th May 1966 is or has been married to a person who subsequently becomes a citizen of Guyana by registration under paragraph (2) or (3) of this article shall be entitled, upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Guyana:

Provided that, in the case of any woman who on 26th May 1966 is not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Guyana under this paragraph shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(5) Any application for registration under this article shall be made in such manner as may be prescribed as respects that application:

Provided that such an application may not be made by a person who has not attained the age of

twenty-one years and is not a woman who is or has been married but shall be made on behalf of that person by a parent or guardian of that person.

23. Every person born in Guyana after 25th May 1966 shall become a citizen of Guyana at the date of his birth:

Provided that a person shall not become a citizen of Guyana by virtue of this article if at the time of his birth:

(a) His father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Guyana and neither of his parents is a citizen of Guyana; or

(b) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

24. A person born outside Guyana after 25th May 1966 shall become a citizen of Guyana at the date of his birth if at that date his father is a citizen of Guyana otherwise than by virtue of this article or article 21(2) of this Constitution.

25. Any woman who, after 25th May 1966, marries a person who is or becomes a citizen of Guyana shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Guyana:

Provided that the right to be registered as a citizen of Guyana under this article shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

26. (1) If the Governor-General is satisfied that any citizen of Guyana has at any time after 25th May 1966 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other than Guyana, the Governor-General may by order deprive that person of his citizenship.

(2) If the Governor-General is satisfied that any citizen of Guyana has at any time after 25th May 1966 voluntarily claimed and exercised in a country other than Guyana any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Governor-General may by order deprive that person of his citizenship.

...

28. Parliament may make provision:

(a) For the acquisition of citizenship of Guyana by persons who do not become citizens of Guyana by virtue of the provisions of this Chapter;

(b) For depriving of his citizenship of Guyana any person who is a citizen of Guyana otherwise than by virtue of article 21, 23 or 24 of this Constitution; or

(c) For the renunciation by any person of his citizenship of Guyana.

...

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 26th May 1966 and the birth occurred after the 25th May 1966 the national status that the father would have had if he had died on 26th May 1966 shall be deemed to be his national status at the time of his death.

...

Chapter V

PART 2

The Ombudsman

52. (1) For the purpose of conducting investigations in accordance with the provisions of this Part of this Constitution, there shall be an Ombudsman.

(2) The Ombudsman shall be appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

(3) The Ombudsman shall not perform the functions of any public office and shall not, without the approval of the Prime Minister in each particular case, hold any other office of emolument, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(4) Subject to the provisions of the next following paragraph, a person holding the office of Ombudsman shall vacate that office at the expiration of four years from the date of his appointment.

(5) The provisions of article 118 of this Constitution (which relate to removal from office) shall apply to the office of Ombudsman, and for the purposes of paragraphs (4) and (6) of that article the prescribed authority shall be the Prime Minister.

53. (1) Subject to the provisions of this article, the Ombudsman may investigate any action taken by any department of Government or by any other authority to which this article applies, or by Ministers, officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority on or after 26th May 1966.

(2) The Ombudsman may investigate any such action as aforesaid in any of the following circumstances, that is to say:

(a) If a complaint in respect of the action is duly made to the Ombudsman by any person or body of persons, whether incorporated or not, alleging that the complainant has sustained injustice in consequence of a fault in administration;

(b) If a Minister or a member of the National Assembly requests the Ombudsman to investigate the action on the ground that a person or body of persons specified in the request has or may have sustained such injustice;

(c) In any other circumstances in which the Ombudsman considers that he ought to investigate the action on the ground that some person or body of persons has or may have sustained such injustice.

(3) The Ombudsman shall not investigate under this Part:

(a) Any action in respect of which the complainant has or had:

- (i) A remedy by way of proceedings in a court; or
- (ii) A right of appeal, reference or review to or before an independent and impartial tribunal other than a court; or

(b) Any such action, or action taken with respect to any such matter, as is described in the First Schedule to this Constitution:

Provided that the Ombudsman:

- (i) May conduct an investigation notwithstanding that the complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;
- (ii) Shall not in any case be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to the High Court for redress under article 19(1) of this Constitution (which relates to redress for contraventions of provisions for the protection of fundamental rights and freedoms).

(4) In determining whether to initiate, continue or discontinue an investigation under this Part, the Ombudsman shall, subject to the foregoing provisions of this article, act in accordance with his individual judgement and in particular, and without prejudice to the generality of the foregoing, the Ombudsman may refuse to initiate, or may discontinue, any investigation if it appears to him that:

(a) The complaint relates to action of which the complainant has had knowledge for more than twelve months before the complaint was received by the Ombudsman;

(b) The subject matter of the complaint is trivial;

(c) The complaint is frivolous or vexatious or is not made in good faith; or

(d) The complainant has not a sufficient interest in the subject matter of the complaint.

(5) The authorities other than departments of Government to which this article applies are:

(a) Any authority empowered to determine the person with whom any contract or class of

contracts shall be entered into by or on behalf of the Government of Guyana; and

(b) Such other authorities as may be prescribed by Parliament.

(6) For the purposes of this article the Judicial Service Commission, the Public Service Commission and the Police Service Commission shall not be regarded as departments of Government.

(7) For the purposes of paragraph (2)(a) of this article a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorised to represent him.

(8) Any question whether a complaint or a request for an investigation is duly made under this Part or any law enacted in pursuance of article 55 of this Constitution shall be determined by the Ombudsman.

(9) Where a complaint or request for an investigation is duly made as aforesaid and the Ombudsman decides not to investigate the action to which the complaint or request relates or to discontinue an investigation of that action, he shall inform the person or body of persons who made the complaint or request of his decision.

(10) In this article "action" includes failure to act and "action taken" shall be construed accordingly.

54. (1) After conducting an investigation under this Part the Ombudsman shall inform the department or authority concerned of the result of that investigation and, if he is of the opinion that any person or body of persons has sustained injustice in consequence of a fault in administration, he shall inform that department or authority of the reasons for that opinion and may make such recommendations for action by that department or authority as he thinks fit.

(2) After conducting an investigation under this Part in pursuance of a complaint or a request for an investigation made by a Minister or a member of the National Assembly, the Ombudsman shall:

(a) If he is of the opinion that the complainant or, in the case of an investigation conducted in pursuance of such a request, the person or body of persons specified in the request has sustained injustice in consequence of a fault in administration, inform the person or body of persons who made the complaint or request that he is of that opinion and the nature of the injustice that he considers has been sustained;

(b) If he is of the opinion that the complainant or, in the case of an investigation conducted in pursuance of such a request, the person or body of persons specified in the request has not sustained injustice, inform the person or body of persons who made the complaint or request that he is of that opinion and the reasons therefor.

(3) Where the Ombudsman has made a recommendation under paragraph (1) of this article and within a reasonable time thereafter no action has been taken which appears to the Ombudsman adequately to remedy the injustice,

he may lay before the Assembly a special report on the case.

(4) The Ombudsman shall annually lay before the Assembly a general report on the performance of his functions under this Part.

55. Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Part, including (without prejudice to the generality of the foregoing power) provision:

(a) For the procedure to be observed by the Ombudsman in performing his functions;

(b) For the manner in which complaints and requests for investigation shall be made to the Ombudsman and for the payment of fees in respect of any complaint or investigation; and

(c) For the powers, duties and privileges of the Ombudsman or of other persons or authorities with respect to the obtaining or disclosure of information for the purposes of any investigation or report by the Ombudsman.

56. In this Part:

"complainant" means the person or body of persons by or on whose behalf a complaint under this Part is made; and

"fault in administration" includes without prejudice to its generality, any contravention of article 15 of this Constitution (which relates to discrimination on grounds of race, place of origin, political opinions, colour or creed).

Chapter VI

PARLIAMENT

PART I

Composition of Parliament

57. There shall be a Parliament of Guyana, which shall consist of Her Majesty and a National Assembly.

58. (1) Subject to the next following paragraph and to articles 34 and 42 of this Constitution, the National Assembly shall consist of fifty-three members, or such greater number of members as Parliament may prescribe, who shall be elected in accordance with the provisions of this Constitution and, subject thereto, in accordance with any law made by Parliament in that behalf.

(2) If any person who is not a member of the National Assembly is elected to be Speaker of the Assembly he shall, by virtue of holding the office of Speaker, be a member of the Assembly in addition to the members aforesaid.

59. Subject to the next following article, a person shall be qualified for election as a member of the National Assembly if, and shall not be so qualified unless, he:

(a) Is a Commonwealth citizen of the age of twenty-one years or upwards;

(b) Has resided in Guyana for a period of one year immediately preceding such day before the day appointed for the holding of the election as may be prescribed by Parliament or is domiciled and resident in Guyana on the first-mentioned day; and

(c) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.

60. (1) No person shall be qualified for election as a member of the National Assembly who:

(a) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(b) Has been adjudged or otherwise declared insolvent under any law in force in Guyana and has not been discharged;

(c) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Guyana;

(d) Is under sentence of death imposed on him by a court, or is serving a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(e) Holds or is acting in the office of any Judge of the Supreme Court of Judicature, a member of the Elections Commission, the Judicial Service Commission, the Public Service Commission or the Police Service Commission, the Director of Public Prosecutions, the Ombudsman, or the Director of Audit.

(2) Without prejudice to the provisions of the preceding paragraph, Parliament may provide that a person shall not be qualified for election as a member of the National Assembly in any of the following cases, that is to say:

(a) If he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of an election or the compilation or revision of any register of electors for the purposes of an election;

(b) Subject to any exceptions and limitations prescribed by Parliament, if he has any such interest in any such Government contract, as may be so prescribed;

(c) Subject as aforesaid, if:

(i) He holds or is acting in any office or appointment prescribed by Parliament either individually or by reference to a class of office or appointment;

(ii) He belongs to any armed force of Guyana or to any class of person that is comprised in any such force; or

(iii) He belongs to any police force of Guyana or to any class of person that is comprised in any such force;

(d) If, during such period (not exceeding five years) preceding the election day as may be prescribed by Parliament, he:

- (i) Has been convicted by a court of an offence relating to excitement of hostility or ill-will against any person or class of persons on the grounds of his or their race; or
- (ii) Has been convicted by a court of any offence connected with an election that is so prescribed or has been reported guilty of such an offence by the High Court in proceedings under article 71 of this Constitution:

Provided that Parliament may empower the court to exempt a person from disqualification for election on account of such a conviction or report if the court deems it just so to do.

(3) For the purposes of paragraph (1)(d) of this article:

(a) Two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(4) In paragraph (2)(b) of this article "Government contract" means any contract made with the Government of Guyana or with a department of that Government or with an officer of that Government contracting as such.

PART 2

Elections

65. (1) No person shall vote at an election unless he is registered as an elector.

(2) Subject to the provisions of paragraphs (3) and (4) of this article, a person shall be qualified to be registered as an elector for elections if, and shall not be so qualified unless, on the qualifying date, he is of the age of twenty-one years or upwards and either:

(a) Is a citizen of Guyana who is domiciled in Guyana or who is resident in Guyana and has been so resident for a period of one year immediately preceding the qualifying date; or

(b) Is a Commonwealth citizen who is not a citizen of Guyana and who is domiciled and resident in Guyana and has been so resident for a period of one year immediately preceding the qualifying date.

(3) No person shall be qualified to be so registered who on the qualifying date:

(a) Is under sentence of death imposed on him by a court, or is serving a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(b) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Guyana.

(4) No person shall be qualified to be so registered if during such period (not exceeding five years) preceding the qualifying date as may be prescribed by Parliament, he has been convicted by a court of any offence connected with elections that is so prescribed or has been reported guilty of such an offence by the High Court in proceedings under article 71 of this Constitution:

Provided that Parliament may empower the court to exempt a person from disqualification for registration on account of such a conviction or report if the court deems it just so to do.

(5) In this article, "the qualifying date" means such date as may be appointed by or under an Act of Parliament as the date with reference to which a register of electors shall be compiled or revised.

(6) For the purposes of paragraph (3)(a) of this article:

(a) Two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

66. (1) The election of members of the National Assembly shall be conducted by secret ballot in accordance with the system of proportional representation prescribed by this article.

PART 3

Powers and Procedure of Parliament

73. (1) Subject to the provisions of this article, Parliament may alter this Constitution.

Chapter XI

MISCELLANEOUS

120. Notwithstanding any provision of this Constitution relating to the making of appointments to, removal of persons from, or the vacation of, any office, Parliament may provide for the imposition of disqualification for any office prescribed by Parliament on any person convicted by a court of an offence relating to excitement of hostility or ill-will against any person or class of persons on the grounds of his or their race.

PART II

Chapter IV

THE PRESIDENT

30. (1) There shall be a President of Guyana, who shall be the Head of State and Commander-in-Chief of the armed forces of Guyana.

(2) The President shall be elected by the National Assembly in accordance with this article.

(3) A person shall not be qualified for election as President unless he is a citizen of Guyana of the age of forty years or upwards, and a person shall

be disqualified for election as President if he is disqualified for election as a member of the Assembly by virtue of any provision of article 60 of this Constitution other than paragraph (1)(e) or of any law enacted in pursuance thereof other than a law enacted in pursuance of paragraph (2)(a) or (c) thereof.

(4) The President shall be elected by secret ballot at a meeting of the Assembly held for the purpose of electing the President (in this article referred to as an "election meeting"); and each elected member of the Assembly shall be entitled to a single vote in each ballot for the election of the President taken at such a meeting (in this article referred to as a "Presidential ballot").

HAITI

NOTE¹

The new national or international legal instruments relating to human rights adopted in Haiti in 1966 may be divided into two groups:

- (A) Those relating only incidentally and very indirectly to the question. These require only brief mention;
- (B) Those relating directly to the question. These call for the reproduction either of their full text or of their main provisions, together with the necessary explanatory comments.

A. The first group includes:

1. Pending ratification of new international conventions, two bilateral agreements concluded through a simple exchange of diplomatic *notes verbales*. Despite their provisional and limited nature, they affect the human right of freedom of movement because, under the Haitian Act of 29 November 1959, and subject to reciprocity, they provide for the granting of tourist cards to the nationals of the two contracting countries, thus doing away with mandatory transit and exit visas. One agreement was concluded between Haiti and the United Kingdom in March and the other between Haiti and Belgium in July 1966.

2. *Act of 21 July 1966*, replacing the annual identity card by a *livret d'identification* (identification book) valid for a period of five years and containing all the particulars necessary for identifying an individual during that period of time. This more rational and more effective method of identifying Haitian nationals and aliens resident in the country has a bearing on the exercise of all recognized human rights.

3. *Act of 10 August 1966*, placing the importation and use of radio, transmitting and television sets under more effective control and revising the previous system of taxation. While it is primarily of a fiscal nature, this Act may have an incidental influence on individual and collective participation in cultural and artistic life and in national or international scientific progress through the use of

modern means for the diffusion of knowledge, thought and information in application of article 27 of the Universal Declaration of Human Rights.

4. *Act of 18 August 1966*, amending the decree of 8 November 1965 granting to the Tobacco and Match Administration, an autonomous administrative organ, a monopoly of the distribution of essential articles. This Act adds to the earlier provisions nearly a hundred new essential articles, which it lists. By reason of its subject matter, this Act can affect the application of article 25 of the Universal Declaration of Human Rights.

5. *Act of 16 September 1966*, which is pre-eminently a measure of administrative streamlining, since it merely transfers to the Secretary of State for Health and Population some activities and responsibilities which logically come within his exclusive competence, such as hospital administration, the operation of social security or charitable institutions, homes for the disabled, rest homes, old people's homes etc., which formerly came under other ministerial departments.

B. The second group of measures includes four decrees having the constitutional force of law and designed to facilitate the solution of certain Haitian economic, social and political problems relating directly to the recognition and effective enjoyment of rights laid down, in the case of the first three, in article 25 of the Universal Declaration of Human Rights and, in the case of the fourth, in article 21 of that Declaration. These decrees improve the regulations and technical framework for guaranteeing and extending the full enjoyment of such rights. It is therefore necessary to explain their spirit and their various purposes by brief explanatory comments and to give, if not their full text, at least their main provisions. These are:

1. *Decree of 14 February 1966* on the operation of the *Comité national de lutte contre la malnutrition* (National Committee for the Elimination of Malnutrition) (CONALMA) (*Le Moniteur*, No. 14, 17 February 1966). This Committee was set up by the Act of 26 July 1965 in order to give effect to the resolutions adopted by the Seminar held, on the initiative of the Haitian Government, at Port-au-Prince from 30 May to 4 June 1965, with technical assistance from the

¹ Note furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law at the University of Port-au-Prince, Government-appointed correspondent for the *Yearbook on Human Rights*.

Inter-American Institute of the Child and with the co-operation of the United Nations Food and Agriculture Organization, the World Health Organization (WHO), Pan-American Sanitary Bureau (PASB), and the William Waterman Fund. The purpose of the Seminar was to provide immediate guidance for the policy of the Haitian Government in the field of nutrition and to grapple with Haiti's social and economic problems, which are aggravated by its high population density (167.9 inhabitants per square km.), its rate of population growth (2.29 per cent *per annum*), the inadequacy of its national production and the low level of average expenditure on food.

It is on these facts that the main paragraphs of the preamble of the decree are based, namely;

"Considering that nutritional policy is one of the State's priority social responsibilities and that for this purpose technical bodies having special powers and operating throughout the national territory should be set up within CONALMA;

"Considering that it is the State's duty to enable the Committee for the Elimination of Malnutrition to fulfil the economic and social purposes for which it was founded by determining its methods of operation".

2. *Decree of 7 March 1966 establishing the National Housing Office (Le Moniteur, No. 19, 7 March 1966).* According to its preamble, this decree was inspired by the following facts and ideas:

(1) The duly noted inadequacy of healthy and comfortable housing throughout the territory of the Republic resulting from the rapid population growth and the rural exodus to urban centres;

(2) This situation particularly affects the poorer people and forces the great majority of the working classes to live in unsuitable dwellings;

(3) It is the State's duty to make up for the lack of private initiative and to develop and vigorously to pursue an adequate housing policy so that the individual may live in an environment where he can enjoy the benefits and achievements of modern civilization;

(4) The modern State recognizes and guarantees to every manual or intellectual worker the right to well-being including in particular the possibility for him and his family to occupy a healthy, decent and comfortable dwelling where he may fully develop his capacities and contribute to the economic and social progress of the community while at the same time raising his own level of living;

(5) In pursuing the basic objectives of the Revolution, housing policy should be incorporated in the vast plan for the development of the territory which the Government has undertaken and is carrying out;

(6) The problem of housing presupposes rational planning and it is essential that responsibility for it should be entrusted to an administrative and technically qualified institution equipped with adequate means enabling it to

promote and carry out the construction of low-cost housing in keeping with the country's needs and with the requirements of a clearly defined programme;

(7) Accordingly, the statutes of the Administrative Office for Workers' Housing Estates should be amended, broadened and extended, to make it, in the light of its mission and its experience, a new organ with a structure enabling it to meet the demands of housing technology and science.

3. *Decree of 25 February 1966 concerning adoption (Le Moniteur, special issue No. 22-C, 18 March 1966).* Shortly after the proclamation of its independence, Haiti adopted, almost without amendment, the five main French Codes, including, firstly, the Civil Code or *Code Napoleon* in 1826, but with the provisions relating to adoption deleted; that no doubt being considered inappropriate to the social conditions of a population which had just emerged from colonial slavery. After 140 years of internal evolution and in our era of ideological inter-penetration and world technology, it became necessary to introduce this institution into Haitian law. The three brief paragraphs of the preamble of the decree express this idea in general terms:

(1) It is the obligation of the State to protect children and the family and it must devote particular care to abandoned or unfortunate children;

(2) Adoption should be regarded as a form of assistance, prompted by a wave of civilizing humanism, for the benefit of the deprived;

(3) Since the institution of adoption does not exist in our legislation, it must be introduced in all urgency and organized forthwith for the benefit of minors of under sixteen years of age.

4. *The electoral decree of 22 October 1966 (Le Moniteur, No. 94, 17 November 1966).* This decree is the last of a number of acts and decrees adopted since the country became independent which regulate the Haitian citizen's right to vote in elections, firstly of members of the legislative branch and the communal councils, and then, by direct suffrage, of the Head of the State, in accordance with the successive constitutions in force. This decree was influenced by the following considerations:

(1) It is the prime objective of the Government of the Republic to take adequate steps to guarantee the survival of the national and democratic institutions;

(2) A unicameral legislature, in a developing community, constitutes the best safeguard for the social, economic and political organization of a State and for the active participation of its people in the affairs of the Republic;

(3) The experiment of a unicameral legislature resulted from the particular structure of the Revolution of 1956/1957;

(4) Every State should choose the constitutional forms of its social, cultural, economic and political organization.

DECREE OF 17 FEBRUARY 1966 REGULATING THE MODE OF OPERATION
OF THE NATIONAL COMMITTEE FOR THE CAMPAIGN AGAINST MALNUTRITION (CONALMA)¹

Chapter I

FUNCTIONS

Art. 1. The National Committee for the Campaign against Malnutrition (CONALMA) is an administrative and technical body responsible to the Chief of the Executive Power and operating under the Secretariat of State for Labour and Social Welfare and the National Commissariat for Development and Planning (CONADEP).

Art. 2. The functions of the National Committee for the Campaign against Malnutrition (CONALMA) shall be:

To work out and propose rational, scientific and pragmatic solutions to reduce hunger and malnutrition in all strata of the population;

To plan, co-ordinate and supervise the activities of all public and private national and international organizations concerned in the campaign against malnutrition;

To train technical executive personnel for the campaign against malnutrition, at the higher and intermediate levels;

To make use of the services of Haitian and foreign specialists already working in laboratories and research and experimental stations in Haiti;

To define for humanitarian purposes the problem of fertility and its control and to encourage the population to adopt appropriate solutions;

To manage and administer the funds made available to it;

To accept any gifts, bequests and other donations from any individual or body corporate;

To organize national seminars on nutrition and, where necessary, to recommend Haitian participation in regional and international conferences and congresses on the subject;

To maintain relations with international organizations concerned with problems of hunger and malnutrition;

To examine and propose the ratification of international conventions submitted to the Government in this regard, and to help in their implementation;

To promote legislation on nutrition.

Chapter II

ORGANIZATION

Art. 3. The National Committee for the Campaign against Malnutrition (CONALMA), which shall be a legal entity, shall comprise:

An Executive Secretariat;

An Advisory Council;

Four Technical Departments.

The Executive Secretariat

Art. 4. The Executive Secretariat shall be made up of:

A Permanent Secretary;

Two members appointed for a period of one year in accordance with the order of appointment laid down in the Presidential Administrative Order of 17 September 1965.

Art. 5. The Executive Secretariat shall be responsible for:

The execution of decisions taken in plenary assembly and relating to the programme of action of CONALMA;

The general administration of CONALMA.

...

The Advisory Council

The Advisory Council of CONALMA shall consist of specialists in various fields, who shall collaborate in the preparation, direction and execution of the organization's programme of action by giving advice, and who shall be consulted by the various departments on questions relating to their speciality or their field of knowledge.

The Technical Departments

Art. 8. The technical departments of CONALMA shall be as follows:

The Research Department;

The Department of Nutritional Education;

The Medical Department;

The Food Economy Department.

The Research Department

Art. 9. The functions of the Research Department shall be:

To prepare all socio-economic and nutritional surveys and studies;

To gather together all data on the basis of which the causes of shortages may be determined and the amount of food available ascertained;

To determine the feeding habits and behaviour of the population;

To report on levels of food consumption in various social groups, and chiefly in groups which have priority or are vulnerable from the physiological standpoint.

The Department of Nutritional Education

Art. 10. The duties of the Department of Nutritional Education shall be:

¹ *Le Moniteur*, No. 14, 17 February 1966.

To direct food education policy at the national level;

To determine the nature and urgency of the various food needs of the population;

To determine the factors making for a balanced diet which meets the needs of the human organism;

To publicize the basic principles of feeding and nutrition with a view to the better utilization of the food supply in Haiti;

To co-operate in the preparation of teaching, audio-visual and broadcasting materials for instruction in and dissemination of nutritional principles;

To propose all programmes aimed at introducing food and nutrition education among the various social groups and at all educational levels.

The Medical Department

Art. 11. The Medical Department, which shall be essentially technical and advisory, shall carry on its activities in connexion with the various projects of CONALMA.

Art. 12. Its functions shall be:

To gather dietetic, chemical, morphological and metabolic data on the population's state of nutrition and the medical aspect of the problem, and to propose appropriate solutions;

To co-ordinate the nutritional activities of public and private bodies and international organizations in the medical field;

To work closely with all organizations concerned with family planning, in view of the correlation between the food supply and population growth;

To participate in the evaluation of the medical aspect of national nutrition programmes.

The Food Economy Department

Art. 13. The task of the Food Economy Department shall be to direct, co-ordinate and evaluate:

Food aid programmes;

Specific food production programmes relating to the diversification of agricultural and agro-industrial production and to the introduction of varieties of agricultural produce with a high nutritive value.

Art. 14. All food aid received within national programmes shall be used to prepare the way for the transition from the present food conditions of the population to the future stage of balanced national production.

Art. 15. The Food Economy Department shall draw up its programmes in relation to the specific needs of the population and on the basis of the following data:

Nutrition surveys;

Food production and consumption statistics;

Demographic statistics;

The cost of living index.

Chapter III

GENERAL PROVISIONS

...

Art. 19. CONALMA shall be financed from the following sources:

Budgetary appropriations;

Contributions from regional, international, public and private organizations;

Any other sources of income to be determined by law.

Art. 20. The funds of CONALMA shall be deposited at the National Bank of the Republic of Haiti (BNRH) in a special account entitled "CONALMA account".

...

DECREE OF 25 FEBRUARY 1966 INTRODUCING THE INSTITUTION OF ADOPTION INTO HAITIAN LAW IN ORDER TO GIVE SPECIAL CARE TO ABANDONED OR UNFORTUNATE CHILDREN¹

Art. 1. Adoption is the act by which a person takes as his own a child not born to him by nature. It shall be authorized in respect of minors below the age of sixteen whenever it is based on just reasons and is advantageous to the adoptee.

Art. 2. The right to adopt shall pertain only to persons, of either sex, over thirty years of age.

It may, however, be exercised jointly by two spouses one of whom is over thirty years of age,

provided that they have been married for more than ten years and have had no issue.

The adoptive parents must be at least nineteen years older than the minors whom they intend to adopt.

The subsequent birth of one or more children or descendants shall not constitute an obstacle to the adoption by a married couple of a child whom they had taken in before the birth of such child or children.

Art. 3. A Haitian may adopt or be adopted by a foreigner. Adoption shall not entail any change of nationality for the adoptee.

¹ *Le Moniteur*, Special issue No. 22-C, 18 March 1966.

Art. 4. No child may be adopted by more than one person, except by a married couple.

One of the two spouses may only adopt with the consent of the other, unless the latter is unable to express his wishes or unless they are legally separated.

Art. 5. If the father and mother of the minor to be adopted are still living, they must both consent to the adoption.

If one of the parents is deceased or unable to express his will legally, the consent of the other shall suffice.

The Communal Judge or the Chairman of the Communal Commission of the adoptive parent's domicile or residence shall be the legal representative of a minor's mother and father if they are unknown and shall consent to his adoption.

Art. 7. If the minor's mother and father are no longer living or if they are unable to express their wishes, the consent shall be given by the family council.

Art. 8. The name of the adoptive parent shall be conferred on the adoptee by adoption and added to his original name. If the adoptive parent and the adoptee have the same surname, no change shall be made.

Art. 9. The adoptive parent shall, with respect to the adoptee, have the rights and duties laid down by the Civil Code in legislation on paternal authority.

If the adoptive parent is placed under certain disabilities, is legally declared a missing person or dies during the adoptee's minority, paternal authority shall revert in full to the latter's relatives in the ascending line.

Art. 10. The family relationship resulting from the adoption shall extend to the adoptee's children.

Art. 11. Marriage shall be forbidden between: The adoptive parent, the adoptee and his descendants;

The adoptee and the adoptive parent's spouse and, conversely, between the adoptive parent and the adoptee's spouse;

Adopted children of the same person;

The adoptee and any children subsequently born to the adoptive parent.

These prohibitions may, however, be waived for serious reasons, by dispensation of the Head of State.

Art. 12. The adoptee shall provide maintenance for the adoptive parent if the latter is in need and *vice versa*.

The obligation to provide maintenance shall continue to exist between the adoptee and his

mother and father. However, the mother and father of the adoptee are not bound to provide maintenance unless he cannot obtain it from the adoptive parent.

Art. 13. If the adoptee dies without descendants, the property given by the adoptive parent or contained in his estate and existing in kind at the time of the adoptee's death shall revert to the adoptive parent or his descendants, on condition that it shall be used to contribute to the payment of debts and without prejudice to the rights of third parties.

Art. 14. If, during the lifetime of the adoptive parent and after the death of the adoptee, the latter's children or descendants themselves die without issue, the adoptive parent shall be the sole inheritor of the property given by him.

Art. 16. The act of adoption shall be ratified by the civil court of the adoptive parent's place of domicile.

The matter shall come before the court at the request of the first mover. A copy of the act of adoption shall be annexed thereto. The case shall be heard without delay and not placed on the cause-list.

Art. 17. The court, meeting *in camera*, shall, after verifying the necessary data from the social investigation, ascertain on the basis of the written conclusions of the *Ministère public*:

(1) Whether all the legal formalities have been complied with;

(2) Whether the adoption is based on valid reasons and is of real advantage to the adoptee.

Art. 18. The court, having deliberated, shall declare, without giving reasons, that there are, or are no, grounds for the adoption.

If there are grounds for the adoption, the terms of the judgement shall contain the particulars laid down in article 812 of the Code of Civil Procedure.

Art. 19. If ratification is refused, each of the parties may, within thirty clear days of the handing down of the judgement, refer the case to the Court of Appeal, which shall rule under the same procedures as the court of first instance.

Without stating its reasons, the Court of Appeal may confirm the judgement and declare that there are no grounds for the adoption, or it may invalidate it and decide that there are grounds for the adoption.

Art. 20. If the adoption is ratified, the *Ministère public* of the Civil Court may file an appeal and the decision shall be handed down under the procedures laid down above.

Art. 21. Appeals in cassation on a technical point against the decision refusing the request for ratification shall be admissible.

...

Art. 25. The competent court may, for very serious reasons, revoke the adoption at the request of the adoptive parent or the adoptee.

The court's judgement shall, in all cases, be subject to appeal.

Revocation shall invalidate all the effects of the adoption thereafter.

DECREE OF 7 MARCH 1966 ESTABLISHING THE NATIONAL HOUSING OFFICE WITH A VIEW TO THE DEVELOPMENT AND VIGOROUS PURSUIT OF AN ADEQUATE HOUSING POLICY¹

Art. 1. The Administrative Office for Workers' Housing Estates, established under the Haitian administration, shall become the "National Housing Office" as from the publication of this Decree.

Art. 2. The National Housing Office shall be an entity of public law, with legal status and financial and administrative autonomy, operating in the framework of the activities of the Department of Labour and Social Welfare.

Art. 3. The main task of the National Housing Office, which is intended to be the basic instrument of Haitian policy for social housing shall be:

(1) To maintain and administer all housing estates built by public communities;

(2) To carry out all socio-economic studies and research for the establishment of a nation-wide order of priorities and needs in housing;

(3) To construct and promote the construction of low-cost housing in urban and rural zones, to accommodate low-income families and individuals;

(4) To determine and lay down, from the physical, social and financial point of view, the standards to be used in pursuing these objectives;

(5) To specify precisely the criteria that shall govern the allocation of each type of dwelling and the methods of achieving private ownership;

(6) To establish within each built-up area a local centre for small-industry or other units, in order to help the inhabitants to raise their level of living in harmony with their new housing;

(7) To organize, with the participation of the residents, active social services in the various housing estates, in order to enable the residents to enjoy the full benefits of progress and civilization through a fully equipped environment;

(8) To decide upon and put into effect, after appropriate study, any agro-industrial initiative for the benefit of the community and the improvement of the economic status of the population of all housing estates or new urban centres;

(9) To negotiate any guaranteed loan with the authorization of the Secretariat of State for Labour and Social Welfare and the approval of the Secretariat of State for Finance and Economic Affairs;

(10) To establish or take part in any society for the attainment of the various basic objectives of housing policy.

Chapter II

ORGANIZATION AND OPERATION

Art. 4. The National Housing Office shall include a High Council for Programming made up of:

(a) The Secretary of State for Labour and Social Welfare or his representative;

(b) The Secretary of State for Finance and Economic Affairs or his representative;

(c) The Secretary of State for Public Works, Transport and Communications or his representative;

(d) The Secretary of State for Agriculture, Natural Resources and Rural Development or his representative;

(e) The Secretary of State for Health and the Population or his representative.

The Council shall be assisted by a Secretary-General.

Art. 5. The functions of the High Council shall be as follows:

(1) To define general housing policy;

(2) To establish the general rules and operational policy of the Office;

(3) To study plans and projects drawn up within the programme of the Office;

(4) To approve and vote the budget of the Office.

...

Art. 7. The administrative organization of the National Housing Office shall comprise:

(1) A Board of Directors;

(2) A Working Committee;

(3) A General Accounting Department;

(4) Specialized Departments.

Art. 8. The Board of Directors shall comprise an Administrative Director and a Technical Director.

...

Art. 13. There shall be five Specialized Departments:

The Socio-Economic Department;

The Department of Social Affairs;

The Maintenance and Building Department;

The Legal Department;

The Department of Enterprises.

¹ *Le Moniteur*, No. 19, 7 March 1966.

Chapter III

CONTRACTS AND OBLIGATIONS

(a) The functions of the Socio-Economic Department shall be to carry out all surveys and censuses relating to the housing problem in all its aspects.

(b) The Department of Social Affairs shall be responsible for the administration of the housing estates. It shall be the intermediary between the Board of Directors and the communities administered for all questions of whatever kind. It shall be responsible for the planning and organization of social programmes for the benefit of the people of these communities. It shall provide them with assistance in the form of group or individual social services.

In carrying out its duties the Department of Social Affairs shall be assisted by an Administrative Board consisting of:

Two employers' representatives;

Two trade union representatives;

Three representatives of the housing estates
(one for each of the categories listed in article 14).

They shall be elected by the High Council for Programming from a list of twenty-one names submitted by the Secretary of State for Labour and Social Welfare. Their office shall be purely honorary.

(1) It shall regularly undertake socio-economic investigations, in the form of open inquiries, within the communities under the jurisdiction of the Office.

(2) It shall compile all data and produce the results, which it shall submit in the form of statistical analyses.

(3) It shall encourage the communities concerned to support and co-operate in all regional programmes for community development.

The Maintenance and Building Department shall undertake the preparation of plans, studies and estimates relating to the maintenance, equipment and expansion of existing housing units and the building of new units. It shall carry out the work and, through regular inspections, shall ensure State supervision of community buildings and facilities. It shall provide technical assistance in all community programmes of social interest.

The Legal Department shall deal with all legal questions concerning the Office.

The Department of Enterprises shall be the section responsible, on the basis of previous socio-economic studies, for establishing small handicrafts or agro-industrial enterprises within the urban areas placed under the Office's jurisdiction as local centres with the aim of raising the level of living of the people concerned. It shall organize in these centres certain financial incentives for the purpose of developing an advanced environment for the inhabitants. It shall supervise the administration and accounting of these various activities and make all kinds of suggestions and recommendations relating to their profit-earning capacity.

Art. 14. The housing estates within the jurisdiction of the National Housing Office shall be placed in three categories:

(1) Estates with low-cost housing;

(2) Estates with housing at moderate rents;

(3) Estates with non-profit-making housing.

Art. 15. Houses in the first category shall be the subject of rental-purchase contracts drawn up between the National Housing Office and the purchasers on the basis of the real value of the buildings, divided into monthly instalments in relation to the term during which the tenant may acquire private ownership.

The monthly instalments shall be equal to 1/240 of the cost of construction, increased by one third to cover the cost of maintenance and operation of communal facilities.

Art. 18. Buildings in the housing estates shall not be attachable. The property right acquired in accordance with the provisions of article 16 shall not be subject to sale, transfer, mortgage or any other legal transaction except between the beneficiary and the National Housing Office. On the death of the beneficiary, the property right may only be transferred or sold to the surviving spouse, to an heir of the deceased person or to the National Housing Office.

Art. 21. Houses in the second category shall be subject only to rental agreements, the amount of which shall be calculated in relation to the capacity of the social group concerned to pay.

Art. 22. Dwellings in estates with non-profit-making housing shall be governed by special State provisions in favour of specific social categories.

*Chapter IV*FUNDS, RESOURCES
AND FINANCIAL ADMINISTRATION

Art. 27. The resources of the National Housing Office shall be made up of:

(a) Contributions by the Haitian State;

(b) Rents of buildings in the estates with low-cost housing;

(c) The net profit from investments in accordance with article 13 of this Decree;

(d) Donations, legacies, subsidies, etc.

Art. 28. The funds of the National Housing Office shall be allocated to:

- (1) General administrative costs;
- (2) The implementation of projects for the construction of low-cost housing;
- (3) The maintenance of the housing estates within the Office's jurisdiction;
- (4) The operation and expansion of the existing housing estates;
- (5) The implementation of a programme for leisure hours and all other activities for the welfare of residents;
- (6) The financing of socio-economic enterprises and participation in such enterprises.

...

SPECIAL PROVISIONS

Art. 34. Since the National Housing Office is a public service organization, the provisions of this Decree shall be public.

...

Art. 37. Compulsory expropriation for public purposes, with fair compensation, may be requested by the National Housing Office.

...

ELECTORAL DECREE OF 22 OCTOBER 1966¹

Art. 1. All Haitians, regardless of sex, who have completed their twenty-first year and are entitled to exercise their civil and political rights shall have the right to vote.

Art. 2. The right to vote shall be forfeited for the same reasons as cause the loss of Haitian citizenship, or in consequence of a final conviction following trial, if the sentence is for life and involves loss of all civil rights.

Art. 3. In the following cases the right to vote shall be suspended for such time as the grounds for such suspension continue to exist, namely:

- (a) On adjudgement of insolvency or fraudulent bankruptcy;
- (b) On judicial suspension of civil rights;
- (c) On committal for trial by process of law;
- (d) On conviction following trial in a court of law or by default if the sentence is for a term of imprisonment and involves loss of all civil rights or if the sentence is for a *peine correctionnelle* (correctional penalties) involving the suspension, wholly or in part, either of civil rights or of political rights only;
- (e) In consequence of conviction for refusal to render jury service, resulting in the suspension of political rights;
- (f) In consequence of conviction for electoral fraud. Suspension shall in this case be for three years.

Art. 4. Naturalized Haitians shall not be allowed to exercise the right to vote unless they furnish proof of fifteen years' uninterrupted residence in the territory of the Republic since the date of naturalization.

In the case of disputes concerning the right to vote of naturalized citizens, the burden of proof shall rest with the latter.

The list of aliens who have become naturalized Haitians shall be sent to the Presidents of the Electoral Boards through the offices of the Depart-

ment of the Interior. The list shall be posted at the main entrance to each polling station.

Any naturalized Haitian who is eligible to vote shall be issued a certificate of identity at his request by the Office of the Public Prosecutor (*Parquet*) of the Civil Court of his district.

Art. 5. Any citizen who fulfills the requirements set forth in articles 1 and 4 and to whom the provisions of articles 2 and 3 above do not apply, may vote either in the commune in which he has his civil domicile or in the commune where he has his political domicile.

Civil domicile is regulated by the Civil Code.

Political domicile is acquired by not less than one year's continuous residence in the commune.

Persons required to reside in a commune in the performance of their public duties may exercise their right to vote in that commune without regard to residence qualifications.

Art. 6. No citizen may vote twice in the same Primary Assembly or vote in two Primary Assemblies. Any person who contravenes this provision becomes liable to the penalties described in articles 59 *et seq.* of this Decree.

As the city of Port-au-Prince is divided into three electoral districts, (*circonscriptions*), the voters of that city have the option of voting in any of the three districts.

Chapter I – Section II

COMPILATION OF PERMANENT ELECTORAL ROLLS – VOTING WITHOUT REGISTRATION

Art. 7. The Primary Assemblies shall meet every six years when convened by the Executive, in the manner prescribed by law, to elect the members of the Legislative Chamber.

They shall meet in special session for the partial elections provided under article 53 of the Consti-

¹ *Le Moniteur*, No. 94, of 7 November 1966.

tution. The same provision shall apply to the case referred to in article 62 of the Constitution.

They shall deal with no topic other than that assigned to them by this Decree and shall break up when they have achieved the purpose for which their meeting was held.

Art. 8. The electoral rolls shall be permanent.

They shall be revised annually.

An executive decree shall specify the rules and forms of such revision.

During the annual revision and within the period to be prescribed by executive decree, any citizen omitted from the rolls may submit his claim at the Town Hall. Any voter registered on one of the rolls of the electoral district may request the registration or deletion of a person who has been omitted or improperly registered, in accordance with the procedure to be established.

Pending the establishment of the permanent rolls, legislative elections shall be held without registration.

Chapter II

CANDIDATES AND DECLARATION OF CANDIDATURE

Art. 9. To be elected a member of the Legislative Chamber, one must:

- (a) Be a Haitian who has never renounced his nationality;
- (b) Have completed his twenty-fifth year;
- (c) Enjoy civil and political rights; and
- (d) Have resided at least one year in the district he is to represent.

...

Art. 11. Candidates for legislative office shall make a declaration of candidature in the following manner:

A candidate for Deputy shall make his declaration to the Office of the Court Clerk at the chief town of his administrative or electoral district.

...

Chapter III

ELECTORAL DISTRICTS

Art. 15. The number of members of the Legislative Chamber shall be fixed at fifty-eight (58) deputies, until such time as the number and boundaries of the electoral districts shall have been determined on the basis of the economic and political importance and the population density of each district.

...

Chapter IV

PRIMARY ASSEMBLIES

Art. 17. All citizens eligible to vote shall meet on a date established by Executive Order to form the electoral Primary Assembly of their voting district.

Each Communal Council, or in its absence, each Communal Commission of the electoral district shall be required to give notice of the date, time and purpose of the meeting twice within the preceding fortnight, but at least one week in advance. This information shall be posted at the main entrances of the Town Hall, the Magistrates' Courts and the residences of the rural district officers.

Art. 18. The purpose of the Primary Assemblies of each electoral district is to elect, directly and by a relative majority of the votes cast:

The Deputy of the administrative or electoral district, if the district has to elect more than one deputy.

Art. 19. Each voter shall mark his ballot with the name of the candidate of his choice.

...

Art. 21. Each Board shall consist of a President, a Vice-President and four assistants.

Art. 22. The President, Vice-President and members of the Electoral Boards shall be chosen by lot by the communal administration from among the voters able to read and write who are presented by the declared candidates.

The names of the candidates' delegates for the drawing shall be written by the candidates' representatives themselves.

The date, day, time and place of the drawing to establish the Electoral Boards shall be given the widest possible publicity by each communal administration.

If none or an insufficient number of representatives of the declared candidates appears, the communal magistrate and one of his assessors, or, in their absence, the President and one of the members of the Communal Commission shall automatically become President and Vice-President of the Electoral Board.

In the absence of these officials, either because they are candidates for election or for any other reason, the local judge shall preside over the drawing. In his absence, it shall be presided by a prominent person of the locality, appointed by the candidates present or by their representatives.

...

Art. 26. In the event that difficulties should arise in the course of the voting, the Board shall tentatively resolve those difficulties by majority vote.

...

Art. 34. The balloting shall take place on one day only, from 6 a.m. to 6 p.m., without interruption.

Section II

COUNTING THE VOTES

Art. 36. After the polls have closed, the ballots shall be counted...

Art. 43. Immediately after the votes are counted, the results shall be made public, and all ballots other than those to be annexed to the report shall be burned in the presence of the voters.

A report on the voting shall be drawn up in four original copies and signed by all the members of the Board; mention shall be made of the reasons for the abstention of those who have not signed the report.

One of the original copies shall be posted at the main entrance to the polling station. The other three shall be sent, respectively, to the Department of the Interior and to the Counting Boards mentioned in articles 45 and 46 below.

After the votes are counted, any candidate or his representative may request from the Electoral Board a certified copy of the report on the results of the voting in the form specified in article 20 of this Decree.

GENERAL PROVISIONS

Art. 61. The maintenance of order in each polling station shall be ensured by the President of the Electoral Board, who shall direct the voting procedures and enforce the law.

Art. 62. The President of each Assembly shall call upon the officers and men of the *Force publique* for the assistance necessary to maintain order both inside and outside the polling station. The latter shall be obligated to accede to his request.

Art. 63. When military personnel present themselves as voters at an electoral assembly, they shall do so singly and shall be unarmed.

Art. 64. The President should expel from the polling station any individual who creates a disturbance.

Art. 65. The Presidents of the Counting Boards shall deliver to each candidate who has been elected, without charge and as soon as possible, a copy of the report giving the count of the votes in his election.

Art. 66. The original duplicates of the reports of the Counting Boards on the election of deputies shall be sent to the Secretary of State for the Interior within one week and shall be transmitted by him to the Legislative Chamber.

HONDURAS

DECREE No. 121 OF 8 NOVEMBER 1966¹

Art. 1. Articles 1, 8, 9, 10, 12, 14, 18, 26, 31 and 32 of Decree No. 43 of 28 February 1962 shall be amended to read as follows:

"Article 1. The Instituto de Fomento del Turismo (Institute to Promote Tourism) is hereby created, with the aims and powers specified in the present Act...

"...

"Article 14. Tourists are defined as foreigners neither domiciled nor resident in Honduras who make a temporary visit to the national territory for purposes of amusement, rest, study, health or other lawful ends not including the exercise of trade, industry, paid work and paid employment. A person legally

entering the country as a tourist is not required to present himself to the public security or immigration authorities after his entry, or prior to leaving the country if his departure is within the period of validity of his visa or corresponding document. A tourist who violates the provision that he may not engage in the exercise of a profession or in other unauthorized paid or profit-making activities will be liable to a fine of 100 lempiras (L 100.00) for the first offence, to expulsion for the second offence and, if he returns to Honduras in the same capacity as a traveller and commits a further offence, the immigration authorities will forbid him to remain in the country and shall take measures to prevent him from re-entering it.

"..."

¹ *La Gaceta*, No. 19,018, 18 November 1966.

ACT RELATING TO AMATEUR RADIO OPERATORS AND RADIO EXPERIMENTERS

Promulgated by Decree No. 119 of 22 November 1966²

Chapter I

GENERAL PROVISIONS

Art. 1. The operation of amateur and experimental radio stations shall be subject to the provisions of this Act, of Government regulations on such operation and of the relevant international treaties to which Honduras has adhered.

Art. 2. Stations authorized to operate in accordance with this Act may not be converted into stations of a type other than that specified in the corresponding licence and may not move to a site other than the one authorized, without the written permission of the Government.

Art. 3. Licences to operate the stations referred to in this Act may be extended to cover radio-telegraphy, radiotelephony, television or other similar means of transmission and may be issued solely to Hondurans or nationals of countries with reciprocal arrangements. Such licences shall be for personal use, non-transferable and valid for an indefinite period.

Art. 4. The Ministry of Communications and Public Works shall issue licences to operate the stations referred to in this Act. An application for such a licence must indicate the type of activities which the applicant wishes to carry out, his name and particulars, his domicile and the address at which the station will be installed once it has been authorized. If the applicant is a foreigner, he must prove that his country of origin permits

² *Ibid.*, No. 19,025, 26 November 1966.

Hondurans to operate stations of the same type as that specified in the application.

...

Art. 11. Amateur radio stations are forbidden to transmit concerts or music of any kind. They may, however, broadcast a low audio-frequency tone for short periods of time for test purposes, in order to develop and improve radio equipment. Amateur radio stations are also prohibited from dealing with matters of a political or religious nature or with matters that run counter to State security, law, morality or good behaviour.

...

Chapter II

OPERATORS

Art. 15. Applicants wishing to obtain an amateur operator's licence must meet the following requirements: (1) the applicant must be a citizen of Honduras or of a country which grants Hondurans reciprocal rights in this area; (2) he must have successfully completed primary education; (3) he must not have any penal record that would make him unworthy of public esteem; and (4) he must have passed the relevant examination.

...

DECREE No. 110 OF 1 NOVEMBER 1966³

Art. 1. A work permit for foreigners is hereby introduced, which shall be granted by the Ministry of Labour and Social Welfare on prior presentation of documents establishing the applicant as a legal resident of Honduras.

Art. 2. It is compulsory for foreigners to obtain the permit referred to in this decree before they may work in Honduras.

...

Art. 5. Foreigners who are legally residing and working in Honduras are allowed a period of one hundred and twenty (120) days, from the date of entry into force of this decree, in which to obtain their work permit.

Art. 6. It is compulsory for all employers to require a foreigner to present his work permit before giving him employment.

...

Art. 8. The Ministry of Labour and Social Welfare shall withhold the granting of the work permit where there is no reciprocity in the country of origin of the applicant.

...

³ *Ibid.*, No. 19,030, 2 December 1966.

ELECTORAL ACT

Promulgated by Decree No. 118 of 4 November 1966⁴

TITLE I

Sole Chapter

GENERAL PROVISIONS

Art. 1. All proceedings in connexion with elections that take place in the Republic shall be governed by the provisions of this Act.

Art. 2. All Honduran nationals, male and female, over eighteen years of age, are citizens of the Republic.

Art. 3. A citizen shall have the following rights: to vote in elections and to be elected; to join with

others in forming political parties in accordance with this Act; to join and to leave political parties already constituted. Persons serving in the army, the police, or any other armed body shall not vote but may be elected except in the cases forbidden by law.

Art. 4. A citizen shall have the following obligations, in addition to those referred to in the Constitution of the Republic and in other legislation: to register in the electoral rolls; to vote in popular elections; to perform, if elected, the duties of a public official or councillor unless he has good and sufficient cause for refusing or renouncing.

Art. 5. Effective exercise of the right of suffrage is the basis of the democratic, republican and representative system and, therefore, responsibility for the supervision and conduct of the electoral

⁴ *Ibid.*, Nos. 19,039, 19,040, and 19,041, 13, 14 and 15 December 1966.

proceedings rests equally with the State, the lawfully registered political parties and the citizens of Honduras, in the form and under the conditions laid down in this Act.

Art. 6. Any person preventing or restricting participation by a citizen of the Republic in the political life of the nation shall be liable to a penalty.

Art. 7. Penal action for electoral offences established by law shall be public and must be brought within six years.

Art. 8. The ordinary courts shall deal with electoral offences and misdemeanours under ordinary law, without distinction as to *fuero*.

TITLE II

Sole Chapter

SUFFRAGE

Art. 9. Suffrage is a right and a civic duty. Its exercise by citizens is mandatory within the limits and under the conditions prescribed in this Act.

Art. 10. All Honduran citizens entered in the National Voting Register and not included in the disqualified categories established by law are voters.

Art. 11. The right of suffrage may not be delegated; it shall be exercised by means of direct, equal and secret ballot.

Art. 12. The right of suffrage shall not be exercised by:

- (1) Persons serving in the armed forces, the police or any other armed body;
- (2) Persons committed to prison, convicted of a criminal offence or committed for trial;
- (3) Persons deprived of their political rights by final sentence of a court of law; and
- (4) Persons disqualified from the exercise of their civil rights.

TITLE III

Sole Chapter

POLITICAL PARTIES

Art. 13. Political parties are associations formed in accordance with the law by Honduran citizens in full enjoyment of their civil rights, for electoral purposes and purposes of political guidance and for the promotion through joint action of the national well-being.

Art. 14. Legally registered political parties are regarded as institutions of public law, whose

existence and freedom of action is guaranteed by the Constitution of the Republic, and are required to regulate their organization, operation and activity in accordance with the principles of the Constitution and those laid down in this law. However, no political parties based on race, sex or class may be formed.

Art. 15. The organization, registration and operation of political parties which proclaim or practise doctrines contrary to the democratic spirit of the Honduran people or which act in agreement with or in subordination to an international or foreign organization whose ideological programmes threaten the sovereignty of the State are hereby prohibited. Organizations promoting Central American unity or pan-Americanism doctrines or continental solidarity shall not be subject to this prohibition.

Art. 16. For the purposes of this law, only parties already registered shall be recognized as political parties.

Art. 30. Only groups set up and registered in accordance with this Act shall have the right to participate as political parties in any election.

POLITICAL MEETINGS AND ELECTIONEERING

Art. 39. Any person shall have the right to join with others, peacefully and without arms, in public demonstrations or in *ad hoc* assemblies without requiring to give notice or receive special permission.

Art. 40. Rallies or meetings in the open air and political demonstrations organized by political parties for propaganda or organizational purposes shall not be held by different parties in the same town on the same day. The local election councils shall be exclusively responsible for issuing the appropriate permits in their respective jurisdictions, which they shall do in strict rotation and in the order in which application is made, and they shall determine the order in which the various parties may engage in such activities in their respective localities. Application for a permit shall be made in writing. The council shall note on the application the date and time at which it was made and the decision concerning the application shall be communicated at once to the applicant and to the agents of the other parties in the locality and a record obtained of such notification. The same provision shall apply to assemblies held in public places by political parties for organizational purposes. On days on which a political demonstration or parade is to take place in a town, the sale and distribution of alcoholic beverages shall be prohibited and persons contravening this prohibition shall be liable to a fine of between 100 and 300 lempiras to be collected by the Government.

Art. 41. Duly constituted political organizations and citizens in general may engage in any type of electoral and political propaganda, in speech or in writing, using the Press, radio or television or any type of poster, advertisement, pamphlet, and, in general, any lawful means for the purpose of obtaining the support of citizens for the party's political platforms, of encouraging voters to register in the voting register or to vote in general or to vote in favour of particular candidates. The National Elections Council shall publish special regulations for the purpose of guaranteeing freedom of political and electoral propaganda and equal rights for all registered political parties.

Art. 42. It shall not be lawful to engage in anonymous propaganda, propaganda designed to encourage voters to stay away from the polls, and propaganda directed against human dignity or respect for the law.

Art. 43. All electoral propaganda shall remain within the bounds of decency and good citizenship, and any person who uses insulting or slanderous language or promotes public disturbance shall be liable for such acts in accordance with the ordinary law.

Art. 44. The local election councils shall not allow the electioneering offices or premises of one political party to be installed within less than 100 metres of the offices or premises of another.

Art. 45. None of the acts referred to in article 40 shall be prohibited unless, in the case of rallies and processions, permission has been given beforehand to another party for some similar public function in the same place and at the same time which might give rise to public disturbance. For political rallies or processions, applications shall be made to the local election council for the appropriate authorization; these shall be recorded in a book kept specially for the purpose, in which entries shall follow one after the other without spaces in between in the order in which the applications were made, according to the date and time of application. Official notice of the authorization shall be sent to the applicant party.

Art. 46. At the request of the party concerned, the authorities shall remove to a distance of two hundred (200) metres any person or group disturbing or seeking to disturb a political meeting or procession. The electioneering offices or premises of political parties shall remain closed for twenty-four hours on a day on which another party is holding a political rally or procession in a particular locality, except during the week prior to the holding of an election.

Art. 47. Public officials or employees are forbidden to engage during working hours in political propaganda activities or discussions. Members of the armed forces of whatever rank, members of the police force and persons in similar positions of authority shall not take part in the activities of

political parties or attend their offices or premises, or be present at electioneering meetings, or use the authority or influence deriving from their official positions for the benefit of, or to the detriment of, any political party, or wear the devices or emblems of any political party, or display propaganda posters in their quarters or engage in partisan demonstrations of any kind.

Art. 48. The National Elections Council, in enforcing the regulations referred to in article 41, shall abide strictly by the following principles:

(1) All electioneering shall be prohibited on the election day;

(2) Rallies for organizational purposes may be held at any time. Rallies or processions for electioneering purposes shall only be permitted from the date on which the election was announced up to two days before the date set for the election; and

(3) No authority shall prevent the open-air meetings referred to in the previous paragraph unless they infringe the provisions of article 40 of this Act.

TITLE IV

Chapter I

ELECTORAL BODIES GENERAL PROVISIONS

Art. 49. The organization, management and supervision of elections shall be the responsibility of the following bodies:

(1) A National Elections Council, which shall have jurisdiction throughout the Republic and shall have its headquarters in the capital;

(2) A Departmental Elections Council for each of the departments of the Republic, with its headquarters in the principal town of the department;

(3) A Local Elections Council with its headquarters in the administrative centre of each municipality and in the Central District;

(4) One polling station for every 500 citizens, or fraction of more than 100 citizens, whose names are included in the voting register of their respective municipality or district. If two or more polling stations are established, the total number of voters shall be divided among them.

...

TITLE VI

Sole Chapter

THE HOLDING OF ELECTIONS

Art. 90. The election shall be held on one day only.

Art. 91. On election day, the polling stations shall open at the appointed places punctually at

six (6) a.m. If any members of the Board of Election are absent, their respective alternates shall take their places. The premises shall be arranged in such a way that the Board of Election can be installed in one part, and a table where the voter can cast his vote in private by marking the appropriate ballot can be set up in another corner or section of the same premises, separated by a partition or by a non-transparent curtain in order to guarantee the secrecy of the vote to the fullest extent.

Art. 98. Voting shall continue uninterruptedly until 5 p.m. and no vote may be cast after that hour. At that time, the Chairman of the Board shall announce: "The voting is closed."

Art. 99. Individuals or enterprises employing office or manual workers shall give such of them who are eligible to vote permission to go and cast their votes during voting hours on election day.

Art. 102. The Boards of Election shall, by simple majority, give a clear ruling on any electoral problems raised by party representatives of by any citizen.

Art. 104. Only members of the Board of Election, the notary or observers, representatives of the political parties, members of the electoral bodies acting in their official capacity, and observers from national or international civic or cultural institutions and from national, regional or international legal organizations may remain on the polling station premises. In order to remain on the premises of a polling station, these observers must be accredited by presenting credentials issued by the National Elections Council; no more than two (2) observers may be present at the same time in any polling station whatever the number of accredited institutions. The institutions concerned must request the Government of the Republic or the political parties registered with the National Elections Council for the credentials referred to in this article.

Art. 105. The Boards of Election shall be empowered to maintain order on their respective premises, to guarantee the freedom of the election and to ensure that voters can enter and leave without hindrance. The Local Elections Councils shall be empowered to guarantee that citizens are free to vote and have free access to the town or district concerned. The Departmental Councils and the National Elections Council shall be empowered to ensure that citizens can exercise all the rights laid down in this Act and those laid down in the Constitution of the Republic with regard to elections and political activities.

Art. 106. Except as provided in the foregoing article, no member of the armed forces may be stationed within a distance of 100 metres from a polling station. Except where a state of emergency

is proclaimed, members of the army, police forces and any other armed body shall be confined to their quarters for two days before and one day after the date set for holding an election. With the authorization of the Local Elections Board, the police may, however, send out special squads for the apprehension of criminals or on other emergency missions; if it is established that such personnel have left their quarters for other purposes, the members of the Council and the official who has ordered such action shall be deemed guilty of the offence of electoral coercion.

Art. 107. Public entertainments and the retail sale and distribution of alcoholic beverages shall be prohibited from 6 a.m. of the day preceding an election day until 6 a.m. of the day after.

Art. 108. If a voter is blind or unable to use both hands, he may be accompanied by a guide or helper who may cast his vote for him.

Art. 110. The calling up of voters for military service shall be prohibited from the day of the announcement of the elections until the day after election day.

Art. 111. If, because of *force majeure*, the voting cannot proceed in a polling station or in a whole municipality, this shall not affect the validity of the elections held in the rest of the municipality, department or Republic; if the abortive election is for offices in the city government, new elections shall be held as prescribed by law.

Art. 112. No voter, member of a Board of Election, party representative, notary, witness or observer shall appear at a polling station armed, in a state of inebriation or bearing insignia or emblems showing his political affiliation.

TITLE VII

Announcement and nullification of election results

Chapter I

ANNOUNCEMENT OF ELECTION RESULTS

Art. 113. The President of the Republic and his Alternates shall be elected jointly and directly by the people by simple majority vote. The results of the election shall be announced by the National Elections Council or, failing this, by the National Congress.

Art. 114. For the purpose of declaring Deputies elected to the National Constituent Assembly or the National Congress, the system of proportional representation shall be used and applied in the following manner:

(1) The total number of valid votes obtained in each department shall be divided by the number of Deputies to be elected in the same constituency. The result of this division shall be the electoral quotient.

(2) As many Deputies and their respective alternates shall be declared elected as there are electoral quotients obtained by the corresponding list of candidates of each party.

(3) If all the seats for each department are not filled after the aforementioned distribution has been made, one Deputy and his respective alternate shall be declared elected from the list receiving the largest residual fraction of votes and this procedure shall be repeated successively in descending order of residual fractions until the number of seats corresponding to the constituency in question have been filled.

(4) Where a list of candidates receives a total number of votes less than the electoral quotient but more than half, it shall have the right to have the votes it has received considered a residual fraction and to participate in the distribution of seats by residual fractions referred to in the previous sub-paragraph.

Art. 115. The order of precedence in which the candidates appear in the corresponding list shall be taken into account in declaring Deputies and their alternates elected.

Art. 116. In departments which have to elect only one Deputy and one alternate, election shall be by simple majority.

Art. 117. The system of proportional representation shall be used for the election of members of municipal governments and shall be applied in the following manner:

(1) The total of valid votes cast in the municipality shall be divided by the total number of seats to be filled in accordance with the relevant Decree of Convocation. The resultant figure shall be the electoral quotient for each municipality.

(2) The citizen whose name appears first in the list of candidates receiving a majority of the votes cast, after the equivalent of one electoral quotient has been subtracted from the total number of votes cast for that list, shall be declared elected Mayor of the municipality.

(3) The citizen whose name appears first on the list receiving the highest number of votes, after the electoral quotient referred to in the previous paragraph has been subtracted, shall be declared elected Municipal Syndic. If the list is the same, the person whose name appears second shall be declared elected. One electoral quotient shall be subtracted from the total number of remaining votes cast for the list from which the Municipal Syndic has been declared elected.

(4) Applying to the results obtained from the previous operations the same descending order of quotients and residual fractions used for the election of Deputies under article 113 of this Act,

the required number of councilmen shall be declared elected.

Art. 118. When a municipal election is held to fill the seat of only one official, election shall be by simple majority.

...

Chapter II

VOIDING

Art. 121. Voiding actions may be instituted only against voting procedure, ballot counts and declarations of election results, without prejudice to the penalties that may be prescribed by law.

Art. 122. The only appeal that may be made against a voiding decision rendered by the National Elections Council shall be the appeal of *amparo* to the Supreme Court of Justice.

Art. 123. An election having any of the following irregularities shall be declared void:

(1) If it was held without being legally called;

(2) If it was not held at the time or place stipulated in the call;

(3) If the call was not made within the legal time-limits or extended or shortened the time-limits laid down in this Act;

(4) If the election was held during a period when constitutional guarantees were suspended;

(5) If one or more persons not possessing the qualifications expressly required by the Constitution of the Republic and by special laws has (have) been elected. If there are two or more seats to be filled, the election shall be deemed to be valid for the candidate or candidates possessing the necessary qualifications;

(6) If there has been any pressure on the part of public officials or employees or by private individuals, or any interference or violence on the part of armed bodies;

(7) If the electoral records or certificates have been altered or falsified;

(8) If, because of an error of name, a person other than the candidate is elected, unless this can be clearly interpreted to be the will of the electorate;

(9) If there has been any error or fraud in the ballot count, where this is decisive for the election;

(10) If there has been substantial misrepresentation in the records.

...

Art. 125. Voiding action may be instituted by any citizen within twenty days following the holding of an election and within three days following the declaration of the election results, when the latter is contested. The National Elections Council may review the antecedents *ad effectum videndi*, if it deems this necessary. It may

also order stricter compliance or implementation or require the provisions set forth in its orders to be executed.

...
Art. 127. If an election has been declared void, the National Elections Council shall immediately order a re-election.

TITLE VIII

Sole Chapter

PENALTIES

...
Art. 130. If an official or public employee or private person is guilty of an act of commission or omission with the intention of bringing pressure to bear on voters or on the election bodies he shall be deemed guilty of the offence of electoral coercion and shall be liable to long-term imprisonment in the lowest degree.

Art. 131. Any official, public employee or private person who, in exercising his own authority or acting on behalf of another authority, in any way prevents or hinders a citizen from exercising his right to vote or from taking any of the necessary preliminary steps in order to vote, or who restricts such a citizen in the exercise of such rights, shall be liable to the penalty referred to in the previous article.

Art. 132. A voter who casts more than one vote, or who votes despite the suspension of his

right to vote, or who votes under another person's name, or who buys or sells his vote shall be liable to a penalty of thirty days' imprisonment, which may not be commuted.

...
Art. 133. Any threat or act of violence committed against a voter or against those performing official electoral functions for the purpose of preventing the free exercise of suffrage shall be an offence punishable by long-term imprisonment in the lowest degree.

...
Art. 136. Any voter who fails to vote without good and sufficient cause shall be liable to a penalty of ten lempiras, which shall be enforced by the Mayor or by the Chairman of the Municipal Council of the Central District, as the case may be.

Art. 137. Any citizen who fails to register to vote without good and sufficient cause shall be liable to a fine of ten lempiras, which shall be enforced in the manner and by the officials prescribed in the foregoing article.

Art. 138. Any person who fraudulently registers twice in the National Voting Register shall be liable to long-term imprisonment in the lowest degree.

...
Art. 141. Any alien who in any manner hinders the performance of civil functions or who interferes in political matters pertaining to elections shall be expelled from the national territory, without prejudice to any other penalties to which he may be liable.

HEALTH CODE OF THE REPUBLIC OF HONDURAS

Promulgated by Legislative Decree No. 75 of 14 November 1966⁵

Summary

Book II of the Code deals with health promotion activities. They include, *inter alia*, the responsibility of the Ministry of Public Health and Social Welfare for laying down technical rules concerning the nutrition of the population (article 34); and that of the Ministry of Health for proposing laws or regulations prescribing the compulsory enrichment or minimum strength of certain foodstuffs with a view to overcoming the absence or insufficiency of nutritive substances in the food habitually consumed by the population (article 35).

Book III contains provisions on health protection activities. Article 84 of its Title V entitled "Foodstuffs and Food Control" reads as follows:

"The Ministry of Public Health and Social Welfare shall be responsible for laying down technical rules on foodstuffs, and the General Directorate of Health shall have responsibility for ensuring compliance with such rules with respect to the importation, production, processing, packaging, distribution, storage, transport, sale, handling and advertising thereof."

The following articles may further be quoted from Title V of Book III:

"85. No person shall import, produce, manufacture, sell or in any way use foodstuffs which are spoiled adulterated, falsified, contaminated,

⁵ *La Gaceta*, No. 19,057, 5 January 1967 and No. 19,058, 6 January 1967. Translations of extracts from the Code into English and French have been published by the United Nations Food and Agriculture Organization as *Food and Agricultural Legislation*, vol. XVI, No. 2, XI/9a.

deteriorated or packaged in such a manner that in the judgement of the health authorities their proper preservation is not guaranteed and their contamination cannot be avoided."

"91. The customs authorities of the Republic shall not release foodstuffs until the health authorities so permit."

"92. The entry into the country of livestock suffering from diseases communicable to man shall be prohibited. In every case, meat intended for human consumption shall undergo health inspection, as shall be prescribed in regulations of the General Directorate of Health, which shall in this respect receive co-operation of the Secretariat for Natural Resources."

"101. All advertising shall be prohibited which contains deceitful or false statements or references contrary to scientific fact, or which in any manner violates the provisions or regulations, or which tends to deceive the public with respect to the origin, quality, properties or source of foodstuffs."

"103. With a view to protecting public health with respect to the consumption of food products imported, manufactured for export, and produced within the country for the home market, the Ministry of Public Health, alone or jointly with the Ministry of Economic Affairs and Finance, shall lay down minimum standards with which the said products shall comply."

HUNGARY

NOTE¹

Act III of 1966 on the Election of Members of Parliament and Councillors

Elections are regulated by the Act in accordance with the basic principles set forth in Section Nine of the Constitution of Hungary.² Under the Act, members of Parliament and councillors, one for every electoral district, are elected by voters on the basis of universal, equal and direct suffrage by secret ballot, for a term of four years. Elected members of Parliament and councillors are duty-bound to give their voters regular accounts of their activity. Voters have the right to recall any member of Parliament or councillor.

Any Hungarian citizen who has reached full age (18th year) has the right to vote, with the exception of those who are serving a term of imprisonment, are under police surveillance or confined under remand, or are insane. Every voter is entitled to one vote, each vote being equal. Any voter may be elected member of Parliament or councillor.

Legislative Decree No. 21 of 1966 on the Detailed Rules Governing the Execution of the Punish- ment of Loss of Liberty and Confinement under Remand

The law is called to determine, by regulating the basic questions of the execution of loss of liberty, the manner and order of the execution of punishment and the rights and duties of convicted persons. It also seeks to promote the accomplishment of the aims of punishment and the prevention, as well as the reduction of criminal offences. The aim of the execution of loss of liberty is to re-educate convicts as law-abiding citizens. The law contains the detailed rules on the general order of the execution of loss of liberty, and the basic principles guiding the separation or grouping of convicts. It defines the rights and duties of convicts, and the rules governing their work, education, instruction and the measures to ensure

discipline. The law provides for separate rules on the preparation of convicts for release, and contains special provisions relating to young persons, and the rules on confinement under remand.

Government Decision No. 1003 of 13 March 1966 on the Development of Sick-Benefits and Ma- ternity Allowance to Co-operative Farmers as well as on the Extension of the Grant of Family Allowance

In recognition of the work of co-operative farm members and in order to promote the successful performance of co-operative farms, the Government decision is aimed at approximating the level of medical attention of co-operative farm members to that of the sickness insurance of persons in employment. To this end, it complements the benefits in kind due to co-operative farm members under the social insurance scheme and fixes the lowest and highest amount of sick-benefit. It provides that the conditions of maternity allowance and the extent of maternity leave shall be determined in accordance with the general rules, and it regulates the conditions for payment of the maternity grant and family allowance. The Government Decision is enforced by Decree No. 12 of 23 June 1966 of the Minister of Agriculture.

Legislative Decree No. 30 of 1966 on the Compul- sory Mutual Pensions Insurance of Co-operative Farm Members

The results gradually achieved by working peasants in large-scale collective farming have made it possible to develop further the social benefits so far enjoyed by co-operative farmers and their family members. In establishing the amount of pensions, the Legislative Decree takes into account the period of time spent in work by co-operative farmers, and their qualifications and remuneration for collective work. It also provides for an increase of low pensions.

¹ Note furnished by the Government of Hungary.

² For extracts from the Constitution of Hungary, see *Yearbook on Human Rights for 1949*, pp. 94-96. Amendments appear in the *Yearbook for 1951*, p. 128.

*Government Decree No. 16 of 1 June 1966
on Family Allowance*

This Government Decree establishes the amount of family allowance due to workers in employment, co-operative farmers and members of artisans' co-operatives, members of the armed and police forces and certain additional categories, and determines the rules of administration concerning the payment of family allowance. (The amount of family allowance was previously raised by Government Decree No. 3 of 1 January 1966.) The detailed rules of enforcement are laid down by Rule No. 2 of 1 June 1966 of the Hungarian Trade Union Council.

*Decree No. 4 of 21 October 1966 of the Ministry
of Labour on the Appropriate Employment of
Women and the Promotion of Protection of
their Health and Physical Integrity*

The Decree provides that in addition to general social progress and women's resultant demands, economic necessity similarly justifies reasonable measures to facilitate women's employment; accordingly, measures shall be taken to provide for the protection of women's health and physical integrity. The Decree specifies the types of work on which women must not be employed on account of harmful consequences to health.

INDIA

DEVELOPMENT OF HUMAN RIGHTS IN 1966¹

1. INTRODUCTORY

During the year 1966, three amendments were made in the Constitution of India, namely, the eighteenth, the nineteenth and the twentieth amendments.² By the eighteenth amendment, it has been made clear that the word "State" in clauses (a) to (e) of article 3 of the Constitution, which confers power on the Parliament of India with respect to the formation of new States and the alteration of areas, boundaries or names of existing States, includes a Union territory, but that in the proviso to that article, it does not. Under article 324 (1) of the Constitution, the superintendence, direction and control of all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President of India are vested in the Election Commission. Before the nineteenth amendment, this power of the Election Commission included the power of appointment of election tribunals for the decision of doubts and disputes arising out of, or in connexion with, elections to Parliament and to the Legislatures of States. But the Election Commission, in its Report on the Third General Elections in India in 1962, recommended that election petitions should be heard by the High Courts of the States. This recommendation was accepted by the Government and to give effect to it, a small amendment was made in article 324 whereby the reference to the appointment of election tribunals by the Election Commission was omitted from that article. This was done by the nineteenth amendment. By the twentieth amendment, the past appointments, postings, promotions and transfers of a large number of district judges in Uttar Pradesh, Rajasthan and some other States and the judgements, decrees, orders and sentences passed or made by them have been validated to avert a serious situation which would otherwise have arisen out of two decisions of the Supreme Court in Chandra Mohan's case (A.I.R. 1966, S.C.

1987) and Ranga Mohammad's case (decided by the Supreme Court on 21 September 1966). But these decisions of the Supreme Court remain in full force so far as future appointments, postings, promotions and transfers of district judges are concerned. Under article 233 of the Constitution, appointments, posting and promotion of district judges are required to be made by the Governor in consultation with, or on the recommendation of, the High Court. Under the Uttar Pradesh Higher Judicial Service Rules made by the Governor, the Governor prescribes the qualifications for such appointments and appoints a Selection Committee for the selection of candidates and the High Court is to recommend candidates for appointment as district judges from the list prepared by the Selection Committee. In accordance with these rules, a large number of district judges was appointed. In Chandra Mohan's case, the Supreme Court held that in effect and substance the Governor, in making the appointments, neither consulted the High Court nor acted on its recommendations as required by article 233. The Supreme Court accordingly held that the Uttar Pradesh Higher Judicial Service Rules providing for the recruitment of district judges were constitutionally void as they contravened the constitutional mandate of article 233 and accordingly the appointments etc., of the district judges were also void. Similar rules were also in force in Rajasthan and a few other States. The number of district judges affected by the judgement of the Supreme Court was very large and hence these past appointments were validated by the twentieth amendment of the Constitution. In Ranga Mohammad's case, the Supreme Court held that the power of transferring a district judge from one station to another vested not in the Governor but in the High Court and that the transfers of district judges which were made by the Governor were outside his powers and were therefore void. By the twentieth amendment, these transfers were also validated. But for this validation, a large number of appointments and transfers of district judges would have been void and the judgements, decrees, orders and sentences passed by them would have also been void and unconstitutional. This would have created a serious situation. Accordingly, the twentieth amendment validated these appointments, postings, promotions and transfers of dis-

¹ Information furnished by Mr. S. P. Sen-Varma, Secretary, Ministry of Law, Legislative Department, government-appointed correspondent of the *Yearbook on Human Rights*.

² For extracts from the Constitution of 26 November 1949, see *Yearbook on Human Rights for 1949*, pp. 98-111.

strict judges which had already been made. But in future, appointments, posting, promotion and transfer of district judges will be made in strict conformity with the decision of the Supreme Court in these two cases.

II. PARLIAMENTARY LEGISLATION

The following Acts of Parliament passed during the year 1967 deserve special mention:

A. *The Seamen's Provident Fund Act, 1966 (23 of 1966)*. The question of providing social security for seafarers has been under consideration of the Government of India for a long time. The National Welfare Board for Seafarers, a statutory body, set up under the Merchant Shipping Act, 1958, at its meeting held at Madras on 11 January 1964, appointed a Tripartite Committee comprising the representatives of the shipowners, seamen and Government. This Committee recommended that a contributory provident fund scheme for seamen should be introduced. The report of the Tripartite Committee was placed before the National Welfare Board for Seafarers on 23 December 1964 and was unanimously approved by the Board. This Act seeks to implement the above recommendations of the National Welfare Board for Seafarers.

This Act also seeks to provide for the institution of a provident fund for seamen, that is to say, persons employed or engaged as members of the crew of a ship under the Merchant Shipping Act. The Act provides for the framing by the Central Government of a scheme to be called the Seamen's Provident Fund Scheme for the establishment of a provident fund for seamen. Contributions are required to be made to the Fund both by employers and by or on behalf of seamen. The Fund vests in and is administered by a Board constituted under the Act. The amounts standing to the credit of any member in Fund cannot be assigned or charged, nor is it liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member. It is specifically provided in the Act that no employers shall, by reason of his liability for the payment of any contribution to the Fund, reduce, whether directly or indirectly, the wages of any seaman to whom the scheme applies or the total quantum of benefits in the nature of old-age pension, gratuity of provident fund to which the seaman is entitled under any agreement with the crew or any other agreement between the parties.

B. *The Orissa Legislative Assembly (Extension of Duration) Act, 1966 (16 of 1966)*. By this Act, the extension of the duration of the Legislative Assembly of the State of Orissa was extended under clause (1) of article 172 of the Constitution with a view to making the general election to the Legislative Assembly of Orissa synchronize with the country-wide General Elections in February-March, 1967.

C. *The Delhi Administration Act, 1966 (19 of 1966)*. This Act has been enacted by Parliament

with the object of providing for a larger measure of association of the representatives of the people of the Union territory of Delhi which is the seat of the federal Capital with the Administrator of the territory. It seeks to establish a Metropolitan Council for the entire territory and also an Executive Council to assist and advise the Administrator of the territory.

The Metropolitan Council is not exactly a legislative body because it has no power to enact any law but it has some of the powers of a Legislature. Under section 22 of the Act, the Council has the right to discuss and make recommendations with respect to:

(a) Proposals for undertaking legislation in relation to Delhi with respect to any of the matters enumerated in the State List or in the Concurrent List in the Seventh Schedule to the Constitution of India;

(b) Proposals for extension to Delhi of any enactment in force in a State relating to any matter enumerated in the State List or in the Concurrent List;

(c) Proposals for legislation referred to it by the Lieutenant Governor of Delhi with respect to any of the matters enumerated in the State List or in the Concurrent List;

(d) The estimated receipt and expenditure pertaining to Delhi to be credited to and to be met from the Consolidated Fund of India;

(e) Matters of administration involving general policy and schemes of development in so far as they relate to matters enumerated in the State List or in the Concurrent List.

The rules regulating the procedure of the Metropolitan Council are in certain respects similar to those of a legislative body. The members of the Metropolitan Council are elected by direct election on the basis of adult suffrage from constituencies delimited by the Election Commission of India. The total number of members so chosen by direct election is fifty-six. The Central Government, however, may nominate in addition not more than five persons, not being in the service of the Government, to be members of the Metropolitan Council.

The Executive Council corresponds to the Council of Ministers in a State. The Executive Council is to consist of not more than four members, and one of them is designated as the Chief Executive Councillor who corresponds to the Chief Minister in a State; the other members are designated as Executive Councillors. Like the Council of Ministers in a State, the principal function of the Executive Council is to aid and advise the Administrator that is, the Lieutenant Governor of Delhi, in the exercise of his functions in relation to matters enumerated in the State List or in the Concurrent List, except in so far as he is required by or under the Act to exercise his functions or any one of them in his discretion or, by or under any law to exercise any judicial or quasi-judicial functions. The members of the Executive Council are appointed by the President of India.

D. *The Jayanti Shipping Company (Taking over of Management) Act, 1966 (24 of 1966)*. The Jayanti Shipping Company Ltd., was a venture started in 1961. For some time past, complaints had been made both in Parliament and outside against the management of this Company alleging mismanagement, misuse of company funds, leakage of foreign exchange, non-deposit of provident fund and income-tax deductions, non-payment of bills for supplies and services, non-payment of salaries and family allotments, non-payment of premia for insurance of ships and so on. The matters came to such a pass that the Government was forced under pressure of circumstances to resort to legislation for the taking over of the management of the Company for a limited period which shall not be in any case more than ten years. This has been done in order to secure the proper management of the Company. Such taking over of the management of a company for a limited period is allowed under article 31A (1) (b) of the Constitution of India.

E. *The Delhi High Court Act, 1966 (26 of 1966)*. By this Act, a High Court has been established for the Union territory of Delhi. Provision has also been made for the extension of the jurisdiction of the High Court to the Union territory of Himachal Pradesh and such jurisdiction has already been extended to the Union territory of Himachal Pradesh. The High Court was established with effect from 31 October 1966. Formerly, the Union territory of Delhi was under the jurisdiction of the Punjab High Court but as there was a great increase in the number of cases, it was considered that a separate High Court should be set up for the Union territory of Delhi.

F. *The Railway Property (Unlawful Possession) Act, 1966, (29 of 1966)*. This Act provides for the protection of railway property by the members of the Railway Protection Force and for the imposition of penalty for unlawful possession of railway property.

With the increase in the quantum of goods traffic on the railways, incidence of theft and pilferage increased very much. Hence it was thought that the Railway Stores (Unlawful Possession) Act, 1955 should be made more comprehensive so as to bring within its ambit the unlawful possession of goods entrusted to the Railways as common carriers and to make the punishment for such offences more deterrent.

G. *The Punjab Reorganisation Act, 1966, (31 of 1966)*. On 21 March 1966 it was announced in the House of the People (*Lok Sabha*) that the Government had decided to accept, in principle, the reorganisation of the State of Punjab on a linguistic basis. By the Punjab Reorganisation Act, 1966 the former State of Punjab has been reorganized so as to constitute two separate States, Haryana and Punjab, and a new Union territory, Chandigarh, and certain areas of the former State of Punjab have been transferred to the Union territory of Himachal Pradesh. The Act provides for the

territories of the two States of Haryana and Punjab and the new Union territory of Chandigarh and also specifies the areas to be transferred to the Union territory of Himachal Pradesh and makes the necessary supplemental, incidental and consequential provisions in relation to such reorganization, including representation in Parliament and in the State Legislatures. The Act has been enacted under articles 3 and 4 of the Constitution of India.

H. *The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (32 of 1966)*. This Act provides for the welfare of the workers in beedi and cigar establishments, for the regulation of their conditions of work and matters incidental thereto. It provides that no employer shall use any place or premises for the making or manufacture of beedies or cigars or both unless he holds a valid licence which should be in accordance with the provisions of the Act. In deciding to grant or refuse a licence, the competent authority is required to have regard to various matters, such as the suitability of the place or premises which is proposed to be used for the manufacture or making of beedies or cigars or both, the previous experience of the applicant, the financial resources of the applicant, the welfare of labour in the locality and the interest of the public generally. Provision has also been made for the appointment of Inspectors to inquire into the working of the Act. Provision is also made in relation to cleanliness and ventilation in the places or premises where the process of manufacturing or making beedies or cigars is carried on. It is provided that no room in such places or premises shall be overcrowded to an extent injurious to the health of the persons employed therein. The employer is required to make effective arrangements in relation to the provision and maintenance of wholesome drinking water. The employer is also enjoined to provide a sufficient number of latrines and urinals which may be accessible to the employees at all times while they are on the premises or in places where the process of manufacturing or making beedies and cigars is carried on. There are also provisions in the Act relating to washing facilities, crèches, first-aid and canteens. Working hours and wages for overtime work are also regulated by the Act. Provision is also made for payment of wages during leave period. There are various incidental and ancillary provisions in the Act with a view to bringing about the welfare of workers employed in the manufacture or making of beedies or cigars.

I. *The Police Forces (Restriction of Rights) Act, 1966 (33 of 1966)*. Article 33 of the Constitution provides that Parliament may by law determine to what extent any of the rights conferred by Part III of the Constitution shall, in their application to the members of the armed forces or the forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. In the Army Act of 1950, the Air Force Act of 1950 and the Navy Act of 1957, provision was made by

virtue of the said article 33 for the restriction or abrogation of the fundamental rights conferred by Part III of the Constitution in their application to the members of the armed forces. Before the enactment of this measure, no such provision had been made by Parliament by law in regard to the forces charged with the maintenance of public order. This Act was passed by Parliament to provide that, in order to ensure the proper discharge of their duties and the maintenance of discipline among them, the members of the police forces, that is, the forces charged with the maintenance of public order, should not, without the express sanction of the Central Government, form any trade union, labour union or political association or communicate with the Press or publish or cause to be published anything except such communications or publications as were issued in the *bona fide* discharge of their duties or were of a purely literary, artistic or scientific character. The Act also provides that no member of a police force shall participate in, or address any meeting or take part in any demonstration organized by any body of persons for any political purposes.

J. *The Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (36 of 1966)*. This Act provides for the acquisition of the undertaking of the Metal Corporation of India Limited for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around the Zawar area in the State of Rajasthan and to utilize those minerals in such manner as to subserve the common good. The Act also provides for the payment of adequate compensation to the company for the acquisition of the undertaking of the company.

K. *The Goa, Daman and Diu (Opinion Poll) Act, 1966 (38 of 1966)*. Goa, Daman and Diu were constituted into a Union territory with effect from 20 December 1961. A Legislative Assembly and a Council of Ministers were constituted in the Union territory in December 1963 under the Government of Union Territories Act, 1963. There was a demand from certain sections of the people of the territory for merger of Goa with the adjoining State of Maharashtra. There were other sections of the people demanding its continuance as a separate entity. With a view to taking a decision on this issue it was considered expedient to ascertain the wishes of the electors of the Union territory through an opinion poll on the question whether the Goa area should merge in the adjoining State of Maharashtra or not and whether the Daman and Diu areas should merge in the adjoining State of Gujarat or not. This Act has made the necessary provision for the taking of the opinion poll generally on the lines of the corresponding provisions of our election law as contained in the Representation of the People Act, 1950 and the Representation of the People Act, 1951. The Act came into force on 12 December 1966, and in January 1967 an opinion poll was held in pursuance of the Act. The outcome of the opinion poll was that the Union territory of Goa,

Daman and Diu should continue as a separate entity.

L. *The Representation of the People (Amendment) Act, 1966 (47 of 1966)*. The main provision of this amending Act related to the trial of election petitions by the High Courts instead of by election tribunals. It is felt that trial of election petitions by High Courts will be more expeditious. After the Fourth General Election, a large number of election petitions has been filed in the various High Courts challenging the elections of certain members of the House of the People (*Lok Sabha*) and the State Legislative Assemblies.

M. *The Post-Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966 (51 of 1966)*. The Post-Graduate Institute of Medical Education and Research, Chandigarh, was started by the Punjab Government in 1963. On the reorganization of the erstwhile State of Punjab with effect from 1 November 1966, the Institute was vested in the Central Government. By this Act, the Institute was made a statutory body corporate and declared as an institution of national importance under entry 64 of List 1 of the Seventh Schedule to the Constitution of India so that it might develop as a high level institution of medical education and research on the pattern of the All-India Institute of Medical Sciences, New Delhi.

N. *The Jawaharlal Nehru University Act, 1966 (53 of 1966)*. This Act seeks to establish and incorporate a University in Delhi after the name of the first Prime Minister of India, the late Pandit Jawaharlal Nehru. The educational needs of Delhi are now catered to by the University of Delhi. As, however, education is rapidly spreading in the Capital of India, the establishment of a second University has been considered necessary in the interest of such education.

III. STATE LEGISLATION

The following Acts passed by the various state Legislatures with a view to improving and bettering the conditions of the people of the respective States and augmenting their welfare in physical, material, cultural and spiritual spheres, are mentioned briefly as follows:

A. *The Andhra Pradesh Official Language Act, 1966 (9 of 1966)* provides for the adoption from such date as may be notified by the State Government, of the Telugu language for the official purposes of the State. Provision is also made for the indefinite continuance of the English language for official purposes.

B. *The Andhra Pradesh Shops and Establishments Act, 1966 (15 of 1966)* consolidates and amends the law relating to the regulation of conditions of work and employment in shops, commercial establishments, restaurants, theatres, etc. and is on the pattern of similar Acts in force in the other States of the Indian Union.

C. *The Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (16 of 1966)* consolidates and amends the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets therefor.

D. *The Bihar Gramdan Act, 1965 (4 of 1966)* provides for the establishment of Gramdan villages in the State of Bihar. The Act is a direct consequence of the Bhoodan and Gramdan movements of Acharya Vinoba Bhave. In answer to the Acharya's call to donate lands and villages so that they may be distributed among landless persons under suitable conditions, many people in the State of Bihar have donated lands and villages in the State. The Act provides for the establishment of Gramdan villages and specifies the conditions under which a village in which lands have been donated by the owners thereof, may be declared to be a Gramdan village.

E. *The Jammu and Kashmir Houses and Shops Rent Control Act, 1966 (34 of 1966)* has been enacted by the Jammu and Kashmir Legislature to make better provision for the control of rents of houses and shops in the urban areas in the State. The amount of any rent in excess of fair rent has been made irrecoverable notwithstanding any agreement to the contrary. Fair rent is determined with reference to "basic rent" as laid down in Schedule A to the Act. This follows the pattern of similar statutes in other States. Provisions have been made for protection of tenants from eviction, for deposit of rent with the Rent Controller, for refund of excess rent and so on.

F. *The Jammu and Kashmir Probation of Offenders Act, 1966 (37 of 1966)* provides, as the title shows, for the release of offenders on probation or after due admonition in certain cases.

G. *The Jammu and Kashmir Shops and Establishments Act, 1966 (39 of 1966)* provides for the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres and other places of public amusement and entertainment.

H. *The Jammu and Kashmir Separation of Judicial and Executive Functions Act, 1966 (40 of 1966)* provides for the separation of the judiciary from the executive in pursuance of the directive principle of State Policy contained in article 50 of the Constitution of India.

I. *The Madhya Pradesh Sahakari Bhoomi Vikas Bank Adhiniyam, 1966 (28 of 1966)* is to facilitate the working of Co-operative Development Banks in Madhya Pradesh.

J. *The Madras Cultivating Tenants (Protection from Eviction) Act, 1966 (11 of 1966)* provides for the protection from eviction of cultivating tenants who are in arrears of rent because of an unprecedented drought which occurred in 1965. It

was considered that in the interests of the general public the cultivating tenants should be spared the distractions and expenditure involved in eviction proceedings launched by landlords so that the maximum possible advantage might result to the State in the matter of production of food crops.

K. *The Madras Private Educational Institutions (Regulation) Act, 1966 (23 of 1966)* seeks to improve the quality and standard of education in the State of Madras. This Act provides for the regulation of private educational institutions in the State. "Private educational institution" is defined to mean any college, school, or other institution whether or not called a tutorial college, school or institute or training centre established and run with the object of preparing, training or guiding its students for any certificate, degree or diploma.

L. *The Maharashtra Regional and Town Planning Act, 1966 (37 of 1966)* makes provision, with a view to improving the living and housing conditions of the people, for planning the development and use of land in regions established for that purpose and for the constitution of Regional Planning Boards therefor.

The Act also seeks:

(a) To make better provision for the preparation of development plans with a view to ensuring that town-planning schemes are made in a proper manner and their execution is made effective; and

(b) To provide for the creation of new towns by means of development authorities.

M. *The Maharashtra Nurses Act, 1966 (40 of 1966)* makes provision for regulating the registration and training of nurses in the State of Maharashtra.

N. *The Mysore Secondary Education Examination Board Act, 1966 (16 of 1966)* provides for the establishment of a Secondary Education Examination Board for the State of Mysore, the object being to improve the standard of holding and conducting certain public examinations, such as the Mysore Secondary School Leaving Certificate Examination, the Teachers Certificate Examination (Higher), the Teachers Certificate Examination (Lower), and so on.

O. *The Mysore Industrial Areas Development Act, 1966 (18 of 1966)* seeks to make special provision for securing the establishment of industrial areas in the State of Mysore and generally to promote the establishment and the orderly development of industries in such areas.

P. *The Mysore Agricultural Produce Marketing (Regulation) Act, 1966 (27 of 1966)* provides for the better regulation of buying and selling of agricultural produce and for the establishment and administration of markets for agricultural produce in the State of Mysore.

Q. *The Mysore Agricultural Debtors Relief Act, 1966 (29 of 1966)* consolidates and amends the law for the relief of agricultural debtors in the State of Mysore.

R. *The Orissa Soil Conservation Act, 1966 (4 of 1966)* provides for the preparation and execution of schemes for the conservation and improvement of soil resources and the prevention or mitigation of soil erosion.

S. *The Berhampur University Act, 1966 (21 of 1966)* and the *Sambalpur University Act, 1966 (22 of 1966)* provide for the establishment and incorporation of two new Universities in the State of Orissa. *The Utkal University Act, 1966 (20 of 1966)* seeks to consolidate and amend the law relating to the Utkal University.

T. *The Orissa Industrial Housing Act, 1966 (1 of 1967)* makes provision for allotment of houses to industrial workers in the State.

U. *The Calcutta University Act, 1966 (2 of 1966)* provides for the reorganization of the Calcutta University, the oldest University of India, founded in 1857. The object of reorganization of the University is to enable it to function more efficiently as a university encouraging, extending, co-ordinating, controlling, regulating and imparting higher education and promoting research.

V. *The West Bengal Cold Storage (Licensing and Regulation) Act, 1966 (6 of 1966)* provides in the public interest for the licensing, supervision and control of cold storages in West Bengal.

W. *The Calcutta Metropolitan Water and Sanitation Authority Act, 1966 (13 of 1966)* provides for the establishment of the Calcutta Metropolitan and Sanitation Authority for the maintenance, development and regulation of water supply, sewerage and drainage services and for the collection and disposal of garbage in the Calcutta Metropolitan District with a view to the promotion of public health.

IV. JUDICIAL DECISIONS

Reference may now be made to a few decisions of the Supreme Court and of the High Courts in relation to the fundamental rights guaranteed by the Constitution of India. One of the important cases decided by the Supreme Court during the year under review was the *Payment of Bonus Act case (Jalan Trading Co. Private Ltd. v. Mill Mazoor Sabha)* (A.I.R. 1967, S.C. 691). The *Payment of Bonus Act, 1965 (21 of 1965)* was enacted by Parliament to provide for the payment of bonus to persons employed in factories and any other establishments in which twenty or more persons are employed on any day during the year.

By section 10 of this Act, it is provided that every employer shall be bound to pay to every employee in an accounting year a minimum bonus,

which shall be 4 per cent of the salary or wage earned by the employee during the accounting year or 40 rupees, whichever is higher, whether there are profits in the accounting year or not. The validity of this provision was challenged on the ground as violating the "equality before the law" clause contained in article 14 of the Constitution. It was contended that this section places in the same class establishments which have made inadequate profits not justifying payment of bonus, establishments which have suffered marginal loss and establishments which have suffered heavy loss, and that therefore the section was discriminatory and the classification so made was not a reasonable one. The Supreme Court in rejecting this plea held that:

"The classification so made is not unintelligible: all establishments which are unable to pay bonus under the scheme of the Act, on the result of the working of the establishment, are grouped together. The object of the Act is to make an equitable distribution of the surplus profits of the establishment with a view to maintaining peace and harmony between the three agencies which contribute to the earning of profits. Distribution of profits not subject to great fluctuations year after year would certainly be conducive to maintenance of peace and harmony and would be regarded as equitable, and provision for payment of bonus at the statutory minimum rate, even if the establishment has not earned profit, is clearly enacted to ensure the object of the Act... If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden. With a view to securing particular objects, a scheme may be selected by the Legislature, wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the Legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under article 14. Invalidity of legislation is not established by merely finding fault with the scheme adopted by the Legislature to achieve the purpose it has in view. Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. Plea of invalidity of section 10 on the ground that it infringes article 14 of the Constitution must, therefore, fail."

Section 37 of this Act authorizes the Central Government to provide by order for the removal of doubts or difficulties in giving effect to the provisions of this Act. This section was challenged on the ground of excessive and unwarranted delegation of power to the executive Government. The Supreme Court upheld the challenge. The

Court observed that the condition of the applicability of section 37 is the arising of doubt or difficulty in giving effect to the provisions of the Act. By providing that the order made must not be inconsistent with the purposes of the Act, section 37 is not safe from the vice of delegation of legislative authority. The section authorizes the Government to determine for itself what the purposes of the Act are and to make provisions for the removal of doubts or difficulties. If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the Legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to the exercise of legislative authority and that cannot be delegated to an executive authority. This decision of the Supreme Court strikes a blow at the long standing legislative practice under which a provision (known as the Henry VIII clause) is usually made in big and complicated statutes giving power to the Government to make orders consistent with the provisions of the Act for the purpose of removing any difficulty which may arise in giving effect to the provisions thereof. The language of the impugned section 37 of the Payment of Bonus Act was no doubt different from the language of usual provisions made in this respect.

In the case of the *Muslim Anjuman-e-Taleem v. the Bihar University* (A.I.R. 1967, Pat. 148), the Bihar University Laws (Amendment) Act, 1965 (16 of 1965) was challenged as violating article 30 (1) of the Constitution. By this provision of the Constitution, a fundamental right has been conferred upon all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. The above-mentioned Act confers full power on the University authorities to lay down the constitution of the governing bodies of educational institutions admitted as colleges and to suspend or dissolve the governing bodies and to appoint *ad hoc* committees also. The High Court of Patna held that such a power was wholly repugnant to the power of the local Muslims to manage their educational institution, and thus there was a clear conflict between the Act and article 30 (1) of the Constitution. In coming to this conclusion, the Patna High Court followed the judgement of the Supreme Court in *Rev. Sidhraj Bhai Sabbai v. the State of Gujarat* (A.I.R. 1963, S.C. 540), where the Supreme Court observed:

"The right established by article 30 (1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interests not of the minority educational institutions but of the public or the nation as a whole. If every order which, while maintaining the formal

character of a minority institution, destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by article 30 (1) will be but a 'teasing illusion, a promise of unreality'."

In the case of *Barium Chemicals Ltd. v. Company Law Board* (A.I.R. 1967, S.C. 295), the Supreme Court reiterated its previous view that a company or any other body corporate is not a citizen within the meaning of article 19 of the Constitution and therefore could not claim the benefit of the provisions of article 19 (1) (g).

In the case of *Union of India v. The Metal Corporation of India Ltd.* (A.I.R. 1967, S.C. 637), the Supreme Court struck down the Metal Corporation of India (Acquisition of Undertaking) Act, 1965 (44 of 1965) on the ground that the Act did not provide for compensation within the meaning of article 31 (2) of the Constitution and it was therefore void. Under article 31 (2) of the Constitution, no property shall be compulsorily acquired except under a law which provides for compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. The second limb of the provision says that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. The Supreme Court held that if the two concepts, namely, compensation and the jurisdiction of the court are kept apart, the meaning of the provisions is clear. The law to justify itself is to provide for the payment of a "just equivalent" to the land acquired or lay down principles which will lead to that result. If the principles laid down are relevant to the fixation of compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a court of law. The validity of the principles judged by the above tests falls, however, within the judicial scrutiny and if they stand the tests, the adequacy of the product falls outside the jurisdiction of the court. The Supreme Court held that the Act did not satisfy the tests and therefore it has not provided for compensation within the meaning of article 31 (2) of the Constitution.

In view of this decision of the Supreme Court which follows its earlier decision in *Vajravalu v. Special Deputy Collector* (A.I.R. 1965, S.C. 1017), it is submitted that it is difficult to understand how the second part of article 31 (2), which says that no law providing for compulsory acquisition of property shall be called in question in any court on the ground that the compensation provided by that law is not adequate, may be effectively applicable in any case. The result of this decision seems to be to nullify for all practical purposes the second part of article 31 (2), which was inserted by the fourth amendment of the Constitution.

IRAN

NOTE¹

During 1966, the following laws and regulations relating to human rights were promulgated:

1. Act concerning the protection and conservation of the country's subterranean water resources;
2. Civil Service Act;
3. Regulations governing the investigation of complaints on employment matters and the

establishment of boards to investigate the employment complaints of civil servants;

4. Act allocating the equivalent of one day of the country's military budget to UNESCO;
5. Act amending article 29 of the Senate Electoral Act;
6. Decree of the Council of Ministers approving regulations governing employment by the Municipality of Teheran;
7. Act establishing arbitration councils;
8. Regulations governing the implementation of the Act establishing arbitration councils;
9. Regulations governing the implementation of article 29 of the Act establishing juvenile courts.

¹ Note and texts furnished by Professor A. Matine-Daftary, Member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*.

ACT CONCERNING THE PROTECTION AND CONSERVATION OF THE COUNTRY'S SUBTERRANEAN WATER RESOURCES

No. 2726 of 17 Khordad 1345 (7 June 1966)²

Art. 1. The protection and conservation of subterranean water resources and the supervision of all matters pertaining thereto shall be the responsibility of the Ministry of Water and Power. The said Ministry shall gradually assemble the necessary manpower and equipment to enable it to ascertain the situation with regard to used and unused subterranean water resources in all regions by collecting data and statistics relating to wells, *qanats*, springs and rivers and by other technical operations, and to make the necessary technical recommendations.

...

Art. 13. If the Ministry of Water and Power requires land owned by private persons or by owners of private organizations for the execution of its projects for increasing utilization of sub-

terranean and surface water resources, it shall follow the procedure laid down in article 3 of the Act defining the precinct of a dammed reservoir of 27 Tir 1344. If, as a result of the execution of a water project on the property of owners of *qanats*, mechanically operated or artesian wells, springs or bogs, there is a loss of water or the source in question dries up completely, the Ministry of Water and Power shall make available to the owners, in addition to the payment of indemnification in accordance with the above-mentioned Act and in proportion to the loss, an adequate supply of drinking water for local residents affected by the loss and, if the source was used for seasonal agricultural purposes, water for the irrigation of gardens, orchards and farmland from the resources of its own installations. The price charged shall be in accordance with the Ministry's regulations and shall not include any capital profit margin.

....

² Published in the *Official Gazette*, No. 6214, 2 Tir 1345 (23 June 1966).

CIVIL SERVICE ACT

No. 3684 of 9 Tir 1345 (30 June 1966)³

Chapter VII

PROTECTION OF THE EMPLOYMENT
RIGHTS OF CIVIL SERVANTS

Art. 60. Civil servants may complain of any violation of their employment rights to the Organization for Administrative and Civil Service Affairs.

Art. 61. Employment complaints must be submitted to the Organization for Administrative and Civil Service Affairs before being submitted to the Council of State, or, when the latter is not in session, to the Supreme Court.

Art. 62. The body competent to investigate the employment complaints of civil servants is the Council of the Organization for Administrative and Civil Service Affairs.

Note 1. The Council may, at its discretion, delegate the investigation of the complaints mentioned in this article to boards.

Note 2. The procedure for the establishment of the boards mentioned in note 1 to this article and for the appointment and removal from office of their members and the procedure for the receipt of complaints, their submission to the boards, the investigation of the complaints by the boards and the investigation of offences committed by board members shall be laid down in regulations to be proposed by the Organization for Administrative and Civil Service Affairs and approved by the Council of Ministers.

Art. 63. If a decision is rendered in favour of the plaintiff, it shall be final and binding upon the ministry or State agency concerned. If the plaintiff is dissatisfied with the decision issued, he may, not later than ten days from the date on which he was notified of the decision, appeal to the Council of State, or, when the latter is not in session, to the Supreme Court.

³ Published in the *Official Gazette*, No. 6226, 18 Tir 1345 (9 July 1966).

ACT AMENDING ARTICLE 29 OF THE SENATE ELECTORAL ACT

No. 3748 of 13 Tir 1345 (4 July 1966)⁴

Sole article. Article 29 of the Senate Electoral Act, approved in Ordibehesht 1328, is repealed and replaced by the following article:

"Art. 29. The term of office of members of the Senate, both those designated by the Shahinshah and those elected by the people, shall be four years. The provisions of this article shall be observed in respect of the current term of the Senate also.

"The elections to the Senate shall begin simultaneously with the elections to the National Consultative Assembly at the end of each legislative term, and the voting shall be completed in one day.

"Note. Any parts of existing laws and regulations which conflict with this Act are hereby repealed."

⁴ Published in the *Official Gazette*, No. 6251, 16 Mordad 1345 (7 August 1966). For extracts from the Senate Electoral Act, see *Yearbook on Human Rights for 1963*, pp. 162-163.

ACT ESTABLISHING ARBITRATION COUNCILS

No. 4160 of 25 Tir 1345 (16 July 1966)⁵

Art. 1. The Ministry of Justice shall establish by progressive stages in every town one or more councils, to be known as arbitration councils, for

the purpose of investigating and resolving conflicts of the type specified in this Act.

Art. 2. Each arbitration council shall be composed of five reliable persons of the locality, who shall be elected for a three-year term by the inhabitants of the area of jurisdiction of the

⁵ Published in the *Official Gazette*, No. 6239, 2 Mordad 1345 (24 July 1966).

arbitration council in question. Each arbitration council shall have a president, two principal members and two alternate members. Each arbitration council shall elect its president and its two principal members by secret ballot at its first meeting.

Three members of an arbitration council shall constitute a quorum, and decisions shall be taken by majority vote.

Art. 3. The Ministry of Justice shall divide up each town into areas of jurisdiction for the establishment of arbitration councils on the basis of local conditions and requirements and shall give public notice of these divisions.

The Ministry of Justice may revise the above-mentioned divisions prior to the holding of fresh elections.

Art. 4. Each arbitration council shall have a counsellor, who shall be a practising or retired judge, an advocate or a notary public and shall be appointed by the Ministry of Justice. The counsellor shall be chosen from among the practising judges of the town which is in the council's area of jurisdiction or from among retired judges, advocates and notaries public who are resident in or prepared to become resident in that town. Advocates and notaries public who are appointed as counsellors shall not practise their profession during their term of office.

The members of an arbitration council may consult with the above-mentioned counsellor when taking a decision, but responsibility for the decision shall lie with the members themselves.

Art. 5. Each arbitration council shall have a secretariat to assist it in the performance of its functions. The staff of the secretariat shall obey the instructions of the counsellor in all administrative and clerical matters.

The Ministry of Justice shall recruit the staff of the secretariat from among currently employed or retired civil servants.

Art. 6. Electors must possess the following qualifications:

1. Be of Iranian nationality;
2. Be at least twenty years of age;
3. Be resident or employed in the area of jurisdiction of the arbitration council concerned;
4. Have no record of criminal conviction;
5. Have legal capacity;
6. Have their names listed in the special register of the arbitration council.

...

Art. 7. Candidates must possess the following qualifications:

1. Be at least thirty-five years of age;
2. Have a reputation for piety, honesty and integrity;

3. Have a standard of literacy and education deemed satisfactory by the committee mentioned in article 9;
4. Possess the other qualifications prescribed in article 6.

Art. 8. The following persons shall not be eligible for election:

1. Persons employed by the State (members of the civil service, the Imperial Armed Forces and the police force) or by State agencies or municipalities, unless they have retired from such service;
2. Practising advocates, licensed agents of legal matters, notaries public and assistant notaries.

Art. 9. Upon publication by the Ministry of Justice of an announcement of forthcoming elections, persons wishing to stand for election shall submit their nominations in writing, together with details of their qualifications, to the local county court at the appointed time.

Nominations shall be examined by a committee consisting of the judge and public prosecutor of the county court, the local police magistrate, a local primary or secondary school teacher and a trustworthy local resident who is not himself a candidate...

Art. 10. Membership in an arbitration council is honorary, but the Ministry of Justice may provide members of an arbitration council with remuneration commensurate with their diligence and assiduity in the resolution of conflicts arising between the residents of the area of jurisdiction.

The Ministry of Justice may also accord appropriate remuneration to counsellors, whether they be judges, advocates or notaries public, and to retired civil servants employed in the secretariats of arbitration councils.

Art. 11. The judge of the local county court shall supervise the work of the council, either directly or through the counsellors and shall inform the Ministry of Justice if he observes any irregularity or laxity. The Ministry of Justice may remove any offending member from office. If three members of an arbitration council have been removed from office or have resigned or died, fresh elections shall be held within one month. If one member has been removed from office or has resigned or died and if more than six months of his term are still to run, the candidate who obtained the next largest number of votes in the last elections shall be appointed to replace him.

In any town where there is a peace court, the functions assigned to the judge of the county court under this Act shall be performed by the justice of the peace...

Art. 12. Each arbitration council shall have jurisdiction of the types of dispute mentioned in this Act provided that:

1. The dispute is between residents of the council's area of jurisdiction;
2. The dispute is between residents of the council's area of jurisdiction and residents of the area of jurisdiction of another council in the same town;
3. The dispute is between residents of other areas of jurisdiction, but has arisen in the area of jurisdiction of the council.

An arbitration council shall take cognizance of a case upon the written or oral application of the plaintiff or upon receiving the relevant file from police officials.

Art. 13. The arbitration councils shall endeavour to bring about a peaceful settlement of all disputes.

Art. 14. In civil cases the competence of the arbitration councils shall be limited to:

1. Complaints against tradesmen and craftsmen concerning goods or services negotiated, provided that the object of the dispute does not exceed 10,000 rials;
2. Damage suits arising from driving accidents, provided that the amount of damages sued for does not exceed 10,000 rials;
3. All other property disputes where the sum involved does not exceed 10,000 rials, except disputes concerning immovable property;
4. Disputes between neighbours, especially damage suits arising in connexion with buildings, provided that the object of the dispute cannot be restored to its former state and its value does not exceed 10,000 rials;
5. Disputes relating to family and marital quarrels, provided, in the case of the latter, that the issue is not marriage or divorce and that the parties are not applying for a legal separation; if the dispute involves property the provisions of paragraph 3 of this article shall apply.

Art. 15. In criminal cases the arbitration councils shall have jurisdiction of minor offences and offences punishable by terms of correctional detention not exceeding two months or by a fine of not more than 1,200 rials.

In towns where the Act of 1339 concerning the powers of police officers in respect of driving offences is enforced, infractions of traffic and driving regulations shall not come within the competence of the arbitration councils.

Art. 16. Investigation of a case by an arbitration council shall be free of charge. An arbitration council may, as it sees fit according to the nature of the case, either summon the two parties to the dispute, hear their depositions and statements and proceed to make such investigations as it deems necessary, such as hearing the testimony of witnesses, visiting the site of the dispute or consulting expert opinion, or it may delegate one of its members to do so. In either case the council shall not be obliged to observe the formalities of regular legal procedure and shall, in so far as is possible, settle disputes by arbitration.

Art. 17. The absence of either party to a dispute, after due notification of the time of the hearing, shall not constitute an impediment to the hearing of the case and the taking of a decision thereon, unless the council considers that the absent party has a valid reason for his failure to attend.

The decision of the council shall be entered by the clerk in a special register and signed by the members of the council, and the two parties shall be notified thereof.

Art. 18. If the counsellor finds the council's decision to be in due accordance with its competence and with the provisions of this Act, the decisions shall be final and the counsellor shall, within five days, issue an order for its execution and shall delegate the task of its execution, in civil cases, to the executing officer of the local county court or to a member of the council's secretariat, as he sees fit, and in criminal cases, to the criminal police officers of the court, giving the necessary instructions for the execution of the decision.

Should the counsellor find that the proceedings have not been conducted in accordance with the provisions of this Act, he shall send the file to the competent judicial authority for investigation.

Art. 21. If a complaint which comes within the competence of the arbitration councils has been brought before a court before the establishment of the arbitration councils, it shall be dealt with by the court.

Art. 22. Except in the case of minor offences, should a decision on any matter require judicial experience, the matter in question shall, at the request of the arbitration council or the counsellor and with the approval of the judge of the local county court, be investigated by the competent judicial authority.

REGULATIONS GOVERNING THE IMPLEMENTATION OF THE ACT ESTABLISHING ARBITRATION COUNCILS

No. 4299/7 of 3 Mehr 1345 (24 September 1966)⁶

...

Art. 1. With a view to centralizing and co-ordinating the administrative affairs of the arbitration councils, there shall be established, at Teheran, an organization to be known as the Central Organization of Arbitration Councils.

Art. 2. Taking into consideration the social circumstances and judicial requirements of the country's urban residents, the Central Organization shall gradually compile a list of localities where the establishment of an arbitration council is desirable and shall submit its findings and recommendations to the Ministry of Justice.

...

Art. 18. The procedure for the submission of complaints and for the timing and conduct of hearings shall be decided by the president of each arbitration council. Police officials shall be responsible for executing the orders issued by the president within his sphere of competence.

...

⁶ Published in the *Official Gazette*, No. 6301, 12 Mehr 1345 (4 October 1966).

REGULATIONS GOVERNING THE IMPLEMENTATION OF ARTICLE 29 OF THE ACT OF AZAR 1338 ESTABLISHING JUVENILE COURTS

No. 5785/7 of 24 Aban 1345 (15 November 1966)⁷

Chapter I

ORGANIZATION OF REFORMATORIES AND THE FUNCTIONS OF DIRECTORS AND OFFICIALS

Art. 1. A reformatory shall be established at the seat of each juvenile court in accordance with the provisions of these Regulations. The date of the establishment of a reformatory in each area of jurisdiction shall be announced by the Ministry of Justice by the insertion of a notice in a local newspaper with wide circulation. In localities where a reformatory has not been established, action must be taken in accordance with the provisions of article 1 of the Juvenile Delinquency Act.

Art. 2. From the date of the approval of these Regulations, at the seat of every county court where a reformatory is to be established, the house of correction of that county shall be designated a reformatory and placed under the authority of the Ministry of Justice.

Art. 3. The reformatory in each area of jurisdiction shall have a director and an adequate number of clerical workers, teachers, instructors, vocational teachers and disciplinary supervisors.

Art. 4. The director of each reformatory shall be responsible for the administration of all matters relating to the reformatory and shall exercise full

supervision over the scholastic and moral education and vocational training of the inmates and all matters relating to their health, board and sleeping arrangements.

Art. 5. The director of each reformatory shall submit every three months a full report on the conduct of each inmate to the judge of the local court.

Art. 6. The director shall carry out the orders issued by the court on the basis of the report and shall notify the court of the results.

Art. 7. Teachers and instructors shall be responsible for the scholastic and moral education of the inmates, in accordance with a work programme to be drawn up by the director of the reformatory in consultation with specialists.

Art. 8. Vocational teachers shall be responsible for the vocational training of the inmates and administration of the reformatory's workshops, in accordance with a work programme to be drawn up by the director of the reformatory in consultation with specialists.

Art. 9. For the maintenance of order and general supervision of the inmates, special officers, to be known as disciplinary supervisors, shall be assigned to each section of the reformatory. A disciplinary supervisor must be not less than thirty-five and not more than fifty years of age at the time of his appointment and must be married and able to read and write.

⁷ Published in the *Official Gazette*, No. 6352, 15 Azar 1345 (6 December 1966).

Art. 10. The director of the reformatory shall appoint the chief of the disciplinary supervision section and an adequate number of disciplinary supervisors.

Art. 11. The disciplinary supervisors must keep the inmates under full supervision twenty-four hours a day and upon changing duty posts must report any incidents and information which have come to their notice to the chief of the disciplinary supervision.

Art. 12. Responsibility for the full supervision of all matters relating to the country's reformatories shall be assumed by an organization to be known as the Organization for the Supervision of Juvenile Courts, at Teheran, which shall function under the authority of the Minister of Justice. Such supervision shall be carried out with the help of social aids and voluntary or salaried workers.

Art. 13. Each reformatory shall submit to the Organization every six months a full report on conditions in the reformatory and action taken during that period, together with details of any proposed means of improvement. The Organization shall study the report and, after obtaining the consent of the Ministry of Justice, shall notify each reformatory as to what means of improvement it considers most effective and issue the necessary directives.

Chapter II

ORGANIZATION OF REFORMATORIES

Art. 14. Each reformatory shall have three sections, as follows:

- (a) Temporary detention section;
- (b) Correction and education section;
- (c) Prison section.

These sections shall be separate from one another, and in each section inmates under fifteen years of age shall be separated from those over fifteen years of age. The girls' section shall be separate from the boys' section.

Art. 15. The correction and education section shall be used for the custody of inmates in respect of whom a court decision has been taken.

Art. 16. In each of the sections mentioned in article 14 of these Regulations, inmates shall receive instruction appropriate to their capacity, age and previous schooling, in accordance with the curricula drawn up by the director in consultation with specialists. The curricula shall be so designed as to avoid, as far as possible, any interruption of the normal course of the inmates' education.

Art. 17. The temporary detention section shall be used for the custody of inmates in respect of whom no court decision has yet been taken.

Art. 18. The detention and moral and vocational instruction of inmates in the temporary detention section shall be collective, except in cases where the court considers isolation necessary in order to prevent collusion or on any other legal ground. Juveniles falling under article 20 of the Act shall also, if the judge so orders, be detained in isolation in the section for as long as is expedient.

Art. 19. The prison section shall be used for the detention of juveniles assigned to that section under a court order.

Art. 20. The mode of detention of inmates in the prison section shall be the same, as regards food, sleeping arrangements and moral and vocational education, as for the corrective and educational section. However, if the mentality and type of delinquency of the inmates make this necessary, the director may divide them into separate groups and prohibit communication between the groups.

Art. 21. In both the correction and education and the prison sections, the conduct of inmates shall be under complete supervision, and the disciplinary supervisors and education officers shall submit to the director at least once a month a report on the behaviour of each inmate.

Art. 22. Supervision of the health and physical education of the inmates shall be the responsibility of the director.

Art. 23. Should the condition of health of an inmate necessitate his treatment in a hospital outside the reformatory, the period of his hospitalization shall be counted as a part of the term of his sentence.

MISCELLANEOUS PROVISIONS

Art. 24. In the case of breaches of discipline, the director may impose punishments of appropriate severity, such as the temporary withdrawal of privileges, a reprimand, or collective or solitary detention in a special place. As a general rule, however, the humiliation of an inmate in the presence of other inmates, corporal punishment and any other treatment injurious to the physical or psychological health of an inmate are absolutely prohibited.

Art. 25. The remuneration for each court counsellor for each session attended shall be 500-600 rials, the exact sum, proportional to the services rendered, to be determined by the judge of the juvenile court.

Art. 26. If a counsellor fails, without proffering a valid excuse, to attend sessions of the court or is remiss in the performance of his functions, the court may request his removal from office and appoint a successor. In the event of the removal from office, resignation or death of a counsellor, his successor shall be selected, in accordance with

the procedure laid down in the Act, for the remainder of the term.

Art. 27. The following persons may not be selected as counsellors:

1. Persons of notoriously corrupt character;
2. Persons notorious for their use of intoxicants or addiction to opiates and narcotics;
3. Persons having a record of criminal conviction;
4. Persons under thirty-five years of age;
5. Unmarried persons.

Art. 28. The remuneration of social aids shall be proportionate to their degree of knowledge and the services rendered. The starting salary shall be 4,000-6,000 rials, and if a social aid is not employed on a monthly basis but for the perform-

ance of a specific task or to carry out special investigations, the fee shall be set by the judge of the court and shall not exceed the sum of 3,000 rials for any one assignment.

Art. 29. Legislation which has been enacted in accordance with the decrees and regulations relating to prisons and which does not conflict with the provisions of the Juvenile Delinquency Act or with these Regulations shall apply in the case of the reformatories also.

Art. 30. Until the Ministry of Justice has established the machinery for the selection and recruitment of directors, clerical personnel, teachers, vocational teachers and disciplinary supervisors for the reformatories, the present staff of the houses of correction shall perform their duties in accordance with instructions from the Ministry of Justice.

REGULATIONS GOVERNING THE INVESTIGATION OF COMPLAINTS ON EMPLOYMENT MATTERS AND THE ESTABLISHMENT OF BOARDS TO INVESTIGATE THE EMPLOYMENT COMPLAINTS OF CIVIL SERVANTS, AS PROVIDED FOR IN ARTICLE 62, NOTE 2, OF THE CIVIL SERVICE ACT

Approved by the Council of Ministers in Decree No. 9522 of 3 Dey 1345 (24 December 1966)⁸

...

Chapter I

COMPLAINTS

Art. 1. A complaint may be brought in respect of any act or omission on the part of a ministry or State agency which results in a violation of employment rights.

Art. 2. As from the date of the approval of these Regulations, any civil servant who has a complaint concerning a violation of his employment rights may enter his complaint, in the Persian language, on a complaint form to be obtained from the personnel office of the ministry or State agency where he is employed and forward it to the Secretariat of the Council.

Note. The Council shall make available to the ministries and State agencies the printed complaint forms approved by it.

The ministries and State agencies shall distribute the forms supplied to them to their units in the capital and in the counties so that the forms are available at all times to all civil servants.

Art. 3. Each complaint form must be filled out in duplicate and signed by the complainant, and two copies of supporting documents must be attached thereto.

Art. 4. If the supporting documents are not in the Persian language, a certified translation and a

certified copy of the documents must be attached to the complaint form.

Art. 5. If a complaint has already been investigated by the legal authorities and a decision has been rendered regarding it, it shall not be eligible for reconsideration by the Council.

Art. 6. A complaint shall be eligible for submission to the Council only if it has been submitted by the complainant to the competent authorities within the ministry or State agency where he is employed and has been definitively rejected by them. If, within one month from the date of the submission of the complaint to the said authorities, no definitive reply has been given, this shall be regarded as a rejection of the complaint and the complainant shall have the right to submit his complaint to the Council.

Art. 7. The submission and acceptance of a complaint for investigation shall not entail the suspension of a decision or action regarding it within the ministry or State agency concerned.

Art. 8. As long as no decision has been issued, a complainant may withdraw his complaint at any stage of the investigation.

Chapter II

INVESTIGATION BOARDS

Art. 9. Qualifications for membership in an investigation board are as follows:

- (1) At least fifteen years of civil service employment or ten years of judicial service;

⁸ Published in the *Official Gazette*, No. 6401, 18 Bahman 1345 (7 February 1967).

(2) An adequate understanding of administrative and employment affairs.

Art. 10. The appointment of members of investigation boards shall be by approval of the Council and shall become effective upon official notification by the Secretary-General of the Organization for Administrative and Civil Service Affairs. Removal from office shall be by the same process.

Art. 11. Each board shall consist of four members, one of whom shall be appointed chairman of the board upon approval by the Council and official notification by the Secretary-General of the Organization for Administrative and Civil Service Affairs.

Art. 12. Qualifications for chairmanship of an investigation board are as follows:

- (1) At least ten years of judicial service;
- (2) Absence of any conviction by a disciplinary or administrative tribunal for an offence of the fourth degree or above.

Art. 13. If members of investigation boards are practising judges, they shall be appointed to the Organization for Administrative and Civil Service Affairs. Otherwise they shall be transferred.

Art. 14. The procedure for the investigation of offences committed by investigation board members of judicial rank shall be in accordance with the Regulations governing the investigation of offences committed by judges. Offences committed by other members shall be investigated in the Council in accordance with the Regulations governing civil service administrative trial procedure.

Art. 15. All investigation boards shall come under the authority of the Chairman of the Council.

Art. 16. The Secretariat of the Council shall be responsible for the clerical work required by the investigation boards.

Chapter III

CONDUCT OF THE INVESTIGATION

Art. 17. When a written complaint is received at the Secretariat of the Council, the particulars shall be entered in the complaints register and notice of its receipt, with the date thereof, shall be given or sent to the complainant.

...

Art. 18. The Secretariat of the Council shall bring the complaint to the attention of the Chairman of the Council within forty-eight hours of its registration.

Art. 19. The Chairman of the Council shall refer the complaint for investigation to one of the boards provided for in article 62, note 2, of the Civil Service Act and shall appoint a member of the Council to supervise all stages of the investigation.

Art. 20. Cases shall be assigned to the boards under a system of rotation. In each case, the chairman of the board shall designate one of the members as investigating member to carry out the necessary investigation and inquiries.

Art. 21. If the investigation of a complaint is a matter of urgency, the rule of rotation may, with the assent of the supervising Council member, be waived in assigning the case to a board for investigation.

Art. 22. The investigation board may call upon the complainant or a representative of the ministry or State agency concerned to provide further information.

Art. 23. The ministry or State agency shall reply to the inquiries of the chairman of the investigation board within the time-limit specified in his letter.

Art. 24. If the complainant is not resident in Teheran and the investigation board considers it necessary to obtain further information from him, the chairman of the board may obtain such information through the local justice of the peace or county court judge.

Art. 25. After completion of the inquiries, the investigating member shall prepare a statement of the case and send the file to the Secretariat of the Council in order that a time may be set for the taking of a decision.

Art. 26. At the appointed session, the investigation board shall examine the file and, after an exchange of views, take the necessary decision.

Art. 27. Should a member of the Council or of the investigation board be related to the complainant by blood or marriage up to the third degree at two removes, that member shall abstain from giving his view on the case. This shall be noted in the record of the session.

Art. 28. Should the investigation board find that the complaint comes under the jurisdiction of other administrative or judicial authorities, it shall, with the assent of the supervising Council member, declare itself incompetent to deal with the case and notify the complainant accordingly.

Art. 29. Should the rendering of a decision concerning a complaint be contingent upon the handing down of a judgement by the competent court, the investigation board shall suspend the taking of a decision until the competent court has handed down its judgement and shall report the matter to the Council.

Art. 30. If the investigation board finds the complaint unjustified and this decision receives the support of the supervising Council member, the Secretariat of the Council shall prepare five copies of the board's decision and have them signed by all members of the board.

Art. 31. If the investigation board or the supervising Council member finds the complaint justified, the board shall report the matter to the Council in a statement of its views signed by the supervising Council member and by all the members of the investigation board, so that the Council may render the necessary decision.

Art. 32. Should further investigations be necessary before a decision can be taken, the

Council shall return the file to the investigation board for completion.

...

Art. 36. Should investigation boards issue conflicting verdicts in similar cases, the Chairman of the Council shall summon a joint meeting of the Council and the investigation boards, to be attended by the majority of chairmen and members, to consider the matter. The decision of the Council shall be final and binding.

Art. 37. The decisions of the Council shall not have retroactive effect, and previous verdicts issued by investigation boards in respect of specific cases shall remain valid.

IRAQ

NOTIFICATION No. (1) OF 1966 OF THE MINISTER OF LABOUR AND SOCIAL AFFAIRS CONCERNING POLITICAL PRISONERS¹

1. The prisons of Hilla, Salman, Baquba, Ramadi and Amara shall be for political prisoners and arrested political persons.

2. In the other prisons, special halls shall be reserved for political prisoners and arrested political persons.

3. Political prisoners and arrested political persons shall be permitted to wear their own private clothes.

4. All political prisoners and arrested political persons shall be exempted from wearing a prison badge and from having their hair cut compulsorily, unless a medical specialist for health reasons advises otherwise.

5. Political prisoners and arrested political persons shall be permitted to bring their own beddings.

6. Political prisoners and arrested political persons shall be permitted to bring food, with the exception of alcoholic drinks, from outside the

prison and on their own private account, provided that the food shall be brought during the ordinary eating hours and be subject to inspection.

7. Political prisoners and arrested political persons shall be permitted to read newspapers and magazines, provided that such items shall be subject to inspection by the prison authority.

8. Political prisoners and arrested political persons shall be permitted to write to anyone, provided that all their outgoing and incoming writings shall be subject to inspection by the prison authority.

9. Political prisoners and arrested political persons shall be permitted to be visited by any person twice a month, provided that this rule shall not contradict any orders issued by an authorized person for securing investigation and that the date and the time of the visit shall be fixed by the Director of the prison. The Director of the prison shall order a prison official to be present at the visit.

10. In case political prisoners or arrested political persons misuse some or all of the rights mentioned above, some or all of such rights may be withdrawn for a period to be specified by the Director of the prison, provided that such withdrawal shall not exceed ten days in each case.

¹ Text published in *Waqayi'al-Iraqiya*, No. 1287, of 17 July 1966. The English translation of the Notification appears in *The Weekly Gazette of the Republic of Iraq*, No. 48, 30 November 1966.

IRELAND

NOTE¹

The Social Welfare (Occupational Injuries) Act, 1966, introduces a system of occupational injuries insurance by extending the existing State Social Insurance Scheme to include provision for compensation for disablement or loss of life following occupational injury. The system is in substitution for the Workmen's Compensation Scheme and is wider in scope.

An explanatory memorandum, setting out the scope of the Act in further detail, is published below.

Two further important changes in the Social Insurance Scheme are made by the Social Welfare (Miscellaneous Provisions) Act, 1966, which also increases non-contributory, old age, blind and widows' pensions as well as personal and adult dependants' rates of unemployment assistance. The conditions for widows' contributory pensions are eased and the scheme of unemployment benefit is extended to include female domestic servants in private employment and female agricultural workers.

Further aids for both private and local authority are provided for by the Housing Act, 1966, which

consolidates with amendments most of the housing law. In future the same legal codes will apply as far as practicable in urban and rural areas and out of date formalities and procedures are eliminated. Among many new provisions are:

(a) The enabling of housing authorities to assist by loan, guarantee or periodic contribution bodies providing houses for elderly persons or for lower income groups; and

(b) A provision empowering the Minister for Local Government and housing authorities to make loans or grants for research and training in matters connected with housing.

The Electricity (Special Provisions) Act, 1966, may be brought into operation by the Government whenever, so often and for such period as the Government is satisfied that there is a serious disruption or threat of disruption of electricity supplies in consequence of a trade dispute concerning the rates of remuneration and conditions of employment of persons employed by the National Electricity undertaking (the Electricity Supply Board). The Act provides for arbitration on such matters and imposes certain restrictions on strike action and picketing by persons employed by the Board.

¹ Note furnished by the Government of Ireland.

SOCIAL WELFARE (OCCUPATIONAL INJURIES) ACT, 1966

Explanatory Memorandum

1. The provisions of the Social Welfare (Occupational Injuries) Act, 1966, replace the present system of workmen's compensation as laid down in the Workmen's Compensation Acts, 1934 to 1955. Instead of employers having direct liability, which is usually covered by insurance, the State will pay benefits for death, injury or disease suffered in the course of employment.

2. *Contributions.* The workers to be covered will, generally speaking, be those who are now eligible to receive workmen's compensation for an accident at work but some other classes are also affected. These include non-manual workers

earning up to £1,200 a year rather than £600 a year under the Workmen's Compensation Acts. The new scheme, which will commence on a day to be fixed by Order, will be financed by weekly contributions payable by employers only, to an Occupational Injuries Fund. These contributions will be payable at the rate of 2/1d. for male workers and 1/6d. for female workers. The contributions will normally be collected for the employer by means of one insurance stamp covering all his social insurance obligations, but a special stamp for occupational injuries purposes only will be provided for workers who are not now covered by social insurance—for example, persons employed over the age of seventy.

3. *Benefits.* The benefits to be provided differ considerably from those provided by workmen's compensation.

For the first 26 weeks of incapacity for work following an occupational accident injured workmen will receive an allowance, termed *injury benefit*, of £5. 15. 0d. a week. This will be increased by £2 for an adult dependant and by a further 13/- for each of two children together with 8/- for every other child. The children for whom these increases will be payable are those under the age of sixteen, and those over sixteen but under eighteen who are at school, in apprenticeship at low earnings or are invalids. A married man with two children may therefore receive injury benefit amounting in all to £9. 1. 0d. a week.

When injury benefit ceases the workman whose injury continues will be eligible to receive a new benefit, *disablement benefit*, which will be paid irrespective of whether he continues to be incapable of work or not. Entitlement to this benefit will be determined by the degree of the workman's loss of faculty as a result of his accident or disease, a pension of £5. 15. 0d. a week being provided for 100 per cent disablement with proportionately lesser rates for reduced degrees of disablement. The full rate of pension will be paid for any period in which the workman is receiving treatment for his injury in hospital. Additions for dependants as in the case of injury benefit will be paid during any such period. Where disablement falls below 20 per cent a lump sum gratuity will normally be paid instead of a pension, the maximum gratuity being £380 but there will be an option of a pension instead of this lump sum gratuity. The disablement pension will be increased by £2. 12. 6d. a week, with additions for dependants, if the workman is, as a result of his accident, permanently incapable of work, and by up to £2 a week, or £4 a week where there is exceptionally severe disablement, if the workman is 100 per cent disabled and needs constant attendance outside hospital. The total payment of disablement pension could therefore amount to £15. 13. 6d. a week for a married man with two children who is totally disabled and receives the maximum payment for constant attendance.

Benefits for certain married women and persons under the age of eighteen will be at reduced rates, corresponding to approximately two-thirds of the normal rate.

The weekly amounts payable to injured workmen by way of injury benefit or disablement pension, including any increases as described above, will be limited to the amount of the workman's wages for a full normal working week at the time of his accident, but in long-term cases account will be taken of wage increases in the employment in which the accident happened. A limitation of this nature will also apply to a combined payment of disablement pension and benefit for sickness or unemployment under the existing social welfare legislation, including any increases. Provision is also made that injury benefit will not be payable for the first three days from

the date of the accident unless incapacity for work lasts for at least a fortnight, and that benefits arising from two or more accidents will be limited to the maximum payable for a single accident.

In addition to the foregoing benefits injured workmen will be entitled under the Act to payment of any reasonable and necessary *medical expenses* they incur as a result of an occupational accident to the extent to which such expenses may not be met under the provisions of the Health Acts or the Mental Treatment Acts or by way of treatment benefit under the Social Welfare Acts. Under this provision of the Act any sum which an injured workman may have to pay for hospital services under the Health Acts, for medical or nursing care outside hospital or for medical supplies, including artificial limbs, may be met under his occupational injuries insurance. Contributions may also be made towards the cost of rehabilitation services for injured workmen.

To deal with *fatal accidents* at work, the Act makes provision for the payment of pensions to widows of £4. 15. 0d. a week plus increases for children similar to those payable with injury benefit, pensions for orphaned children of £2. 7. 6d. a week, and pensions for one or both parents. In the case of the parents of an unmarried workman this pension is 95/- to one parent and 24/- to the other while a married workman's parents may receive 24/- each a week. A dependent widower of a woman who dies as a result of an occupational accident will receive a pension similar to that payable to a widow if he is permanently incapacitated, or a gratuity of £247 if he is not so incapacitated. A funeral grant of £50 is also payable following death by accident at work.

4. *Condition for benefit in respect of an accident.* The only condition to be satisfied for any of the foregoing benefits is that the workman has met with an accident arising out of and in the course of insurable employment. A similar condition obtains at present for entitlement to workmen's compensation. A number of provisions designed to liberalise the condition are, however, made in the Act. It is provided, for example, that an accident happening in the course of a workman's employment will be deemed, unless there is evidence to the contrary, to arise out of the employment, and that such an accident will be accepted as arising out of the employment if it is caused by another person's misconduct or by the workman's being struck by any object or by lightning if he in no way contributed to the accident.

5. *Diseases.* In addition to covering accidents at work the benefits under the Act will be provided in respect of diseases which are due to the nature of the employment. These diseases are to be prescribed by regulations.

6. *Provision for past cases.* Workmen's compensation will continue to be payable by employers in respect of accidents which occurred or disease which were developed before the new

scheme comes into operation, and the rates of such compensation are not affected by the Act. The Act includes provision for the making of regulations to enable recipients of weekly payments of workmen's compensation who are permanently incapable of work to have a like right to an unemployability supplement and increases for dependants as a recipient of disablement pension, and to constant attendance allowance in circumstances similar to those in which this allowance would be paid in future cases. It is also intended, following the commencement of this scheme, to permit full payment of disability benefit under the Social Welfare Acts with weekly payments of Workmen's Compensation in cases where the unemployability supplement referred to above is not payable and compensation has lasted for at least six months. Under the present regulations disability benefit is not payable with workmen's compensation except to the extent that it is higher than the compensation payment. This will mean that a man receiving weekly payments of Workmen's Compensation of £4. 10. 0d. a week will be eligible to receive a disability benefit payment of £2. 12. 6d. if single or £4. 12. 6d. if married, with increases for dependent children. The foregoing additions to workmen's compensation payments will be payable from the Occupational Injuries Fund by the Department of Social Welfare. The additions will be reduced where the combined

payment of compensation and addition would otherwise exceed the earnings in the employment which gave rise to the compensation.

7. Effect of benefits on common law damages. The Act does not interfere with a workman's right to claim damages at common law in respect of injuries caused by the negligence of an employer or a third party, but provision is made that in assessing damages account may be taken of the benefits which the workman will receive under the Act for a period of five years.

8. Administration. The new scheme will be administered by the Department of Social Welfare in the same way as other social welfare benefits. Title to benefit will be decided by the Department's Deciding Officers, who will have the advice of the Department's Medical Referees and, where necessary, of specialists in regard to medical questions. A person who is dissatisfied with a benefit decision may appeal against it, although provisional assessments of disablement which are subject to review after a short period will not be open to appeal. Provision is also made in the Act which will require workers to notify their employers of accidents which may give rise to claims for benefit and employers to report accidents and furnish information required in connection with claims.

ISRAEL

HUMAN RIGHTS IN 1965-1966¹

I. LEGISLATION

A. *The Broadcasting Authority Law, 5725-1965*

Until 1965, the public broadcasting system of the country, "Kol Yisrael" (The Voice of Israel) was operated as a government department attached to the Prime Minister's office. To remove any apprehension that the Government might be tempted to curtail the rights of opposition parties and further to secure the impartiality and objectivity of the service, it was decided to set up a separate and independent public corporation, in which the Government would have its proper part to play. The reorganization was effected by the Broadcasting Authority Law, 5725-1965.

The new Broadcasting Authority consists of a council of twenty-five members (the Plenum), a Management Committee of five and under it a Director and staff. The members of the Plenum represent the public and are appointed by the President of the State upon the recommendation of the Government which on its part must consult with academic, artistic and other public bodies in the choice of candidates. Not more than three of the members of the Plenum may be State employees. Of the others, one is to be appointed as Chairman of the Broadcasting Authority and one as Deputy Chairman. The Plenum meets at least six times a year and at any time when a meeting is demanded by a third of its members. Its primary function is to lay down the policy of the Broadcasting Authority within the legally defined tasks of the Service. These tasks include among other things, broadcasts to meet the requirements of the Arab-speaking minority in their own language, as well such as are designed to promote understanding and peace with neighbouring countries. The Plenum exercises a number of other directory and supervisory functions. In other respects, such as the approval of the budget of the Broadcasting Authority, the appointments of the Director, agreements with foreign governments or other non-Israel bodies, the decision lies with the Government and in certain cases with the proper parliamentary committee.

B. *Local Authorities (Elections) Law, 5725-1965*

This law provides for a unified system of elections to municipalities as well as local councils. Elections are direct, based on universal, equal suffrage and applying the principle of proportional representation (section 2), as is the case with parliamentary elections. There are however some differences in respect of the persons entitled to vote and of those entitled to be elected.

(a) In addition to the voters in parliamentary election (section 11 (a) (1), 11 (b) of the Law) non-nationals are entitled to vote in local elections if they are eighteen years old and residents in the polling district (section 12). Voting by soldiers is regulated by special provisions (sections 78, 84).

(b) Candidates must be registered as voters and have their permanent place of residence within the area of the relevant local authority. They must be twenty-one years old. The reasons for ineligibility deviate from those of parliamentary candidates (section 7).

Persons denied the right to vote or to be candidates may appeal to the District Court (sections 17, 21, 42). Similarly appeal lies against the result of the election (sections 72-73). Elections propaganda by state employees and soldiers, and generally such propaganda on polling day, are subject to restrictions (sections 74-77).

C. *Population Registration Law, 5725-1965*

This law combines registration of births and deaths under the Public Health Ordinance, 1940, with registration of residents introduced in 1949. The following provisions may be noted in connexion with human rights questions.

The law reflects the independence of husband and wife in the matter of domicile: in the notice which a person emigrating from Israel is obliged to give to the registrar he has to include his minor children emigrating with him, but not his wife; if she emigrates together with him, she has to notify the registrar separately, and if not, she retains her legal domicile in the country. In view of the

¹ Note furnished by Dr. Ernst Livneh, Senior Assistant to the Attorney-General of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

² See particularly the Local Authorities (Restriction of Elections) Law, 5724-1964, reported in the *Yearbook on Human Rights for 1964*, p. 150.

Women's Equal Rights Law, 5711-1951,³ the doctrine of English common law, that a married woman of necessity shares her husband's domicile and automatically changes it with him even if they live apart, does no longer fully apply in Israel.⁴

In the case of adoption of a child, the adopter only is registered as "parent", and the adoptee is registered as his "child" and with the name according to the adoption order (section 20). The same applies to documents issued under the law, particularly the identity card. No mention is made of the fact of adoption, of the adoptee's natural family and of his former name.

The father of a child of an unmarried mother may be registered on the strength of a joint notice by both parents or of the judgement of a competent court. If the mother was married to another man, the natural father cannot be registered except by virtue of a court judgement (sections 21-22).

Difficult questions arose for the legislator with regard to the right to inspect the register and to receive information and extracts from it. The solution adopted in the law is that every person may receive any information about entries concerning himself, and also about the name and address of any other person. To obtain other information he has to convince the registrar that *prima facie* he has an interest therein. A court may, in a pending case, authorize a person to inspect the register. Apart from these cases only a very limited number of Ministers and high officials may, for the purposes of their task, inspect the register or authorize others to inspect it.

D. Social Legislation

(a) Under the original Social Welfare Services Law of 1958,⁵ an indigent whose application for assistance was rejected might apply to the Minister of Social Welfare for review of the decision of the local welfare office. But he had no remedy if the local office failed to deal with his application in due course, or if he was dissatisfied with the relief offered or with a condition on which it was made dependent. (Moreover, it became evident in course of time that the Minister could not effectively deal with all applications for review submitted to him.)

The 1965 Amendment of the Law sets up local or regional review committees. Members of each committee are a qualified social worker and two representatives of the public, none of them connected with the authority whose decision they review. At the same time the Amendment Law obliges the local welfare office to reply to appli-

cants within a reasonable time and also enlarges the scope of review so as to comprise any aspect of the decision by which the applicant feels aggrieved. The review committee may give the welfare office directions and *inter alia* order it to grant relief within the limits fixed for the local office itself.

(b) Homes for children, or for elderly and infirm persons, were in former Palestine sometimes run on a business basis. The competition of modern charitable institutions had during the last generation considerably raised the general standard but there were no legal provision to ensure that the general standard be reached and maintained in every home where persons in need of care were kept. Now the Homes (Supervision) Law of 1965 has introduced a system of licensing and supervision of homes for such persons. Standards in respect of buildings and equipment, personnel, treatment of inmates etc. are laid down in rules, and no licence is to be granted unless observation of such standards is ensured.

(c) Apart from this particular law recent legislation has brought about improved protection for dependent persons within and without their own family. The Criminal Code Ordinance (Amendment No. 24) Law of 1965, among other innovations, fills a gap in the prior law. While hitherto a parent who deserted his children incurred no penalty unless the child was left "without means of support", the amendment also lays down penalties for leaving children in the hands of a person or institution neither of whom are obliged or willing to take care of them. The same protection is extended to other helpless persons.

(d) More comprehensive provisions were enacted the following year in the Protection of Wards Law, 1966. It provides protection for children up to 14 years as well as for other persons who for reason of invalidity, mental defects or old age are unable to take proper care of themselves (section 1). Originally designed to prevent the exploitation of such persons and their misery either for the collection of alms or for political and other demonstrations (section 2), the law was in the committee stage considerably extended, so as to make it a more effective instrument of social welfare. It now enables a welfare officer to apply to the court for authorization to intervene not only for the benefit of a neglected minor (such power exists under the Youth (Treatment and Supervision) Law of 1960,⁶ but similarly for an adult in circumstances as described above (sections 4-5). Still, no adult person may be subjected against his will to medical treatment, except if he is mentally defective or refuses treatment unreasonably (section 6). The decisions of the court are carried into effect by the welfare officer, but the court may order otherwise (section 11). The Law contains the usual provisions on the welfare officer's power to make inquiries, on secrecy of proceedings, on appeals, on penal sanctions, etc.

³ *Yearbook on Human Rights for 1951*, p. 185.

⁴ Israel Supreme Court judgements *Matalon v. Rabbinical District Court Tel-Aviv-Yaffo* (1963) 17 Piskei-Din III, 1640; *X v. Rabbinical District Court Tel-Aviv-Yaffo et al.* (1963) 17 Piskei-Din IV, 2222; *X v. Rabbinical District Court Jerusalem and Y* (1964) 18 Piskei-Din IV, 141 (not reported in this *Yearbook*).

⁵ *Yearbook on Human Rights for 1958*, pp. 112-113.

⁶ *Yearbook on Human Rights for 1960*, p. 193.

(e) The National Insurance (Amendment No. 4) Law of 1959⁷ had introduced a Large Family Insurance, whereunder families with four or more children—normally under fourteen years of age but in special circumstances up to eighteen years—were paid a modest allowance. Now the National Insurance (Amendment No. 12) Law of 1965 not only extends the allowance to the first three children, but also raises the age limit for children generally to eighteen years; and for a child incapable of supporting himself and lacking other sufficient income, the allowance is paid up to twenty-five years of age. In other branches of National Insurance too the age for child allowances was raised: while hitherto in the old age and survivors' insurance, benefits for a child between fourteen and eighteen years were paid only if the child was a pupil at school devoting his time mainly to study, the Amendment provides for payment of the allowance in respect of all minors up to the age of eighteen years.

(f) The spiritual welfare of children forms the object of the Legal Capacity and Guardianship (Amendment) Law of 1965. With a view to checking the unauthorized alteration of religion of minors, it lays down the following rules:

- (i) A minor's religion can be changed only to that of one of his parents;
- (ii) No such change is permitted unless authorized either by consent of both parents or by confirmation of the court, and confirmation cannot be given except on application of one of the parents of the child or of his guardian;
- (iii) No child of ten years or more can be compelled to change his or her religion;
- (iv) Consent of the parents and, where required, of the child (which must be given in writing) as well as confirmation by the court, have to precede the act of conversion;
- (v) Any change of religion made in disregard of these provisions is without legal effect and punishable;
- (vi) No propaganda aiming at a change of religion may be addressed directly to minors.

E. Labour Legislation

(a) The Annual Leave Law of 1951⁸ was amended in 1965 by replacing the uniform minimum leave of two weeks by a sliding scale ranging from fourteen days during the first four years with the same employer up to twenty-eight days in the fourteenth year and after. It may be noted in this connexion that the working week in Israel is six days, and the aforementioned periods of leave include one legal day of rest per week.

(b) Reforms of the provisions of the Bankruptcy Ordinance of 1936 and the Companies Ordinance of 1929 concerning priority rights of certain creditors were utilized in order to bring those two laws in conformity with the requirements of the Protection of Wages Convention No. 95 of the International Labour Organization: while the two Ordinances fixed a double ceiling—a maximum amount and a restriction to wages or salary for the six months preceding the relevant date—the Amendment Laws give priority in bankruptcy or in the compulsory winding-up of companies to wages and salary up to a fixed amount outstanding for any period whatever before such relevant date.

F. "Good Samaritan" Legislation

In Israel (as in some other countries) the legislature has in recent years been concerned with the position of persons who, in rescuing others, incurred expenses or suffered themselves injury or death. Under the law as it stood till 1964, the rescuer acted entirely at his own expense and risk. He had no right against the beneficiary of his action nor, where the latter had been injured by a third person, against the tortfeasor. In so far as monetary expenses and services for the benefit of the injured person or his dependants were concerned, that wrong was redressed in the Law of Torts Revision (Bodily Injuries) Act, 5724-1964.⁹ But this Law does not deal with dangers in which the rescuer himself is injured or even killed. Following a case where newspapers had made a collection in order to compensate the families of two men who lost their lives in attempting to save a child from drowning, a private member's bill proposed giving the victim of such rescue attempts a legal right rather than alms. The new Life Saving Operations (Casualties) (Benefits) Law, 5725-1965, endeavours to give a remedy for the gravest cases—death or incapacity of the rescuer. The Treasury, through the National Insurance Institute, pays the victim or his dependants the same benefits as would be payable if the rescuer had suffered a work accident. In contested cases the victim or his dependants may have recourse to the National Insurance Tribunal. A corresponding Law for soldiers grants them and their dependants the same rights as if the rescuer had suffered incapacity or death in the field.

G. The Succession Law, 5725-1965

This law, one of the first comprehensive codification of Israel law, is here reviewed only in so far as it touches upon questions of human rights. In this respect it should be regarded as the final stage in a continuous development towards the elimination of discrimination and the liberalization of the law.

⁷ *Yearbook on Human Rights for 1959*, p. 172, No. 7.

⁸ *Yearbook on Human Rights for 1951*, p. 182, and International Labour Office, *Legislative Series 1951-Isr. 2*.

⁹ *Yearbook on Human Rights for 1964*, p. 150.

Until the beginning of the present century, matters of inheritance were in this country, as in the then Ottoman Empire as a whole, within the exclusive jurisdiction of the religious courts and their various laws. The first step towards a modern, unified law was made in 1913 by the enactment of the Provisional Law relating to the Inheritance of Immovable Property (hereafter referred to as the Ottoman Law). This law introduced for certain kinds of land tenure (so-called *miri* land) an order of succession adopted (with minor changes) from the then new German Civil Code. For the first time one rule of succession applied equally to all inhabitants, though restricted to one important part of property, excluding the divergent religious (and for foreigners, the national) laws with their often discriminatory provisions. Freedom of testamentary disposition, however, was still not available. The next step was taken in the Succession Ordinance enacted in 1923 by the British Mandatory Government of Palestine. This law extended the Turkish succession rules to all kinds of property, but only with subsidiary force, that is to say in so far only as no particular religious or foreign law applied and subject to contrary testamentary dispositions. It prescribed expressly that nationality or religious belief should not incapacitate any person from inheriting by law or under a will. For *miri* land, however, the Turkish rule remained exclusive. In 1951 the Israel legislature, in the Women's Equal Rights Law,¹⁰ took a further step towards unification and removal of discriminations contained in religious and foreign laws: foreign rules of succession were entirely replaced by those of the Ottoman Law, and the application of religious laws was restricted to cases where all the parties, none of them a minor, agreed to be judged by them. Testamentary dispositions were recognized as before, but the exclusive domination of the Ottoman Law in respect of *miri* land was not affected. The last step was taken by the Succession Law. A general system of intestate succession now applies to all estates in Israel and to them in their entirety, but it may be superseded by will or by an agreement of the heirs to apply their personal religious (but not a foreign) law; a special provision of the new law prevents a minor or otherwise legally incompetent heir from being prejudiced by such an agreement. Other provisions preserve the succession rights of a child born out of wedlock as well as render them applicable in cases of adoption. Following traditional Jewish law and modern English legislation, the new Israel law makes detailed provision for "maintenance out of the estate" for the benefit of the deceased's widow (or widower), parents and children; in so far as these persons are in need, they may be awarded periodic payments (often for a limited period of time) or in certain cases a lump sum. On the other hand no fixed portion of the estate is reserved for any person independently of personal need, and the award of maintenance from the estate depends upon a number of considerations,

such as the assets of the estate, the share therein due to the person claiming maintenance, etc.

H. *Shipping (Limitation of Ship Owners' Liability) Law, 5725-1965*

This law was enacted to give effect to the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships (Bruxelles 1957). While it does not grant the citizen any rights against the State, it secures for him minimum protection against the overwhelming bargaining powers of shipowners and their organizations, who were hitherto free entirely to exclude their liability for loss of life, personal injury and loss of or damage to property of passengers and other parties using shipping services.

I. *Punishment of Genocide*

The Nazis and Nazi Collaborators (Punishment) Law, 5710-1950,¹¹ as amended in 1963, abolished prescription of offences under that law. Following resolution 3 (XX) of the United Nations Human Rights Commission of 9 April 1965, the inapplicability of prescription was extended to the Crime of Genocide (Prevention and Punishment) Law, 5710-1950.¹²

J. *The "Little Penal Reform" of 1966*

The Criminal Code Ordinance, 1936, is largely a codified version of English common law. But its codification cut it off from the source of modernization of the law of England—its continuous development by the English courts. While a number of chapters and many single provisions of the Ordinance have been revised over the years, a basic reform of the Code is still in the stage of preliminary study. In the meantime it was felt necessary to make at least some major adjustment of penalties. This was done in the Criminal Code Ordinance (Amendment No. 28) Law, 5726-1966.

As far as the general tendencies of the 1966 reform can be observed, they consist in endeavours to reduce the excessive casuistry of the Ordinance; in the reduction of legally prescribed penalties to those usually imposed by the Courts; and in a movement away from maximum and minimum penalties and a concentration around the medium ranges in the scale of punishment. This does not mean that the death penalty (in the few cases in which it is still provided in Israel law) and imprisonment for life were abolished or that new minima for imprisonment or fines were introduced. But "life imprisonment" was reduced to twenty years in respect of ten offences—i.e. in all the offences under the Code except murder, where

¹⁰ *Yearbook on Human Rights for 1951*, p. 185.

¹¹ *Yearbook on Human Rights for 1950*, p. 163.

¹² *Ibid.*, pp. 162-163.

an obligatory penalty of imprisonment for life replaces the former death penalty. On the other hand, the amendment opposes the tendency of short terms of imprisonment by raising the penalty for contraventions to one month and that for many misdemeanours to three months imprisonment. Those are, however, maxima, and usually shorter terms of imprisonment are imposed.

Apart from these general trends, many adjustments of penalties for individual crimes were made, some towards greater leniency (among them infanticide and concealment of birth), others (notably sex offences) towards greater severity. Here too the tendency towards levelling excessive differences can be observed, e.g. in the law of theft, where the general penalty was raised from one year to three, but at the same time many special offences, some of them with very severe penalties, were absorbed into the general provision. In the case of theft and some other offences the enlargement of the legal maximum permitted the legislator to repeal special provisions on repeated crimes (recidivism).

A number of offences of the Code was abolished: challenge to duel (a custom unknown in Israel society); procuring a miscarriage by the woman herself (the punishment for other persons was reduced from fourteen to five years imprisonment); and suicide.

K. The 1965 Reform of Criminal Procedure

One of the largest pieces of legislation in the year under review is the Criminal Procedure Law, 5725-1965,¹³ with 228 sections. Together with the Criminal Procedure (Arrest and Searches) Ordinance (Amendment) Law, 5725-1964,¹⁴ it codifies and partly reforms the bulk of the law on the subject. The following provisions concern matters of human rights:

1. An "effective remedy" against violation of a person's rights by criminal acts, and "equal protection of the law" by due enforcement of its penal provisions (articles 2, paragraph 3, and 26 of the International Covenant on Civil and Political Rights) are ensured by the right of everyone who has unsuccessfully complained to the police of an alleged offence to have the matter reviewed by the Attorney General: section 58 of the Law. According to section 7 of the Courts Law, 5717-1957,¹⁵ the complainant can, if the Attorney General too refuses to institute criminal proceedings, apply to the High Court of Justice.¹⁶

2. Rules concerning arrest (article 9 of the Covenant) are chiefly contained in the aforementioned 1964 amendment of the Arrest and Searches Ordinance. The present law regulates arrest after the statement of charge has been filed. Information of the accused on the reasons for his arrest and on the charge against him (article 9.2 of the Covenant) is prescribed in sections 21 and 23. The person arrested may ask to have a near relative or friend as well as an advocate to be informed unless, in exceptional cases, a judge of the District Court orders otherwise in view of the need for secrecy: sections 27-28. Detailed provisions of the law (sections 30-51) provide for release on bail and, in cases of delay of proceedings, without bail, as required by article 9.3 of the Covenant.

3. Provisions guaranteeing a fair and public trial before an independent and impartial tribunal (article 14.1 of the Covenant) are given in the aforementioned Courts Law, 5717-1957 and not repeated in the present law.

4. The presumption of innocence (article 14.2 of the Covenant) finds expression in section 142 of the Law which prescribes immediate acquittal of the accused if the prosecution, at the close of its case, has not made out at least a *prima facie* case against him.

5. The rights of the accused enumerated in article 14.3 of the Covenant are guaranteed by the following provisions of the Law (most of which were taken over from prior enactments):

(a) Information about the charge: section 23 (with section 21) in case of arrest; section 85 (with section 75, especially No. 4) in other cases.

(b) Preparation of defence: section 67-74, rule 20 of Criminal Procedure Rules, 5726-1966; defence counsel: sections 11-19, 27.

(c) Trial without delay: sections 46-49; rules 19-20.¹⁷

(d) Presence of accused: sections 116-120, defence counsel: sections 11-19; information about accused's rights: section 132.

(e) Examination of prosecution witnesses; summoning and examination of defence witnesses: sections 156-160, 95-105.

(f) Interpreter: sections 128-130.

(g) Privilege against self-incrimination etc.: sections 136, 142, 145 (a) (2) and (3), 146.

6. The procedure against juvenile accused (article 14.4 of the Covenant) is regulated in a special enactment, the Juvenile Offenders Ordinance, 1937. A new Law on the subject is in preparation.

7. Right of appeal (article 14.5 of the Covenant): The relevant provisions of the Courts Law are complemented by sections 179-201 of the new Law.

8. Compensation in cases of erroneous conviction (article 14.6 of the Covenant): Legislation is in preparation.

¹³ *Laws of the State of Israel*, vol. 19, p. 158-189. Another English translation appeared as vol. 13 of *The American Series of Foreign Penal Codes* (New York and London, 1967).

¹⁴ *Yearbook on Human Rights for 1964*, pp. 148-149.

¹⁵ *Yearbook on Human Rights for 1957*, pp. 154-156.

¹⁶ See the case *Wagenaar v. Attorney-General*, reported in the *Yearbook on Human Rights for 1964*, p. 151.

¹⁷ See also the case *Amar v. Attorney-General*, noted in part II of this report.

9. *Ne bis in idem* (article 14.7 of the Covenant): sections 2, 133 (5) and (6), 168 (end) of the Law replace section 21 of the Criminal Code Ordinance 1936.

10. *Nulla poena sine lege* (article 15 of the Covenant): uncodified principle of criminal law (see section 4 of the Criminal Code Ordinance 1936).

L. Defamation Law, 5725-1965

This law, while based on older local and English tradition, introduces a number of innovations which, depending on whether they are viewed from the aspect of the person defamed or of the defamer, may appear either as increasing the protection of honour and reputation (article 17, end of paragraph 1, of the International Covenant on Civil and Political Rights), or as restricting the right to freedom of expression, such as provided for in article 19, paragraphs 2 and 3, of the Covenant. The following provisions of the new law concern such human rights.

1. Bodies of persons and even unorganized "groups" may seek protection from defamation (sections 1, 4). However only natural persons and bodies corporate may sue for damages or institute a private criminal complaint; unincorporated bodies and groups (such as the members of a profession or the inhabitants of a locality defamed) can only apply for the institution of public criminal proceedings.

2. The good name of a deceased person is given a certain amount of protection: his spouse, any of his children, parents or brothers and sisters may apply for prosecution of the defamer (section 5 as amended in 1967; section 25).

3. The defence of truth is now both in civil and in criminal proceedings made dependent on the existence of a substantial public interest in its publication (section 14 as amended in 1967); hitherto this rule applied, as in England, only in criminal prosecution.

4. For libels published in newspapers civil and criminal liability falls on the person who brought the defamatory matter to the newspaper and caused its publication (see, however para. 6 (d) below); on the editor; and on the person who actually decided on the publication. The publisher of the newspaper bears civil liability. The editor may be acquitted in criminal proceedings, if he took reasonably steps to prevent publication of the libel and did not know that it was published (section 11).

5. For publications in print, except newspapers appearing at least once in forty days, the owner of the printing press and the vendor or other distributor also bear responsibility, but only if they knew or ought to have known about the libel published therein (section 12 as amended).

6. The Law reproduces the absolute and qualified privileges known in the English common law with certain adaptations to the constitutional

arrangements in Israel. There are, however, a few new provisions:

(a) Similar to provisions of the English Defamation Act, 1952, absolute privilege is recognized for correct and fair reports of open sessions of an international organization of which the State of Israel is a member (such as the United Nations), of an international conference to which the Government of Israel has sent a representative, of an international tribunal and of the elected agencies of the World Zionist Organization—the Jewish Agency (section 13 (8)).

(b) Qualified privilege is granted, in addition to those cases that feature in the common law, for *bona fide* publications, if the accused or defendant did not know and ought not to have known of the existence of the person defamed; or, in the case of defamation by *innuendo*, of extrinsic circumstances from which the defamation or its application to the party defamed is deduced (section 15 (1) as amended).

(c) Similarly protected is a publication made for the sole purpose of denouncing or denying another defamation previously published (section 15 (10)).

(d) A person who does no more than submit information to the editor of a newspaper with the *bona fide* request to examine the question of its publication in the newspaper also enjoys a qualified privilege (section 15 (11)).

7. A number of new provisions are designed to make the protection against defamation more effective by countering the spread of defamation in print.

(a) In criminal and civil proceedings alike, the court may, in addition to granting other available sanctions or relief, order the prohibition of the distribution of copies of the defamatory publication or their confiscation, even in the hands of a person not a party to the proceedings, if he keeps such copies for sale, distribution or storage, but not normally against public libraries and archives nor against private persons (section 9 (a) (1); 9 (b)).

(b) The court may also order publication at the expense of the accused or defendant of a correction or denial of defamatory matter or publication of the judgement. In order to assure publication of a correction or denial at the earliest possible moment, the court may, where the accused or defendant admits the defamatory or untrue character of part of his publication, make an interim order in respect of that part at any stage of the proceedings before judgement (section 9 (a) (2); section 10).

(c) To promote rectification of defamatory statements at a still earlier stage, the Law on the one hand empowers the court to have regard in favour of the accused or defendant of an apology for, or correction or denial of, the defamation, or of the suspension of further publication (section 19 (4)); and on the other hand (following the English Defamation Act 1952) makes the plea of qualified privilege of persons responsible for a newspaper dependant on their publishing a counter-statement of or on behalf of the party

defamed if the latter so requests and his counter-statement does not contain on its part defamatory or other illegal matter (section 17).

8. Experience with prior law and practice had shown the danger of the injured person being subjected to additional defamation in the course of the very proceedings instituted for the protection of his reputation. This danger arose partly from one-sided newspaper reports of the proceedings and partly from the rule of English and local law that a general bad reputation of the party defamed is a ground for reducing the compensation due to him. To counteract these tendencies the new Law:

(a) Empowers the court to prohibit, permanently or temporarily, the publication of the proceedings and pleadings, except the charge in a criminal case and the judgement, if and in so far as these restrictions are necessary to protect the reputation of a person concerned in the case (section 21 as amended in 1967);

(b) Postpones the taking of evidence on the alleged bad character of the party defamed until the court has found the other party criminally or civilly liable for the defamation (section 22);

(c) Generally endeavours to restrict the taking of such evidence to the minimum necessary to do justice to the parties (*ibid.*).

II. JUDICIAL DECISIONS

1. *Freedom of Occupation*¹⁸

*Falk Hatchery Ltd. v. Egg and Poultry Board*¹⁹
(In the Supreme Court sitting as a High Court of Justice. Judgement of 25 May 1965)

With a view to developing the breeding of poultry in Israel the Egg and Poultry Board (Production and Marketing) Law, 1963 sets up the respondent Board and, among other things, confines the marketing of "reproduction material" (hatching-eggs and newly hatched chicks) to "authorized contractors". The Law provides that the accreditation of such contractors by the Board shall be in accordance with rules prescribed by the Board itself with approval of the Ministers of Agriculture and of Trade and Industry, and empowers the Board to prescribe in its rules the duty of every breeder to be linked with an authorized contractor of his choice.

The petitioning company did not qualify under the rules as an authorized contractor. It was therefore requested by the Board to link up with a contractor of its choice. When it failed to do so the Board, by virtue of its powers under the rules, linked it to a certain authorized contractor.

In the High Court the petitioners attacked the rules as tending to the ultimate extinction of their

economic existence, to deprive them and the breeders associated with them of their livelihood, and to violate their right of trade.

The Court doubted the seriousness of the alleged danger to the petitioner's existence, but found also no substance in the legal argument.

"... there is no deprivation of any property in the exact meaning of the word which would require compensation, but rather a limitation of power or freedom—the freedom of occupation. It all depends on the nature of the enabling law, for the doctrine (of the prior cases) speaks of the freedom of occupation as something which the secondary legislator may not abolish or restrict unless given power to do so expressly or by clear implication from the purpose and tenor of the enabling law. As far as the present law is concerned we have to bear in mind that the entire egg and poultry branch of the national economy has been run for years in planned form and not by way of free trade... That was already the first and decisive invasion of freedom of occupation in the sense of pure liberalism. True, the petitioners have enjoyed till now the benefits of freedom of marketing within the framework of protection and planning, and this freedom is now taken away from them. But that was the will of the legislature when it provided in the Law itself for the need to link up with an authorized contractor, without ensuring that all those who had till then engaged in marketing should in future enjoy the status of authorized contractors... Every intervention in the economy involves of necessity a disturbance of the *status quo*, and in such cases the invocation of freedom of occupation... is of no avail. With such a disturbance, which flows from the will of the legislature, the citizen has to put up without compensation from public funds, and to this state of affairs, which is created by virtue of the law, he has to adjust himself as well as he can."

*Zohar v. Minister of Health*²⁰ (In the Supreme Court sitting as a High Court of Justice. Order of 11 July 1965)

The petitioner, holder of a diploma of stomatology of the University of Bucharest, obtained an *order nisi* against the Minister of Health to show cause why the Minister should not recognize the diploma as one authorizing the petitioner to practice general medicine in Israel. In discharging the *order nisi*, the Court refused to prefer its own views of the matter to that of the Minister and to express an opinion on questions of the medical profession. As to the question what standard ought to be applied the Court said:

"This Court will not object to the competent authority setting itself high and exacting standards and watching that no person be admitted to the medical profession in Israel whose qualification is not clear beyond all doubt."

¹⁸ International Covenant on Economic, Social and Cultural Rights, art. 6.

¹⁹ (1965) 19 Piskei Din I, 659.

²⁰ (1965) 19 Piskei Din II, 401.

*Mattiash & Sons Ltd. v. Minister of Trade & Industry and ors*²¹ (In the Supreme Court sitting as a High Court of Justice. Judgement of 17 June 1966)

In 1964 the copper price on the world market rose to such heights that Israel producers and exporters of copper were became unable to compete with foreign products. Among other means of subsidy for the local industry the respondents made export licences for copper scrap dependent on the undertaking of exporters, to import copper ingots and to supply the metal to local producers at a price considerably below the international level. When the petitioners, who were an old-established firm of scrap metal exporters, refused to accept this condition, their export licence was not renewed, and subsequently, by a complicated arrangement with other firms active in this field, the export of scrap copper was concentrated in the hands of one licensed company. The petitioners obtained an *order nisi*, which was however discharged after hearing of the case. The following abstract of the judgement shows the deliberations of the court.

"1. Freedom of occupation is one of the citizen's rights of liberty which are recognised in the common law, but the Import, Export and Customs Powers (Defence) Ordinance, 1939, gives the Minister of Trade and Industry powers to restrict the freedom of occupation... The Minister must of course be expected, on making use of his power of giving a licence to a single firm, to consider if indeed the common good requires this denial of individual freedom; in particular he must be expected to consider this where the case concerns not the choice of a certain trade by any person, but the denial of the right to continue in a trade in which such person is already active and from which he has been making his living.

"2. In import and export policy and in price fixing the need sometimes arises of giving subsidies for a certain commodity... This policy is executed *inter alia* by imposts to be paid into an equalization fund from which subsidies are paid... Power to prescribe such imposts and to make the grant of licences dependent on the assurance of their payment is founded upon the (aforementioned Ordinance of 1939)...

"In the present case the authorities took a short cut and instead of fixing imposts on the one hand and granting subsidies on the other, made the aforementioned arrangement.²² There is no reason to say that this short cut is inconsistent with natural justice or with basic principles of law...

"3. It is evident that the petitioner has no vested right to export licences, at any rate not to unconditional licences, in view of the position in the world market for copper and of the

powers granted the Minister of Trade and Industries.

"4. While the legal regime within the State in general views monopolies with disfavour, yet... in a case as the one before us the authorities act on the wide powers given them in the (aforementioned Ordinance of 1939)...

"It has been laid down more than once that this court does not interfere with the policy of the executive, provided the latter acts within the framework of its powers and no fault is to be found in the execution of such policy.

"5. There is in my view no need to enter into an examination of the question (raised by petitioners), whether the grant of a subsidy involves a violation of any undertaking towards other States which also signed the (GATT) Agreement, for an international convention does not come within the frame of the term "law", and it is only the observation of laws which the court enjoins in the relations between the State and the citizen.

"6. It is a long established principle (which has also found strong expression in the Talmud...) that the government does not go back on its word. But it is clear that with a change of times and circumstances the authorities cannot be expected to be frozen into inactivity and to continue a policy decided upon in the past in the light of circumstances then prevailing. It must also be clear that even from a legal aspect the State cannot fetter itself in its policy, not even by way of private contracts."

2. Discrimination on Religious Grounds²³

(In the Supreme Court sitting as a Court of Civil Appeals – Judgement of 25 May 1966)

*Kalo v. Bat-Yam Municipal Council*²⁴

Discrimination is found in Israel less between the adherents of different religions than between the stricter and laxer groups within Judaism itself. The Supreme Court suppresses discrimination, no matter whether it concerns the specific rights recognized in the Universal Declaration on Human Rights and the two International Covenants on the subject, or any other vital interest of the citizen.

In 1963 the respondent municipal council changed the scale of fees of its business tax so that non-ritual butcher-shops had to pay fees prohibitively higher than "ritual" shops. The District Court found this distinction non-discriminatory, since it considered that the fees applied to two different types of business. The Supreme Court reversed the decision. It found that there was no economic basis for the different scale of fees, and the only apparent reason for the distinction flowed from religious grounds:

²³ International Covenant on Civil and Political Rights, art. 2.1; International Covenant on Economic, Social and Cultural Rights, art. 2.2.

²⁴ (1966) 20 Piskei-Din II, 327. English abstract: *Jerusalem Post*, 16 June 1966.

²¹ (1966) 20 Piskei Din II, 651; (1967) 2 Is.L.R. 282.

²² I.e. the condition contained in the export licence, to provide the local industry with copper at reduced prices.

"Religious consideration . . . is foreign to the matter of business tax. The municipality does not deal with religious matters, and it is not its task to ensure the provision of services and supplies in accordance with religious precepts."

3. *Speedy Trial or Release from Arrest*²⁵
(Supreme Court — President's decision
of 22 November 1966)

*Amar v. Attorney-General*²⁶

Sections 46-49 of the Criminal Procedure Law, 5725-1965²⁷ are an innovation designed to prevent unnecessary prolongation of criminal trials and detention. A suspect or accused must be released from custody:

(a) If a statement of charge has not been filed within 90 days after his arrest (section 46);

(b) If his trial has not been commenced within 60 days after the filing of the statement of charge (section 47);

(c) If his trial in the court of first instance has not been concluded by judgement within one year after the filing of the statement of charge (section 48).

Only a judge of the Supreme Court may order an extension of detention beyond these limits or a re-arrest, and not for more than three months each time (section 49).

In granting in a case under category (b) above such extension for special reasons, the President of the Supreme Court added the following general direction in order to enhance the practical effect of the law:

"(T)he authorities concerned—the public prosecution as well as the courts—are to watch strictly that the trial of an accused who is in custody be commenced within 60 days after his arrest, since otherwise the purpose of the legislator in respect of section 47 would be frustrated . . . It is imperative that the Courts Administration should pay attention to this matter with a view to ensuring co-ordination between the public prosecution and the courts in regard of the fixing of dates for criminal trial in the spirit of what is said in section 47 of the Law."

4. *Humane Treatment of Prisoners
Participation in Cultural Life*²⁸

(In the Supreme Court sitting as a High Court
of Justice. Judgement of 29 June 1966)

*Ellinger v. Director of Shatta Prison*²⁹

The petitioner, a prison inmate, complained of newly imposed restrictions upon the introduction

of reading matter into the prison. He alleged that the prison library was antiquated and quite insufficient to provide the books and periodicals he used to receive before the new regulations.

The court found that restriction in accordance with the law, which forbids the introduction of any articles, including books, except with the written permission of the officer in charge of the prison. The stricter application of the law was justified by the prison authorities on the grounds of the danger of the introduction of pornographic, inciting and seditious material, calculated to cause tension among the prisoners and to lead to disturbance of order and security, and also of previous occurrences when drugs and sharp instruments had been concealed in books. Nevertheless an exception was made for books of instruction.

In these circumstances the court saw no possibility to accede to the petitioner's request, but added a recommendation to the Commissioner of Prisons, to enlarge the diversity and renew the supply of books available to inmates.

5. *Determination of a Party's Right in Lawsuit
Independent and Impartial Tribunal*³⁰

(In the Supreme Court sitting as a High Court
of Justice. Order of 29 April 1965)

*Hussein v. Competent Authority and anr.*³¹

Under the Leasing of Land (Temporary Provisions) Law, 5719-1959³², a person who has occupied and cultivated for a period of not less than ten years before a certain date land belonging to the State or the Development Authority is entitled to be given a lease for not less than forty-nine years, provided the land was his principal source of livelihood and he has no other land sufficient for that purpose. The existence of these conditions, as well as particulars of the lease, are determined by a "competent authority" to be appointed by the Minister of Agriculture.

The petitioner objected to the person appointed as competent authority acting in his case, because that person was a high official in the Israel Land Administration; without attacking him personally the petitioner expressed his apprehension lest he might in his judicial task be influenced by the views of his office. The respondents denied the judicial character of the task under the aforementioned Law and justified the appointment with the appointee's experience in matters of land administration, which appeared particularly valuable in connection with his task under the Law of 1959.

The High Court of Justice granted the petitioner an *order nisi* against the competent authority, and

²⁵ International Covenant on Civil and Political Rights, art. 9.3; art. 14.3 (c).

²⁶ (1966) 20 Piskei-Din IV, 582.

²⁷ See part I of this report.

²⁸ International Covenant on Civil and Political Rights, art. 10.1; International Covenant on Economic, Social and Cultural Rights, art. 15.1.

²⁹ (1966) 20 Piskei Din III, 94.

³⁰ Covenant on Civil and Political Rights, art. 14.1.

³¹ (1965) 19 Piskei Din I, 572. An English abstract of the judgement appeared in the *Jerusalem Post* of 20 May 1965.

³² *Laws of the State of Israel*, vol. 13, p. 210.

in making it absolute took notice of the quasi-judicial powers of the authority, such as fact-finding, summoning witnesses and administering the oath to them, as well as the authority's obligation to enable the occupier of the land to present his arguments and to produce his evidence: that, the court concluded, is proof of a legal dispute between the State or the Development Authority and the occupier, to be submitted to the competent authority for decision. In these circumstances the principles of the independence and impartiality of tribunals apply, and a party who reasonably apprehends that the person appointed may, even unwittingly, be influenced by his position as an administrative officer in the same field, has a right to object to the decision of his case by that officer.

6. Equality before the Courts³³

(In the Supreme Court sitting as a Court of Civil Appeals. Judgement of 8 July 1966)

*Seltzer and "Yehuda" Insurance Company v. Selicho*³⁴

The plaintiffs (respondents to the appeal) claimed compensation for the death of their husband and father in a road accident. The defendants complained that the registrar granted the plaintiffs postponement of the payment of court fees for the entire amount and brought this question before the Supreme Court.

Per Berinson, J.:

"It is to be regretted that such continuous and obstinate effort as is required to bring the matter before the highest judicial instance of the land, was made before the trial even began, with a view to preventing the trial of the action, and this only by reason of the respondents' poverty. If that wearisome preliminary struggle had been conducted in respect of the entire case, I would have accepted the inevitable and been ready to discuss the appellants' objection on its merits. But since it is conducted on . . . the postponement of a comparatively small part of the court fees, it is difficult to resist the impression that another purpose is concealed behind it, namely to freeze the claim from the outset, to delay it in its first stages and to tire out the respondents . . .

"There is, I think, a fundamental difference in the position of the two parties in respect of a preliminary dispute over the postponement of court fees, and it ought to find expression in the approach of the court to their interests therein. For the plaintiff, refusal to postpone the payment amounts to non-suit . . . While the defendant, if the registrar does not accept his opposition to the postponement of court fees, . . . has not yet lost anything . . .

"The appeal is rejected; to express our disapproval of it being lodged, we order the appellants to pay the respondents' costs of the appeal (on the higher scale)."

7. Accused's Right to Remain Silent. Protection against Self-Incrimination. Communication with Counsel. Duties of Police and of Public Prosecutor³⁵

(In the Supreme Court sitting as a Court of Criminal Appeals. Judgement of 9 June 1966)

*Tau v. Attorney-General*³⁶

The Supreme Court, without abandoning its previous ruling that:

"a confession is not to be rejected because it was obtained from the accused by a ruse or trick, provided it was not given under threats or promises."³⁷

qualified it by stressing the duty of the police to show respect for the accused's human rights.

The accused, a tax consultant, had assisted his clients in tax evasion by forging documents and by fraudulent tricks. To prove that he was indeed the person responsible for the offences, it appeared necessary to establish that the handwriting in the forged documents was his. To this end the police officer conducting the inquiry resorted to a trick of his own. The accused had in the past worked as a clerk in the tax administration; the police officer talked with him about one of the files on which he had worked at that time, as though conducting an inquiry against that taxpayer, and asked him whether a certain notice in the file was written by him. The accused asked to be allowed to consult his lawyer. In a three-cornered telephone conversation between the accused, his advocate and the police officer, the latter made the same misleading representation to the lawyer, who then advised his client that he might answer questions asked in connection with that particular file.

The accused was convicted of various offences, among them two the proof of which was based on the identity of his handwriting with the specimen in the tax file. When he appealed to the Supreme Court, the Attorney-General's representative thought it proper to be content with confirmation of the conviction in respect of the other charges, no matter whether the court would hold the evidence obtained by trick admissible or not. Consequently the court refrained from ruling on the admissibility of that evidence, but laid down the following directions which, though *obiter dicta* in respect of the case decided, constitute guidance for the behaviour of investigators and prosecutors.

³⁵ International Covenant on Civil and Political Rights, art. 14.3.

³⁶ (1966) 20 Piskei Din II, 539; (1967) 2 Is.L.R. 137.

³⁷ *X v. Attorney General* (1959) 13 Piskei Din II, 1205 (1210).

³³ International Covenant on Civil and Political Rights, art. 14.1.

³⁴ (1966) 20 Piskei Din III, 193.

"1. A person suspected of or charged with a criminal offence is not obliged to account for his movements but has the right to keep silent on the matter.

"2. The right of silence ought not to be circumvented by an examination aimed at extracting from the suspect himself incriminating information without his being able to understand the purpose of the question.

"3. A suspect has also the right to consult his lawyer on the question of whether or not to make a statement to the police. Such consultation ought not to be frustrated by information misleading the suspect or counsel regarding the purpose of the police examiner's question. If counsel is misled by the police he cannot fulfil the duty imposed upon him by the law to serve the interests of his client loyally and devotedly and to help the court to dispense justice.³⁸

"4. The rule of the 1959 precedent mentioned above at note 37 on the admissibility of evidence obtained by trick ought not to be understood as approval by the Court of the employment of such methods, which not only undermine the public's confidence in the police but also endanger criminal justice in the courts.

"5. While the Court had in the past shown understanding for the difficult task of the police and for the public interest in bringing offenders to justice, yet as against this public interest, there was also the personal interest of the citizen and his right not to contribute to his own conviction; in the eyes of the law the latter took precedence over the former.

"6. Not only were the police bound by these rules, but also the public prosecutor ought to refrain from submitting evidence tainted by deception of the accused or his counsel."

8. *Accused's Right to Defend Himself through Legal Assistance of his Own Choosing*³⁹

(a) *Hejazi v. Chief Military Prosecutor*.⁴⁰ (Appeal Court Martial. Judgement of 27 June 1965)

(b) *Hejazi v. Minister of Justice*.⁴¹ (Supreme Court sitting as a High Court of Justice. Judgement of 22 December 1965)

When Adolf Eichmann was put on trial⁴², the Israel parliament amended the Advocates Ordinance, 1938, then in force, to enable him to be defended by a German lawyer of his own choosing. The amendment was later perpetuated in

section 23 of the new Chamber of Advocates Law, 1961⁴³, which in part reads as follows:

"Foreign defence counsel in certain cases

"23. A person not being an Israel national, who is charged with an offence punishable by death . . . may, with the approval of the Minister of Justice, appoint for himself a defence counsel who is not an advocate within the meaning of this Law, if he is qualified to practise as an advocate abroad. The Minister of Justice may approve the appointment in special circumstances and after consultation with the National Council of the Chamber. A defence counsel whose appointment has been approved as aforesaid shall, for the purposes of the matter in question, have the status of an advocate within the meaning of this Law . . ."

(a) *Hejazi v. Chief Military Prosecutor*

Hejazi was indicted before a District Court Martial under the Defence (Emergency) Regulations 1945 for discharging fire arms at a group of soldiers and for other security offences, all of which carry a (non-obligatory) death penalty. Not before the opening of the trial did the accused ask the court to appoint for his defence a lawyer of his own country, the Hashemite Kingdom of Jordan. The court instead appointed a local lawyer who conducted Hejazi's defence, and, on the latter being convicted and sentenced to death, also his appeal before the Appeal Court Martial. That court accepted one of the grounds of appeal put forward by counsel, that section 23 of the Chamber of Advocates Law conferred a "vested right" on the accused to be defended by a foreign advocate if he so chose. The Court's reasons for so holding were as follows:

(i) On the history of section 23 of the Chamber of Advocates Law:

"(The Chief Military prosecutor) reminded us that the enactment of the section was preceded by the Eichmann trial, when no lawyer prepared to act for the defence was to be found in Israel. For obvious reasons, the Chief Military Prosecutor added, the Israel Government was not ready to leave Eichmann legally unrepresented, but then the question arose, how should Eichmann be represented by a foreign lawyer since Israel Law did not permit a foreign lawyer to appear before the Israel Courts. For this reason the Law was amended . . . We do not disregard the fact that the Eichmann trial led to the enactment of section 23. But in reading the section we are unable to accept the argument . . . that it is an *ad hoc* provision, i.e. for a particular trial or a particular category of trials. It is clear to us that the legislature intended to give an accused person who is not an Israel national and is charged with a capital crime a fair and reasonable opportunity to defend himself; but the legislature made no distinction

³⁸ Chamber of Advocates Law, 5721-1961, section 54.

³⁹ International Covenant on Civil and Political Rights, art. 14.3 (d).

⁴⁰ Not reported.

⁴¹ (1965) 19 Piskei Din IV, 203. English abstract: *Jerusalem Post*, 30 December 1965.

⁴² *Yearbook on Human Rights for 1962*, p. 127.

⁴³ *Yearbook on Human Rights for 1961*, p. 185.

between an accused such as Eichmann and the like and other accused persons whom the objective facts bring within the section."

(ii) As to the argument that the accused was not deprived of his right, since he had not informed the court that he had appointed counsel and asked for an adjournment to obtain the Minister's approval, but only that the court should assist in appointing a foreign lawyer, which the court was not obliged to do, the Appeal Court Martial said:

"In point of fact the Chief Military Prosecutor may be right. But the question is whether from the aspect of the provisions of the section and of the requirements of justice the court discharged its duty to the appellant. In our view ... the appellant did not know ... what was his true right. In his situation, arrested in a foreign state, he was unable to contact a foreign lawyer to defend him ... In these circumstances we are of the opinion that the court below had the duty to explain to the appellant what was his right and to give him the proper and reasonable opportunity to give effect to it."

(iii) As to the reasoning that the accused had lost his right through express waiver or through delay in making his application;

"... not only does section 23 not provide that the right must be exercised before commencement of the trial ... but it seems to us that in a capital trial one should not be bound by minor technicalities ... It is certainly possible that upon his arrest the appellant was not aware of the seriousness of the charges brought against him and that he changed his mind when in the course of his interview with (the Israel advocate appointed for his defence) it was born upon him that his position was indeed critical because his life was in jeopardy ... Further ... section 23 was not brought to the appellant's notice before the beginning of the trial ... Although ignorance of the law is no excuse, yet when we ask ourselves what is preferable, to do justice to the accused or to deprive him of a defence because of his possibly negligent conduct, or even when he did not exercise his vested right when it was natural for him to do so, then there is no doubt that the answer, especially in a capital trial, is that justice is to be preferred."

(iv) As to the apprehension of delay in the conduct of the trial itself:

"... in capital matters it is better that justice should be delayed rather than denied. If the appellant possessed any right (and we have determined that he did) then the argument that its exercise was liable to waste time is one which neither reason nor justice can suffer."

In the result the Court Martial of Appeal quashed Hejazi's conviction and sentence and returned the case for retrial with an express order that the accused submit to the Minister of Justice

within 3 months the names of foreign lawyers ready and able to conduct his defence.

(b) *Hejazi v. Minister of Justice*

With the assistance of his appointed Israel lawyer Hejazi found one advocate willing to come to Israel and take on his defence, Maître Jacques Verges of Algeria. When asked by the Minister of Justice what were his "special circumstances" which section 23 of the Chamber of Advocates Law required in order to justify the Minister's approval of the appointment of a foreign advocate, the accused replied that in his view no Israel advocate could do, and any local advocate who defended him faithfully and honestly would run the risk of betraying his conscience and his country. The Minister, after consultation with the Chamber of Advocates, rejected this reasoning and the request itself, expressing his conviction that an Israel advocate who undertook the accused's defence would fulfil his professional duty towards him faithfully and without any conflict with his conscience.

The accused obtained an *order nisi* from the High Court of Justice which was by a majority decision made absolute.

(i) The High Court unanimously differed from the view of the Court Martial of Appeal that section 23 of the Chamber of Advocates Law conferred a "vested right" on the accused to appoint a foreign advocate for his defence, subject only to the Minister's approval of the person chosen. The existence of special circumstances was one of the conditions of the appointment of a foreigner as counsel for defence, and only if such circumstances were found could the Minister approve the appointment.

(ii) The members of the Court also agreed in rejecting the petitioner's contention that no local lawyer could conduct his defence properly. They pointed to the successful appeal by the petitioner's counsel against conviction, as well as to other cases in which Israel advocates had acted with similar devotion to their foreign clients and had earned the court's praise for raising, without conflicts of conscience, pleas in defence which to all appearances were not to the advantage for the State.

(iii) The Court was only divided on the question of what might in the event be special circumstances justifying the appointment of a foreign lawyer. One of the three members of the Court thought the petitioner's own lack of confidence in his Israel counsel's ability to make the petitioner's standpoint his own, even though unjustified, was sufficient reason to grant his request. The two other Justices required an objective test of such "special circumstances". While one of them denied that they existed at all in the instant case, the third member of the Court found them e.g. in the fact that the Appeal Court Martial had affirmed the accused's right to choose a foreign counsel. While it was correct that that court's judgement was not binding on the Minister,

"the respect due to that court of last resort, the influence of its decision on the accused's feelings and the bitter disappointment to be expected from the subsequent rejection of his request, ought also to have been weighed."

In making the *order nisi* absolute the Court requested the Minister of Justice to reconsider his decision on the approval of the appointment of a foreign advocate as counsel for defence.

(The accused's request was later refused again, this time for reasons appertaining to the person of the lawyer chosen. The trial of the accused had to be postponed owing to his illness.)

9. Conflict between Human Rights

*Qabub v. Examining Judge*⁴⁴ (In the Supreme Court sitting as a High Court of Justice. Order of 8 December 1965)

Though this case concerned procedure at the stage of preliminary examination which has since been abolished in Israel⁴⁵, it is here reported because it deals with a conflict between the accused's right to examine prosecution witnesses⁴⁶, his right to be tried without delay⁴⁷, and the witnesses' right not to be compelled to testify against themselves⁴⁸.

The petitioner, who was accused of certain crimes, availed himself of his right to ask for a preliminary examination. Some of the witnesses against him, accused of the same crime but in separate proceedings, refused to be cross-examined by the accused for fear of incriminating themselves. The judge holding the preliminary investigation decided to interrupt it till the trial of the witnesses had been concluded, relying on Rules of Court which permit him to do so "if the continuation would cause an injustice". Against this delay the accused applied to the High Court of Justice.

One of the witnesses was already tried and convicted for his part in the crime, though his appeal was still pending. Since in Israel law an appeal does not normally lead to a rehearing of the facts, the High Court *held* in respect of this witness:

"Having been convicted he can no longer rely on the protection against self-incrimination, and in this respect it is of no importance that his conviction is under appeal and may be quashed; for whatever he may depose in cross-examination on his statement to the police, he

cannot incriminate himself any more than did his conviction by the court."⁴⁹

As regards the other witnesses, counsel for the petitioner claimed that without cross-examination by him their depositions to the police could not be used against the accused even in a preliminary investigation. This contention the High Court rejected:

"... 'that the evidence affords *prima facie* justification for charging the accused with the offence specified in the notice of charge' refers to that 'evidence' which was in the hand of the District Attorney and was now submitted to the judge holding the preliminary examination. That evidence does not lose its character as evidence for the purpose even though not tested in cross-examination...; the absence... of cross-examination may diminish the weight of that evidence, but weighing the evidence is none of the tasks of the judge holding the preliminary examination."

As to the accused's right of speedy trial, the Court concluded from the provisions of the Rules of Court that the witnesses' refusal to be cross-examined, whether justified or not, was no sufficient reason to interrupt the preliminary examination; the judge holding the examination would have to continue it to its end and to come to a decision as to whether or not to put the accused on trial.

10. Freedom of Thought and Conscience. Right to Take Part in Public Affairs⁵⁰

(In the Supreme Court sitting as a High Court of Justice. Order of 6 July 1966)

*Shuk-Halevi and anr. v. Mayor of Ramat-Gan and anr.*⁵¹

The second respondent was elected on the list of a certain party to the municipal council of Ramat-Gan. The second applicant was the candidate following him on the same list and was not elected, and the first applicant was one of the voters and supporters of the same list. When the second respondent transferred his loyalty to another party, the applicants asked him to vacate his seat, and at the same time the first respondent, to invite to the meetings of the municipal council the second applicant instead of the second respondent. Their application for an *order nisi* was rejected.

⁴⁴ (1965) 19 Piskei Din III, 665.

⁴⁵ Criminal Procedure Code 1965 (in force: 15 January 1966); see Part I of this Note.

⁴⁶ International Covenant on Civil and Political Rights, art. 14.3 (e).

⁴⁷ *Ibid.*, art. 14.3 (c).

⁴⁸ *Ibid.*, art. 14.3 (g).

⁴⁹ Nevertheless the High Court suggested that the prosecution might proclaim not to use anything said by the witness in the trial against him.

⁵⁰ International Covenant on Civil and Political Rights, arts. 18.1; 19.1; 25 (a).

⁵¹ (1966) 20 Piskei Din III, 169.

Per Sussmann, J.:

"One can understand the disappointment and complaint of a political organisation which, having submitted a list of candidates in whom it puts its trust and having won votes for it, has now, on the secession of one of its members, to find that it loses part of the fruits of its success in the elections. But the question before the court is not a question of morals or of public decency, according to which the second respondent may or may not have been acting; this court will not intervene in the matter, unless the petitioners are in a position to point at some legal cause to disqualify that respondent for the office of a member of the municipal council."

Per Kister, J.:

"I did not find in the legal provisions... anything pointing to an obligation of a successful candidate to act according to directions of the party or faction on whose ticket he was elected... A person elected on behalf of a certain party on the strength of declarations made to the public of voters is under a moral duty, if he finds that his conscience does not permit him to continue in the same party line, to consider whether he ought to resign. But the matter of his resignation must be left entirely to his personal decision."

Per B. Cohen, J.:

"No decision of a political faction is binding on a member except within the faction. From this it is clear that it is permitted—and, fortunately, it seems to be even desirable in the legislator's view—that a member may freely change over from one faction to another... I am afraid the petitioners close their eyes to the logical consequences of the position taken by them. If they succeeded in convincing us that a person, on leaving his faction or party, loses his place in the elected body, that would also mean that a member of such party of faction, on being lawfully though unwillingly excluded therefrom, would lose his seat in the elected body. Such a position would lead to excessively monolithic voting, while under the present elastic system a member's rebellion does not endanger him any more than that on the next election the party will no longer include him in its list of candidates."

11. Freedom of Expression⁵²

(In the Supreme Court sitting as a High Court of Justice. Order of 7 September 1965)

*Pahal Ltd. v. Minister of Education and Culture*⁵³

The petitioner intended to sell through another company, Shiloh, the translation of a book called

My Sex Life. With the petitioner's consent, Shiloh submitted a copy of the book to the Committee for the Fight against the Spreading of Obscene Literature attached to the Ministry of Education and Culture. The Committee (which has no statutory powers but gives advisory opinions when asked to do so) came to the conclusion "that the book undermines morals and its distribution is forbidden by law."

The petitioner asked for an *order nisi* against the Minister and the chairman and vice-chairman of the Committee, the chief object of which was to show cause why they should not refrain from forbidding the publication of the book.

Held, petition rejected:

"The decision of the committee complained of is no "decision" at all... The committee did not say that it forbids the publication of the book; it stated correctly that its publication is "forbidden by law", that is to say it referred the questioner to the Criminal Code Ordinance, 1936 (section 179) which forbids, without decision by any committee, the publication of obscene materials. If the petitioner or their agents are indeed *bona fide* of the opinion that the committee's advice is wrong, they may publish the book and run the risk of criminal prosecution. This Court is neither obliged nor prepared to give them a "certificate" in advance for the publication of this book. Our task is to intervene in actions of the Executive which have been done not according to law or without competence. Here is no "action" infringing the rights of the citizen, and in such cases we do not interfere."

12. Protection of the Family Equal Rights of the Spouses⁵⁴

*Amash v. Attorney-General*⁵⁵ (In the Supreme Court sitting as a Court of Criminal Appeal. Judgement of 14 February 1966)

Section 7 of the Penal Law Reform (Bigamy) Law, 5719-1959⁵⁶ provides:

"Where the husband dissolves the marriage against the will of the wife and there is not, at the time of the dissolution, a final judgement of the court or of the competent religious tribunal making the dissolution binding on the wife, the husband shall be liable to imprisonment for a term of five years."

The accused and his wife lived apart. When he instituted divorce proceedings in the Moslem Religious Court, his wife declared that she was not

⁵² International Covenant on Civil and Political Rights, art. 19.

⁵³ (1965) 19 Piskei Din II, 648.

⁵⁴ International Covenant on Civil and Political Rights, arts. 23.1, 23.4; International Covenant on Economic, Social and Cultural Rights, art. 10.1.

⁵⁵ (1966) 20 Piskei Din I, 378.

⁵⁶ *Yearbook on Human Rights for 1959*, p. 172, para. 6.

prepared to return to him nor to accept a divorce and left the Court. The Qadi rejected the accused's claim, but mentioned that Moslem law enables the husband to dissolve the marriage by his one-sided declaration (*talak*), though this is forbidden in Israel under the provisions of Law quoted above. The accused took the hint and the Qadi pronounced the marriage as dissolved.

This is one of the cases which illustrate the difficulty of adjusting traditional law to the requirements of human rights. The Israel legislature did not repeal the religious law nor invalidate the divorce obtained thereunder, however undesirable; it only made the use of *talak* a criminal offence. In the case the accused was in due course convicted and sentenced to imprisonment for six months. On appeal, the sentence was mitigated to conditional imprisonment for the same period with a fine. The Supreme Court took into consideration that the accused had first tried to obtain a divorce in the legal way and only after his attempt had failed and the Qadi himself had drawn his attention to the traditional, now forbidden procedure, had he resorted to it.

13. *Protection of the Family Equality of Husband and Wife*⁵⁷

*Hassneh Israel Insurance Company v. Reif*⁵⁸ (In the Supreme Court sitting as a Court of Civil Appeals. Judgement of 18 May 1966)

The first plaintiff (respondent to the appeal) was the widow of a man killed in a motor accident. The defendant and appellant company refused to pay her damages as it should under the contract of insurance, because the plaintiff and her late husband were members of a kibbutz, i.e. a co-operative settlement whose members receive no wages for their work and do not maintain themselves and their families, but are maintained by the kibbutz.

The Supreme Court (*per Berinson, J.*) described the organization of a kibbutz as follows:

"(a) The kibbutz represents a form of life, unique of its kind. It is a co-operative society, based on personal work of its members. Absolute equality prevails among the members, men and women, and also community in all fields of production and consumption, everyone giving according to his capacity and receiving according to his needs. In this respect the kibbutz is nothing but a large family which lives a life of community on the basis of equality and mutual aid. Its possessions vest in the community, and the individual "member of the family" owns no property of his own⁵⁹. The fruits of work and other income of the "members of the family" flow into one chest and from it all their needs are provided to them.

⁵⁷ International Covenant on Civil and Political Rights, arts. 23.1, 23.4.

⁵⁸ (1966) 20 Piskei Din II, 393; (1967) 2 Is.L.R. 133.

⁵⁹ It may be noted that personal property such as furniture, books, etc., is today customary.

"(b) Faithful to the principle of equality the kibbutz treats all work done within it or on its behalf as of equal value. In actual fact the deceased filled a post worth at least LI. 1,000.— (\$333.—) per month.

"(c) The first respondent does needlework in the kibbutz as she did before her husband's death, but in view of her precarious state of health her working capacity appears to be reduced."

The problem with which the court had to contend arose from the role of the kibbutz as a kind of super-family, or rather from the neglect of this role by the law⁶⁰. For the kibbutz movement is based entirely on voluntary co-operation, whereas family relations are subject to rules adapted to the natural family only. While pecuniary damage was in this case sustained by the kibbutz, which lost one of its most useful members but had no cause of action, the law entitles the widow to claim compensation for loss of her provider, although her maintenance was provided as before by virtue of her membership in and her work for the kibbutz. In law the kibbutz could not obtain compensation except by virtue of the right of the widow and by her paying over to the kibbutz the compensation obtained from the defendant insurance company. Thus the legal problem boiled down to the question as to whether the widow had a claim although she suffered no pecuniary damage. This question the court answered in the affirmative, partly because under Jewish law—the law of the parties applicable to family matters—the wife's right of maintenance is absolute, not depending on her dependency, and partly because members of a kibbutz may leave it at any time, in which case the wife's dependency on her husband would revive. Thus the judgement of the lower court, which obliged the insurance company to pay compensation to the widow and children of the deceased, was confirmed by the Supreme Court.

14. *Right to Take Part in Public Affairs Right to be Elected – Trade Unions*⁶¹

*Ashkenazi v. Central Election Committee for the Histadrut*⁶² (In the Supreme Court sitting as a High Court of Justice. Order of 17 September 1965)

The Histadrut is not only the largest trade union in the country but one of the most influential

⁶⁰ A new law on co-operative societies with a chapter on the kibbutz is in preparation. In one special field—the supervision of "homes" for children and infirm persons—the law takes notice of the situation: the Homes (Supervision) Law, 5725-1965 (see part I of this report) protects children, elderly persons and physically infirm or mentally sick persons "while outside their own families", but defines "family" in respect of such protected persons as "including kibbutz".

⁶¹ International Covenant on Civil and Political Rights, art. 25 (a), (b); International Covenant on Economic, Social and Cultural Rights, art. 8.

⁶² (1965) 19 Piskei Din III, 194.

factors in general politics. The petitioner complained that the respondent committee of the Histadrut refused to recognize the list of candidates led by him for the forthcoming internal elections in that body. He based his applications for an *order nisi* on section 7 of the Courts Law, 5717-1957⁶³ which provides:

"(a) The Supreme Court sitting as a High Court of Justice shall deal with matters in which it deems it necessary to grant relief in the interests of justice and which are not within the jurisdiction of any other court or tribunal.

"(b) Without prejudice to the generality of the provisions of subsection (a), the Supreme Court sitting as a High Court of Justice shall be competent:

"(1) ...;

"(2) To order State authorities ... and such other bodies and individuals as exercise any public functions by virtue of law to do or refrain from doing any act in the lawful exercise of their function."

While there was no dispute that the Histadrut fulfils public functions in fact, the High Court found none which it exercises by virtue of law. For this reason it found itself lacking in power to grant the *order nisi*.

It may be added that the decision, though reached without examination of the merits of the case, appears inevitable also for reasons of principle: the High Court's task is the supervision of the *legality* of the exercise of public functions; if it had power to control also their justification where no question of legality arises, it could interfere with the activities of political parties and other bodies, which have to remain independent.

15. *Non-Discrimination – Right to Take Part in Public Affairs – Right of Access to Public Service*⁶⁴

*Marciano v. Election Committee for the Ofaqim Local Council*⁶⁵ (In the Supreme Court sitting as a High Court of Justice. Order of 27 October 1965)

The respondent committee, whose task was to prepare the 1965 elections to the local council of Ofaqim and *inter alia* to appoint the six polling committees for the village, was composed of representatives of three parties, none of which had a majority. By an agreement between two of these groups the polling committees were composed in such a way as to exclude the third group, although it represented little less than half the electors, from the chairmanship of all six committees.

While the Local Authorities (Election) Law 1965⁶⁶ requires no more than an adequate rep-

resentation of the minority in the polling committee and gives no direction with respect to committee chairmen, the High Court:

Held (*per Sussman, J.*):

"As every public authority so also (the Election Committee) must act honestly and without bias and be guided by relative considerations ... (T)he decision of the Committee was, in the words of (its) counsel, "a political decision", that is to say, the Committee decided to distribute the chairmanships of the (polling) committees among the coalition parties whose esteem it prized and to exclude the members of the opposition altogether. Counsel for the committee confessed before us with commendable frankness that the committee did not act on any other objective consideration, such as the suitability of those it appointed to fulfil the task or the unsuitability of the others. There is no need to say that such consideration, designed to concentrate the chairmanship in the hands of a group of notables, is not valid. It reveals an improper discrimination against the minority, based on motives not relevant to the matter, for the membership of the chairmen of the polling committees in the majority group in the Election Committee is no proper criterion of their suitability for the task. For this reason the Committee's decision is to be set aside."

Kister, J., concurring, based his judgement on Jewish tradition according to which "those appointed to fulfil public tasks are to act judicially".

"One of the consequences of this principle (he pointed out) is that such appointees, when choosing chairmen of polling committees, are bound to treat all citizens alike and are forbidden to curtail the right of a citizen or of a group of citizens in reliance upon the power of majority. There are indeed public tasks which are only entrusted to a person who enjoys the confidence of the majority ... Here, however, the object is the task of supervising that the elections are conducted in an orderly fashion, and for this purpose the candidate need not belong to the majority, and it may even be better if he belongs to the minority."

16. *Property Rights*⁶⁷

*Serbi & ors. v. Director of Israel Lands Administration*⁶⁸ (In the Supreme Court sitting as a High Court of Justice. Judgement of 23 May 1966)

During the War of Liberation 1947-1948, the petitioners were evacuated by the then pre-Government national institutions from a mixed quarter of the town of Jaffa and settled in a village deserted by its Arab inhabitants. In 1949 the Government published a notice in the daily press

⁶³ *Yearbook on Human Rights for 1957*, p. 154.

⁶⁴ (1965) 19 Piskei Din III, 393.

⁶⁵ International Covenant on Civil and Political Rights, art. 25.

⁶⁶ See part I in this note.

⁶⁷ Universal Declaration of Human Rights, art. 17.

⁶⁸ (1966) 20 Piskei Din II, 490.

promising to transfer the evacuees, by mutual agreement, to final settlements and not to pull down their present dwellings before their resettlement.

The place where petitioners settled temporarily was part of lands vested in the Custodian of Absentees' Property and later in the Israel Lands Administration. In 1961 the latter sold the land to a semi-public building company which undertook to provide adequate flats for the evacuees on the land. When the petitioners refused to move before being given alternative accommodation, the building company initiated eviction proceedings against them, in which the respondent joined as co-plaintiff. The petitioners obtained an *order nisi* against the respondent, requiring him to show cause why he should not sue the building company for specific performance of its undertaking to provide adequate flats to the petitioners and why he should not rescind his eviction claim against them or apply for his name to be struck out from the eviction claim of the company.

The *order nisi* was discharged. The High Court of Justice first considered the respondent's contention that the assurance given to the evacuees in the public announcement of 1949 (and not contained in, nor followed by, agreements with each of them) was a mere political act from which no legal consequences could flow. While rejecting this contention the Court itself asked whether and to what extent the citizen has a legal right to demand that the authorities honour an assurance to act, or to refrain from acting, in a matter concerning his interests. Even supposing that such a right exists on principle, the Court held, there had to be found a cause of action for the demand that the respondent should sue the building company or dissociate himself from the company's eviction claim.

The company, the Court considered, had undertaken to give the settlers, and among them the petitioners, equivalent accommodation in the buildings to be erected on the land in question but it could not start building as long as petitioners held on to the land. Moreover, what was equivalent accommodation was to be the subject of negotiations between the settlers and the company; no court of law would order the company to conduct those negotiations in one way and not in another, and therefore the respondent could not sue, and ought not to be ordered to sue, the company to do so. As regards the respondent's participation in the company's eviction proceedings, this was no matter for the High Court to decide but depended on the merits of the case: either the respondent had a cause of action of his own against the petitioners or he had none; in neither case would and could the High Court of Justice intervene in proceedings pending before a competent court of law.

17. *Natural Justice – Tenure of Public Office*

*Althegeer v. Chairman and Municipal Council of Ramat Gan*⁶⁹ (In the Supreme Court sitting as a High Court of Justice. Order of 6 January 1966)

The petitioner, who was employed by the respondent municipal council as editor of its information bulletin, stood as a candidate for election to the council in 1965. Had he been successful, he would under the provisions of the law have had to resign from his post. He failed to be elected and the council dismissed him from its service.

In the High Court the petitioner's chief complaint was that the municipal council had refused his request to be heard and had decided on his discharge in his absence. The Court accepted this contention in so far as it concerned the petitioner's right to make representations to the council before the latter decided on the matter; although natural justice did not require the council to let the petitioner appear in person at its meeting, he had to be afforded the opportunity to state his case either in writing or before a committee or other suitable person charged with hearing him. With this qualification, the respondent's decision to dismiss the petitioner was set aside.

To reach this result the Court had to overcome three objections of the respondent:

(a) That the detailed provisions of the Municipalities Ordinance did not provide for hearing an interested party, but to the contrary, for deliberation among the members of the council; and that the rules of natural justice did not apply to a municipal council;

(b) That the dismissal of a municipal employee raised no questions of citizen rights, since in this respect no difference existed between a public and a private employee;

(c) That municipal employees held their office only at the council's pleasure and could be dismissed for any reason and even for no reason at all.

The Court rejected these arguments.

(a) As to natural justice (*per Cohn, J.*):

"The legislature is presumed to know well the existence and meaning of the rules of natural justice and the strictness with which this Court insists on their being observed. It is not supposed to reiterate every time it empowers somebody to take action which may infringe upon another person's right, that those powers are to be exercised only in accordance with, and subject to, the rules of natural justice."

(b) As to the nature of dismissal from public employment (*per Cohn, J.*):

"When dismissing one of its servants a municipality exercises a power given to it by law—section 171 of the Municipalities Ordinance.

⁶⁹(1966) 20 Piskei Din I, 29.

Even though the act of dismissal also has contractual effects in the sphere of private law, this is not enough to detract from the fact that here the use of a statutory power is involved, which falls within the scope of the acts of authority referred to in section 7 of the Courts Law, 1957,⁷⁰ and therefore the rules of natural justice apply."

(c) As to the alleged right of municipalities to discharge their servants at pleasure, *Cohn, J.*, left the question open, since in the case under review

the respondent had relied on specifically defined reasons and was therefore obliged to give the petitioner a reasonable opportunity to satisfy it, that these reasons did not exist or did not justify his dismissal. *Kister, J.*, was not content to leave the matter at that. He cited a long line of dicta and precedents in Jewish law, beginning with the Talmud and continuing down to the present, which even before the establishment of the State had found expression in the usage according to which the permanent employees of Jewish public institutions could not be arbitrarily dismissed.

⁷⁰ The section deals with the High Court's power "to grant relief in the interest of justice" and in particular to order State and local authorities, "to do or refrain from doing any act in the lawful exercise of their functions . . ."

"The municipality is obliged to take notice of the existence of labour practices in this country and in particular of those customs which touch upon matters of dismissal from work, from public office and from the service in public institutions."

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1966)¹

I

The legislation enacted in Italy in 1966 on social matters relating to human rights is mainly concerned with labour and relevant social welfare, private farming and the disabled.

Act No. 604 of 15 July 1966 (*Gazzetta Ufficiale* No. 195, 6 August 1966), laying down rules governing the dismissal of individual employees, is designed to protect the weaker party in a labour contract, namely, the worker. As the rapporteur of the bill in question rightly pointed out in the Senate, both social considerations and moral requirements demand that "the weaker party in a labour contract should be protected against abuse by the stronger party, abuse being taken to mean any manifestation of power for which there is no justification in the objective of the contract itself, particularly in cases in which there is a more outrageous and brutal manifestation of power by the stronger party, i.e., unilateral termination of the contract".²

Article 1 of the aforesaid Act provides that: "In a labour contract for an indefinite period concluded with a private employer or a public institution, where security of employment is not guaranteed by law, statutory regulations, or collective or individual contract, the employee may not be dismissed except for just cause within the meaning of article 2119 of the Civil Code or on justifiable grounds."³ Under article 2, the grounds for the dismissal must be stated at the worker's request; in addition, notice of dismissal must be given in writing. (Arbitrary dismissal has thus been eliminated and it has been confirmed that termination of contract by one of the parties shall be the

subject of negotiations with the employer, who shall be liable for compensation.) Unless these provisions are complied with, the dismissal is "ineffective".

Article 3 embodies the most notable provision of the Act, in that it restricts the "justifiable ground" for dismissal to "obvious non-fulfilment of the contractual obligations by the employee" or to "reasons connected with production techniques, working methods and the normal operation of these methods". Of particular importance, for the purpose of safeguarding some of the principal freedoms of the individual, is article 4, which declares null and void any dismissal occasioned "by reasons of political belief or religious faith, by membership of a trade union or by participation in trade-union activities". The burden of proof (article 5) of the existence of legal grounds for dismissal lies upon the employer.

Article 6 lays down the conditions for an appeal against the dismissal, while article 7 establishes the appeals procedure; when the employee is unable to avail himself of specific procedures laid down in trade-union agreements, he has the right to begin conciliation proceedings at the local labour office. The conciliation report acquires the force of a deed directly enforceable by decree of the *Pretore*. Should the attempt at conciliation be unsuccessful, the parties may, by mutual consent, settle the dispute through special arbitration. (This form of arbitration was introduced in labour disputes in Italy some time ago.)

For cases in which dismissal is proved to be unjustified, article 8 provides two alternatives: re-employment of the worker (understood to

¹ Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Comunità internazionale*, a publication of that association, and government-appointed correspondent of the *Yearbook on Human Rights*.

² Senate, IV Legislature No. 1673-A. A similar decision was reached by the Constitutional Court: see below, Constitutional Court Decision No. 63 of 1 June 1966.

³ Civil Code, article 2199, *Termination on justifiable grounds*. "Each of the contracting parties may terminate

the contract before the expiration of its term if the contract is for a fixed period, or without giving notice if the contract is for an indefinite period, when there are proven grounds for not continuing the contract even temporarily. If the contract is for an indefinite period, the employee who withdraws on justifiable grounds is entitled to compensation as laid down in the second clause of the preceding article.

"The employer's bankruptcy or the compulsory winding up and dissolution of the undertaking does not constitute justifiable grounds for termination of the contract."

mean: the revocation of the dismissal and the resumption of the employment contract), or the payment of a prescribed amount of compensation between certain lower and upper limits. (This second alternative was provided on the principle that it is impossible to enforce the obligation in the first.) For the purposes of the application of this Act, labourers and white-collar workers are placed on an equal footing (article 10). The Act does not apply in the case of undertakings which have fewer than thirty-five employees, or with regard to workers of pensionable age (article 11). Subsequent articles guarantee employees the most favourable conditions in collective labour contracts or trade-union agreements (article 12) and exempt judicial and conciliation procedures from any government dues (article 13).

Acts No. 535 of 24 June 1966 and No. 613 of 22 July 1966 (*G.U.*, No. 178, 20 July 1966 and No. 200, 12 August 1966) extend certain forms of compulsory insurance to further categories of persons.

Act No. 535, the purpose of which is to eliminate a serious anomaly in social security legislation, provides for the extension of compulsory sickness insurance to male and female members of religious orders who are gainfully employed. (Workers in these categories were already entitled to compulsory social insurance in respect of disability, old age, tuberculosis and industrial accidents.)

Act No. 613 provides for the extension of compulsory insurance in respect of disability, old age and survivors to persons engaged in trade and to assistants who are members of their families, and the co-ordination of pension legislation in respect of self-employed workers; it thus covers all the remaining ground in legislation concerning self-employed workers. The Act, which comprises eight sections and a total of forty articles, extends compulsory insurance in respect of disability, old age and survivors to the small tradesmen who fall into the category of persons entitled to compulsory sickness insurance, as provided for in Act No. 1397 of 27 November 1960,⁴ to persons providing auxiliary commercial services and to other self-employed workers in this category and their dependents (article 1). There is a fairly broad interpretation of the term "dependents": it includes natural children legally acknowledged or recognized by order of a court, children born of another spouse by a previous marriage, and foster children who have been legally entrusted by the proper authorities (article 2). The minimum age for entitlement to an old-age pension is established as sixty-five for men and sixty for women (article 17).

In conformity with article 25 (1) of the Universal Declaration, provisions were made in two Acts, No. 625 of 6 August 1966 and No. 851 of 14 October 1966 (*G.U.*, No. 205, 19 August 1966

and No. 265, 24 October 1966), concerning certain categories of the disabled.

Act No. 625, providing welfare legislation for the benefit of crippled and disabled persons completes the provisions of Acts already passed in 1962 and in 1965⁵ benefiting these categories, and makes good the deficiencies with regard to health services, rehabilitation and the public assistance allowance for unemployable persons. Under the new Act, the Ministry of Health is responsible for the provision of specific medical treatment designed to promote the rehabilitation of needy crippled and disabled persons classified as physically or mentally handicapped whose disablement may be lessened by means of appropriate rehabilitation treatment (article 1). Under a Ministry of Labour and Social Welfare scheme, the crippled and disabled are entitled (under provisions of the same law) to avail themselves of the provisions for occupational guidance and vocational training and re-training. In conjunction with the Ministry of Health, the Ministry of Labour and Social Welfare may also encourage or authorize the setting up of experimental and special vocational training centres for the crippled and disabled (article 3). Lastly, the State will pay a monthly assistance allowance to needy crippled and disabled persons over the age of 18 who are certified as totally and permanently, though not psychologically, incapacitated for work (article 5).

Act No. 851, which provides for the compulsory employment of industrially disabled and incapacitated persons, orphans and widows of victims of industrial accidents, by Government departments, local authorities and public bodies, is a further addition to the substantial body of legislation already passed for the benefit of categories of persons who, as a result of misfortune, have difficulty in finding employment and cannot return to normal work. Industrially disabled and incapacitated persons used only to have the benefit of the provision for compulsory employment, up to a certain percentage, in private undertakings employing over fifty persons. Under the new Act, this benefit has been extended to industrially disabled and incapacitated persons and to surviving dependents and is applicable in respect of State, regional, provincial and local authorities, State and municipal undertakings, and public institutions in general (articles 2 and 3). For the purposes of the Act industrially disabled persons are considered to be persons under the age of fifty-five whose working capacity, because of an industrial accident or occupational disease, has been permanently reduced by not less than one third (article 1).

Two Acts concerning agriculture are also worthy of mention. Act No. 606 of 22 July 1966

⁴ See the Note published in the *Yearbook on Human Rights for 1960*, p. 201.

⁵ Act No. 1539 of 5 October 1962, which, in effect, concerns the compulsory employment of a certain percentage of disabled persons and the establishment of training courses; Act No. 458 of 23 April 1965, which grants the General Association of Disabled Persons the legal status of a public body corporate.

(G.U., No. 195, 6 August 1966), setting forth provisions in respect of leases to tenants who do not own the land they cultivate, is designed to increase productivity, which will be of considerable social importance and will meet the need to guarantee to the large number of tenants of farms who do not own the land they have leased the stability and security of rights essential for efficient farming, by the most economic combination of adequate capital investment and other means of improving productivity. This is also a recognition of the fact that stability is a prerequisite for the practical application of the various legislative provisions benefiting farmers. The Act determines the minimum length of lease, which is fixed at six years, in order to guarantee the stability necessary for the running of a farm, while the period of any extension or renewal of the lease must be not less than that of the cycle of crop rotation. The lease must be drawn up in writing.

Act. No. 607 of 22 July 1966 (G.U., No. 195, 6 August 1966), which lays down regulations in respect of long-term leases and perpetual land taxes, was designed to remedy the blatant disparity between the economic and social needs dictated by the present difficult agricultural situation and the survival of complicated legal relations of feudal origin concerning property and land ownership. These legal relations hamper the process of development, to the detriment of the farmer working the land. The new Act has a dual purpose: to extend to long-term leases and perpetual land taxes the principle of *equo canone* (the iniquity of rent in kind and the capitalization rules laid down by law to determine the cost of enfranchisement resulted in an enfranchisement cost which was higher than the commercial value of the land) and to set up a straightforward and economic enfranchisement procedure.

Under article 1 of the present law, perpetual or temporary long-term rents and other perpetual land taxes may in no circumstances exceed an amount equivalent to the lessor's income from the land on which they are levied, as determined under existing laws. Rents and other taxes fixed at higher rates are reduced to the above limit, while rents and other taxes fixed at lower rates may not be increased. The enfranchisement of rents and taxes is effected in all cases by the payment of a sum equivalent to fifteen times their value, as determined by the present law. The enfranchisement procedure (articles 2 *et seq.*) takes place before the local *pretore*, to whom the judicial claim for enfranchisement is addressed. As soon as the interested parties have been notified of the ruling of the *pretore* dealing with the enfranchisement of the land concerned, the rent or land tax is abolished in all respects. During these proceedings, deeds and documents are exempted from stamp duty, while dues and fees charged by solicitors, barristers and legal advisers are reduced by half.

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With regard to the right to housing (Universal Declaration, article 25 (I)) mention should be made of Act No. 605 of 15 July 1966 (G.U., No. 195, 6 August 1966), which establishes a ten-year programme of financing and insurance for the construction and purchase of housing for railway workers. The Act authorizes the State Railways Administration to carry out a ten-year construction and housing programme for railway workers, to be financed by the setting up of an appropriate fund. Seventy per cent of this fund is set aside for the creation of a revolving fund for the granting of low-interest loans to railway workers who, either individually or associated in co-operatives, propose to construct or purchase housing for a family dwelling.

II

TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS WHICH ENTERED INTO FORCES FORCE IN ITALY IN 1966

European Agreement on mutual assistance in the matter of special medical treatment and climatic facilities, signed at Strasbourg on 14 May 1962,

Put into force in Italy by Act No. 298 of 29 March 1966 (G.U., No. 126, 24 May 1966).

Amendments to the Constitution of the International Labour Organisation marked Nos. 1 and 3, adopted at Geneva on 6 and 9 July 1964 respectively.

Put into force in Italy by Act No. 343 of 29 March 1966 (G.U., No. 139, 7 June 1966).

Convention for the safety of life at sea, signed in London on 17 June 1960.

Put into force in Italy by Act No. 538 of 26 May 1966 (G.U., suppl. to No. 178, 20 July 1966).

European Agreement (with regulations) on the issue to military and civilian war disabled of an international book of vouchers for the repair of prosthetic and orthopaedic appliances, signed in Paris on 17 December 1962.

Put into force in Italy by Act No. 553 of 8 June 1956 (G.U., No. 183, 25 July 1966).

Protocol 1 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of stateless persons and refugees, signed at Geneva on 6 September 1952.

Put into force in Italy by Act No. 650 of 13 July 1966 (G.U., No. 209, 24 August 1966).

Protocols 2 and 3 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Strasbourg on 6 May 1963.

Put into effect in Italy by Act No. 653 of 13 July 1966 (G.U., No. 210, 25 August 1966).

Agreement relating to refugee seamen, adopted at The Hague on 23 November 1957.

Put into effect in Italy by Act No. 654 of 13 July 1966 (*G.U.*, No. 210, 25 August 1966).

Convention against discrimination in education, adopted in Paris on 14 December 1960; Protocol setting up a Conciliation Committee charged with finding through their good offices a solution to disputes between States which are parties to the Convention against discrimination in education, adopted in Paris on 10 December 1962.

Put into effect in Italy by Act No. 656 of 13 July 1966 (*G.U.*, No. 211, 26 August 1966).

Agreement between the Government of the Republic of Italy and the Government of the Federal Republic of Yugoslavia, relating to information centres, concluded at Belgrade on 10 November 1965.

Put into effect in Italy by Presidential Decree No. 765 of 31 May 1966 (*G.U.*, No. 244, 30 September 1966).

Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, adopted in New York on 21 March 1950.

Put into effect in Italy by Act No. 1173 of 23 November 1966 (*G.U.*, No. 5, 7 January 1967).

III

The principle that limitations may legitimately be imposed upon the extent to which an individual may exercise a given right or freedom, in order to safeguard and respect the right or interest of other persons, was firmly upheld by the Constitutional Court in its decision No. 18 of 3 March 1966. In the case in question, it was a matter of reconciling respect for freedom of information, which is laid down in article 21 of the Constitution (Universal Declaration, article 19), with the protection of the rights of an individual in any way involved in a criminal trial.⁶

In two decisions handed down on 14 October 1964, concerning two proceedings of the same nature, the Bologna Court had challenged the constitutionality of article 164 (1) of the Code of Criminal Procedure and article 684 of the Penal Code in the light of article 21 of the Constitution.⁷ The Court pointed out that the above-mentioned penal regulations make it an offence to publish certain trial documents in the Press whereas not all persons who have had a part in drawing up the actual documents (private parties

and witnesses) are sworn to secrecy; limitation is thus imposed solely upon the freedom of the Press, in breach of the principle of freedom of information laid down in the Constitution.

In its decision of March 1966, the Constitutional Court ruled that there were no grounds for challenging the constitutionality of the above-mentioned article 164 (1) of the Code of Penal Procedure and article 684 of the Penal Code in the light of article 21 of the Constitution. The Court affirmed that, in view of the social importance of the Press, which has a far-reaching and important role even on the subject of justice, these provisions govern autonomously relations between the Press and Court investigations and specify the documents which may not be published and the duration of the ban. The purpose of these provisions is similar to the purpose of the secrecy of Court investigations. ("By disclosing information which should not be divulged, the Press puts wrongdoers on their guard and may impede the course of justice.") However, the Court continued, "it cannot be denied that there is a growing need for differentiation between provisions governing the secrecy of Court investigations and those governing the publication of news in the Press, since the juridical importance of the disclosure varies according to the medium employed. If the disclosure is made on a semi-private basis, from person to person, it remains within a limited sector and the possibility of its having harmful effects is limited; if, on the other hand, it is immediately published in the Press, where the area it can reach is practically unlimited, it can have far more serious effects on the course of legal inquiries, on the accumulation of evidence and on the search for truth".

As soon, therefore, as the Press is instrumental in impeding the course of law, it no longer performs its proper social function. For these reasons, the secrecy of Court investigations with regard to the Press has been further safeguarded in that the ban on publication is complete and does not admit of exceptions, exemptions or discrimination between documents. Freedom of expression, guaranteed by article 21 of the Constitution, has therefore been restricted in safeguarding another ideal, the pursuit of justice, although this ideal in its turn serves to guarantee the exercise of every freedom, including that under consideration, and is itself guaranteed as a fundamental right by the Constitution.

Other facets of the same ideal are also safeguarded by the regulations in question: "(a) to ensure the impartiality and independence of the judge by protecting him from any external influence exerted by the Press which might prejudice the course of inquiries and the first appraisals of the results; and likewise to ensure the freedom of the judge by prohibiting any extraneous act which might impede arrival at an unbiased decision; (b) to protect, during the period of Court investigations, the dignity and reputation of all persons who, in their various capacities, participate in the proceedings".

⁶ The question of the limitations that may be imposed upon the Press in the individual and collective interest of justice was also raised and examined in the course of the United Nations Seminar on the Protection of Human Rights in Criminal Procedure, held in Vienna (Summer, 1960).

⁷ Constitution article 21: "All persons have the right freely to express their own opinions with the spoken or written word and any other means of dissemination. The Press may not be subjected to authorization or censorship".

The Court also observed that, in so far as the defendant is concerned, the publication in the Press of news which is incomplete, inaccurate and generally injurious to his honour may be held to be in conflict with the principle, guaranteed by article 27 (2) of the Constitution (Declaration, article 11), that everyone has the right to be presumed innocent until proved guilty. Finally, the other parties and witnesses are entitled to similar protection.

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* *

On another question of legality in the light of article 21 of the Constitution, the Constitutional Court was called upon to hand down a decision with regard to the limitations which may be imposed upon freedom of expression when vital State interests are involved.

In its decision of 20 January 1965, the Assize Court of Modena questioned the constitutionality of article 272 of the Penal Code in the light of article 21 of the Constitution.

In its decision No. 87, of 22 June 1966, the Constitutional Court handed down a decision on only the first two clauses of article 272 of the Penal Code, which govern criminal behaviour in two circumstances: (1) propaganda advocating the violent establishment of a dictatorship, the violent elimination of a social class, the violent overthrow of the social and economic order established in the State, or the destruction of every political and legal order of society; (2) propaganda advocating the destruction or suppression of national sentiment. The third clause, concerning justification of the above-mentioned acts, was not considered by the Court as coming within its terms of reference.

The Court started from the principle, which it had already affirmed on other occasions, that the protection of public morals, explicitly required by article 21 of the Constitution,⁸ does not constitute the only limitation of freedom of expression; there are other limitations which derive from the need to protect various rights which are also guaranteed by the Constitution. The Court therefore directed its inquiries towards the particular right protected by the provision in question in order to determine whether or not it is protected by the Constitution in such a manner as to warrant the restriction of a basic freedom.

The Court arrived at different conclusions with regard to the first and second clauses of the contested article.

The first clause of article 272, the Court wrote, penalizes propaganda when it advocates recourse to violence as a means of achieving a change in the existing order; in other words, when its purpose is, in all cases within the scope of this provision, to provoke violence aimed at "the destruction of

every political and legal order of society". Such propaganda, although it might not constitute open incitement, is liable to provoke reactions which would endanger the preservation of values which every State must guarantee in order to survive. "Therefore, the right of freedom of expression may not be deemed to have been violated by a limitation imposed to safeguard the democratic system. Articles 1 and 49 of the Constitution proclaim this system as the only one which may determine social and national policy. It does not permit the violent usurpation of power, but demands respect for the popular sovereignty entrusted to legally constituted majorities, protection of the rights of minorities and observance of the freedoms laid down in the Constitution. By prohibiting propaganda as a means of achieving the establishment of a different order by violence, the contested provision also protects the economic order, with regard to the right to work, trade-union organization, private enterprise, property and so on. Lastly, it helps to preserve public order, which is held to be an established legal order."

The Court therefore ruled that there were no grounds for challenging the constitutionality of the first clause of article 272 of the Penal Code.

With regard to the second clause of article 272, which penalizes persons who make propaganda advocating the destruction or suppression of national sentiment, the Court observed that that sentiment, which is not to be confused with political nationalism, "represents the feelings of the majority of the nation and contributes to the sense of ethnic and social unity of the State. It is nevertheless merely a sentiment which, originating and evolving within each person's conscience, belongs exclusively to the realm of mind and spirit. The object of such propaganda is not to provoke violence, as in the case previously examined, nor is it aimed at defaming the nation, undermining the duties of a citizen towards his country or jeopardizing other constitutionally guaranteed rights. Its aims, therefore, are not illegal, and any limitation upon it would encroach upon the freedom guaranteed by article 21 of the Constitution".

The Court therefore "ruled that the second clause of article 272 of the Penal Code was unconstitutional".

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* *

With regard to the rights of workers (Declaration, article 23), mention should be made of decision No. 63, handed down by the Constitutional Court on 1 June 1966, concerning the applicability of time-limits to paid work.

In this decision, the Court declared that "although the right to paid work may be limited, not all the prescription system is compatible with the special guarantee deriving from article 36 of the Constitution. In a labour contract lacking the security characteristic of a public service employment contract, the fear that the contract may be

⁸ Constitution, article 21: "Printed publications, spectacles, and all other demonstrations which may be contrary to public morals are prohibited".

terminated, in other words that he may be dismissed, impels, or may impel, the worker to surrender some of his own rights; thus such a surrender, when it occurs during the employment contract, may not be considered a free expression of will with regard to the contract and is declared invalid by article 36 of the Constitution. In fact, article 2113 of the Civil Code, which jurisprudence has already incorporated among the principles of the Constitution, permits the annulment of the surrender if it has occurred prior to termination of the employment contract or immediately afterwards. In essence, the object is to protect the weaker of the contracting parties against his own weakness as the party in whose interest it is to maintain the contract".

The Court accordingly "ruled that articles 2948 (4), 2955 (2) and 2956 (1) of the Civil Code are unconstitutional in so far as they permit limitation of the right to remuneration during the term of the labour contract".

Further recognition of the moral and legal equality of spouses⁹ was granted by the Constitutional Court in decision No. 46 of 4 May 1966 handed down following a ruling by the Court of La Spezia of 19 May 1965.

The circumstances which gave rise to the decision were as follows: some years after a decree of separation by mutual consent, a wife had summoned her husband in an attempt to obtain a Court order for an increase in the maintenance allowance which she was already receiving from her husband; the latter had pleaded that the remuneration that his wife was receiving in her employment was only slightly less than what he himself was earning. The Court had therefore questioned the constitutionality of article 156 of the Civil Code (concerning the relationship between separated spouses and referring to article 145 of the Civil Code for rulings) in the light of articles 3 and 29 of the Constitution.¹⁰

In its decision, the Court first of all specified that the plea of unconstitutionality, on the ground that the article was in conflict with the principle of equality, was based on the disproportion between the obligations of the two spouses. This disproportion was due to the fact that articles 145

and 156 of the Civil Code, in determining the amount that the husband should pay in order to meet his wife's needs, do not require the latter's financial circumstances to be taken into account, whereas in the converse case they provide that the wife shall be obliged to contribute only if the husband lacks sufficient means. In order, therefore, to ascertain whether the alleged discrimination between the spouses was at variance with the Constitution, the Court observed that "the slightest discrimination for reasons of sex in legislation concerning relations between spouses is absolutely forbidden by article 3; there is a single and precise limitation upon this prohibition which is prescribed in the second paragraph of article 29 of the Constitution to safeguard family unity and which, as an exception to the general principle established in the article itself of full moral and legal equality of the spouses, shall be strictly interpreted".

Leaving the difference in treatment of cohabiting spouses laid down in article 145 "completely without prejudice", the Court declared that the protective "unity" required by article 29 of the Constitution may not be invoked in respect of marriages in which, as the result of separation, the presumed material or spiritual "unity" is absent. "Article 156 must therefore be regarded as inconsistent with article 29 in that, in providing for a separation where neither of the two spouses is at fault, it renders the husband responsible for providing his wife with the necessities of life without making any allowance for the means which the latter may happen to have at her disposal. These means must, however, be taken into account in determining what portion should be used to enable the separated wife, not simply to overcome a necessitous situation, which might even be non-existent, but to maintain the same level of living which she would have enjoyed if there had been no separation together with the contributions for the same purpose, for which the husband shall still be responsible in proportion to his means."

The Court thus ruled that "article 156 (1) of the Civil Code was unconstitutional in so far as it imposed upon the husband, in cases of separation by mutual consent where neither of the spouses is at fault, the obligation of providing his wife with all that is required for the necessities of life, without regard for the financial circumstances of the latter".

The principle of equal treatment for workers of both sexes, applied in Italian jurisprudence, was reaffirmed by the Court of Appeal of Rome (*Foro Italiano*, 1967, I, 645) in its decision of 15 December 1966, which confirmed the decision handed down by the Court of Rome on 10 April 1965,¹¹ and declared null and void any clause of a collective labour contract, which, in establishing the retirement age of employees, lays down a lower age-limit for women (55 years) than for men (60 years).

⁹ See the two decisions of the Italian Constitutional Court quoted in the *Yearbook on Human Rights for 1964*, pp. 162 and 163.

¹⁰ Civil Code, article 145, *Duties of the husband*: "It is the husband's duty to protect his wife, to keep her with him and to provide her with all that is required for the necessities of life according to his substance. The wife shall contribute to the maintenance of the husband if the latter does not possess sufficient means".

Constitution, article 3: "All persons are of equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions or personal and social status. . . ."

Constitution, article 29: "The Republic recognizes the rights of the family as a natural union based on marriage. Marriage is based on the moral and legal equality of both spouses, within the limits prescribed by the law for safeguarding family unity".

¹¹ See Note in *Yearbook on Human Rights for 1965*, p. 173.

The principle of granting the right to social security (Declaration, article 22) without discrimination to every individual "as a member of society" received the outstanding recognition of the Supreme Court of Appeal in its decision of 25 January 1966 (*Foro Italiano*, 1966, II, 330) in respect of a worker of foreign nationality. This decision, concerning a question new to Italian jurisprudence, created a precedent of particular interest.

In its decision of 28 December 1961, the Court of Florence had upheld the principle that a foreign subject working as an employee in Italy is not liable to I.N.A. Casa (National Housing Insurance Institute) contributions, since he is not entitled to apply for a workers' housing grant. In this case, the defendant, who was a foreign subject, was accused of failing to pay the said contributions as laid down in the relevant Italian legislation. Cassation proceedings were instituted by the *Pubblico Ministero* on the ground that the principle on which the Court had based its acquittal was a mistaken one.

When the appeal by the *Pubblico Ministero* was found to be valid, the Supreme Court confirmed its contentions.

The Supreme Court observed, to begin with, that "article 5 of Act No. 43 of 28 February 1949¹² makes no distinction between employees of Italian nationality and employees of foreign nationality in regulations governing the payment of I.N.A.C. contributions." It also pointed out, that the specific aim of the law "is to provide the capital necessary for the implementation of the workers' housing construction plan by imposing a levy which, precisely because of the public benefit of the outstanding social purpose which it is designed to achieve,¹³ pays no regard for the circumstances of each individual worker". It follows therefore that payment of the contribution is compulsory even if the worker opts not to apply for the housing grant or is not in a position to avail himself of it. Finally, as a "mandatory" argument, the Court referred to article 40 of Presidential Decree No. 1265 dated 9 April 1956, which forms part of the above-mentioned Act No. 43 and states: "All persons of either sex and of any nationality who are gainfully employed are obliged to pay contributions under Act No. 43, article 5 (1) (b) of 28 February 1949..."

The Court annulled the contested decision without review since the offence had been extinguished by amnesty.

With regard to the principle of freedom and respect of the human person, on which the whole of the Universal Declaration is based (see in particular article 3), mention should be made of a ruling handed down incidentally by the Court of Milan, during the hearing of a criminal trial and taken up again in the relevant decision of 1 April 1966 (*Giurisprudenza Italiana*, 1966, II, 177).

¹² See *Yearbook on Human Rights for 1951*, pp. 196-199.

¹³ Author's italics.

In the trial, which concerned alleged offences against morals committed in student newspapers published in a senior high school, the three accused were minors—two boys and a girl. In the course of the inquiries the *Pubblico Ministero* had ordered the two boys to undergo a medical examination, which they did; since the accused girl had refused to appear before the *Procuratore della Repubblica* to undergo a medical examination, the *Pubblico Ministero* itself had filed an application for a similar examination to be ordered in respect of the girl for purposes of verification as laid down in article 11 of Royal Decree No. 1404 of 20 July 1934.¹⁴

In its ruling, the Court held that the aforesaid article 11, while imposing upon the judge the responsibility for making special inquiries in order to ascertain the psychological, medical, moral and environmental background of the accused minor and his family, leaves the judge the broadest discretion concerning the methods of such an inquiry, and stipulates that the hearing of "expert opinions" shall be merely optional. However, the Court declared in its ruling, "subsequent provisions and, in this instance, article 13 of the Constitution have now imposed precise limitations upon the broad discretion and the dispensing with any procedural formality provided for in article 11, with regard to some methods of verification". Thus, if a judge should deem a medical examination, and therefore an inspection of the person, necessary for the said purposes, "there can be no case for not applying that provision of article 13 of the Constitution¹⁵ which stipulates that an inspection of the person must be sanctioned by a court order and must be carried out in compliance with the conditions provided for by law, i.e., by article 310 of the Code of Criminal Procedure. (This requires that decency should be observed and that the judge should notify the person concerned of his right to be attended by a person nominated by him.) There is no doubt from the manner of its formulation that the rule laid down in article 13 has the force of an 'injunction' and may therefore be enforced directly and immediately."

The Court, having thus determined that in this instance the medical examination declared optional by law "was neither necessary nor advisable" and that a verbal examination of the accused would suffice, rejected the application.

¹⁴ R.D. 1404, article 11, *Forms of procedure; inquiries into the personality of minors*. "In proceedings against minors, special inquiries shall be carried out in order to ascertain the medical, psychological, moral and environmental background of the accused and his family. The *Pubblico Ministero*, the Court and the Division of the Court of Appeal may make inquiries and hear expert opinions without any procedural formalities, in determining the personality of a minor and the reasons for his delinquency".

¹⁵ Constitution, article 13: "Personal liberty is inviolable. No form of detention, inspection or personal search or any other restriction of personal liberty is permitted except by a duly authorized act of the judicial authorities and then only in cases and under the procedure prescribed by law."

IVORY COAST

ACT NO. 66-251 OF 5 AUGUST 1966 RESPECTING THE STATUS OF CO-OPERATIVES¹

SUMMARY

Section 1 of the Act reads as follows:

"Co-operatives and their unions shall be corporative bodies in civil law whose members may be physical or juridical persons; they shall be of particular type, having variable capital and staff.

"They shall act as the agents of their members, on a non-profit-making basis."

As stated in section 2, the co-operatives constituted under this Act may purchase, transform, process, preserve, transport, sell and perform any other acts for the purpose of achieving their objects.

Other provisions of the Act deal with the constitution; the members, customers, registered capital; the administration; the financial provisions; and the approval and trusteeship.

¹ *Journal officiel*, No. 38, 18 August 1966. The text of the Act in French and a translation thereof into English have been published by the International Labour Officer as *Legislative Series* 199-I.C. 1.

JAMAICA

NOTE¹

During the year 1966 no new legislation relating to human rights was enacted in Jamaica.

In the information submitted by Jamaica for 1965, mention was made of two important judicial decisions on the interpretation of section 20 (8) and section 24 of the Jamaica Constitution, relating respectively to articles 7 and 2 of the Universal Declaration of Human Rights.² The following further information on these two judicial decisions is submitted:

(a) *Section 20 (8) of the Constitution. Article 7 of the Universal Declaration of Human Rights. Regina vs. Nasralla.*

The appeal of Patrick Nasralla was heard by the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council reversed the decision of the Court of Appeal holding that:

(i) It is necessary to pronounce upon the validity of the decision that the order made by the trial judge adjourning the case for trial on the issue of manslaughter was *ultra vires* section 20 (8) of the Constitution, since to obtain redress under Chapter III the appellant has to show that his fundamental rights have been or are likely to be infringed. He cannot show this if his whole case rests on a procedural fault that could easily be put right. A court on a further trial could properly have amended the indictment by adding a count for manslaughter and proceeding to trial on that count only;

(ii) That what is essential to the plea of *autrefois* is proof of a verdict of acquittal of the offence alleged — not proof that the accused was in peril of conviction for that offence. In so far as a verdict on any count by its terms specifies an offence, it speaks for itself. In so far as it does not, its effect may be accentuated by enquiring of what offences comprised in that count the accused stood in peril of conviction. This is the only relevance of the existence of peril in the popular sense of the word; it is a means of interpreting the verdict;

(iii) That it is necessary for the respondent, if he is to succeed in the plea *autrefois acquit*, to bring himself within the law as stated by Haleby establishing that a verdict of acquittal of murder coupled with a disagreement on the issue of manslaughter is not a partial but a general verdict; that the rule that a jury cannot be directed to give a partial verdict is inconsistent with modern practice and obsolete; it is sufficient to state in this case that a partial verdict cannot be held to cover by inference a crime about which the jury disagreed.

This conclusion destroys the foundation of the respondent's case and of the judgement of the Court of Appeal.

(b) *Section 24 of the Constitution. Article 2 of the Universal Declaration of Human Rights. Byfield vs. Allen.*

The appeal in the Byfield vs. Allen case has not yet been heard by the Court of Appeal.

¹ Note furnished by the Government of Jamaica.

² See *Yearbook on Human Rights for 1965*, p. 176.

JAPAN

NOTE¹

I. LEGISLATION

1. *Law on Partial Amendments to the Law concerning National Holidays* (Law No. 86 of 25 June 1966)

This Law considers the fifteenth day of September as the "Day of Respect for the Aged" and adds it to the list of national holidays. It seeks the people's love and respect for the aged who have long contributed to society and to celebrate their long life.

2. *Law on Emergency Measures concerning the Project for the Full Equipment of Traffic Safety Facilities* (Law No. 45 of 1 April 1966)

In view of the increasing number of traffic accidents and the casualties resulting therefrom in recent years, this Law was enacted in order to install traffic safety facilities in places where many traffic accidents have occurred or on roads where the securing of traffic safety has become an urgent necessity. By effecting such improvements, the Law aims to prevent traffic accidents and to contribute to smooth transportation.

3. *Law on Administrative Counselling Commissioners* (Law No. 99, 30 June 1966)

In view of the desirability to promote the smooth settlement of complaints made by people in connexion with administrative measures taken by government departments, this Law was enacted with the purpose of contributing to the democratic functioning of the administrative branch of the Government by making legal provisions necessary for the commissioning of private persons to give counsel to citizens making such complaints.

Under this Law, the Director of the Administrative Management Agency is authorized to commission persons, who are held in high public esteem and who have understanding as well as zeal for the improvement of the management of the administration of the Government, to offer counsel in response to complaints brought to him by

private persons concerning the business of the administrative organs of the State or of the public juridical persons to be designated by Cabinet Order, and to communicate necessary matters to them. This Law provides for the rules to be observed by such individuals (Administrative Counselling Commissioners) in performing the commissions, the ground for their dismissal, etc.

4. *Employment Measures Law* (Law No. 132 of 21 July 1966)

The purpose of this Law is to contribute towards the balanced development of the national economy and the achievement of full employment by establishing a balance, both qualitatively and quantitatively between the supply of and the demand for the nation's manpower and by enabling workers to make effective use of their abilities, through the adoption by the State of necessary comprehensive measures for employment in the whole sphere of its public policies, thus by promoting employment security and by elevating the economic and social status of workers.

The Law provides for such matters as the basic plan for the measures concerning the employment of workers, the guidance to be provided to persons seeking employment and to those seeking workers, the training and securing of skilled labourers, the granting of vocational reconversion allowances, the promotion of employment of middle-aged and older persons, etc.

5. *Ministerial Ordinance of Partial Amendments to the Prison Law Enforcement Regulation* (Ministry of Justice Ordinance No. 47 of 1 November 1966)

This Ministerial Ordinance aims to improve the treatment to be given to convicted prisoners by shortening the period of confinement in solitary cells and allowing those confined in communal cells to talk freely with each other except in cases specially prohibited; amending the standards of food and beverages to be supplied to them; abolishing instruments for chaining prisoners to an iron ball prescribed as one of the instruments of restraint; allowing them to read newspapers or to receive newspapers sent in from outside the prison, etc.

¹ Note furnished by Mr. Tsuneo Horiuchi, Director, Civil Liberties Bureau, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights*.

II. JUDICIAL DECISIONS

The Tokyo District Court rendered on 20 December 1966 a decision to the effect that in a case where a company, having adopted a system which prescribes female workers to resign when they marry, dismisses a female worker who is reluctant to resign after her marriage, the dismissal is to be considered null and void, and that the female worker, accordingly, still has the rights based on the employment contract with the company.

The decision states in one part of the reason for its conclusion that any stipulation in a labour agreement between a company and its employees, its working rule of labour contract making marriage a cause of resignation only for female workers, makes a distinction in labour conditions between both sexes and restricts the freedom of marriage, and that no reasonable grounds for such stipulation can be found. Therefore, in the light of the purport of the Constitution of Japan, the Civil Code and the Labour Standard Law, such stipulation is deemed to provide for matters contrary to the public order prescribed in labour laws, and its validity must be denied.

III. MAIN TREND

1. *System of Civil Liberties Commissioners*

The number of Civil Liberties Commissioners as of 31 December 1966 was 9,196, including 1,012 female Commissioners (about 11 per cent of the total). The number of female Commissioners tends to increase year by year.

These Civil Liberties Commissioners are posted in cities, towns and villages throughout the country, their efforts being concentrated upon the protection of human rights in the respective communities. The average number of Civil Liberties Commissioners in a city is 6.2, in a town 2.2 and in a village 1.5.

The main activities of the Civil Liberties Commissioners in 1966 are represented by 3,747 cases of reports and investigations of human rights violations, and 88,312 cases of counselling concerning human rights. Since the rapid increase in traffic accidents caused by automobiles has become a grave social problem in recent years in Japan, the Civil Liberties Commissioners in Tokyo, Kanagawa, Saitama, Chiba, Gumma, Shizuoka, Yamanashi, Nagano and Niigata prefectures published the results of their mutual investigations into the actual state of damages compensation paid to traffic accident victims.

On 28 September, at Tokushima City, the All Japan Federation of Civil Liberties Commissioners held its 1966 General Meeting, at which discussions were engaged in and resolutions adopted on various matters.

2. *Human Rights Week*

The week from 4 December 1966 ending on 10 December ("Human Rights Day"), was fixed as the eighteenth "Human Rights Week", and during the week various activities for the dissemination of the meaning of human rights were carried out throughout the country.

3. *System of Legal Aid*

Legal aid cases handled by the Legal Aid Association are increasing annually. Out of 3,650 applications for legal aid in 1966, the Association decided to provide such aid in 1,656 cases. In the 1966 fiscal year, a subsidy of 60 million yen from the National Treasury was appropriated for the purpose of providing legal aid—an increase of 10 million yen over the previous year.

The results of legal aid work during the five fiscal years 1962-1966 show 13,255 cases of applications for legal aid and 5,307 cases of decisions to provide legal aid—the percentage of the decisions taken to the applications made for aid being 40.

IV. TRENDS IN HUMAN RIGHTS PROBLEMS

In 1966 the Civil Liberties Bureau of the Ministry of Justice (including the Legal Affairs Bureau and District Legal Affairs Bureaux which are the local organs of the Civil Liberties Bureau) and the Civil Liberties Commissioners received 8,746 cases of infringement of human rights—an increase of 1,762 over the previous year. Of these, cases of infringement by public officials amounted to 377—a decrease of 205 over the previous year, while cases of infringement by private persons numbered 8,059—an increase of 1,657 over the same period. With regard to infringement of human rights by private persons, cases involving "infringement upon the safety of residence" and "coercion and oppression", both arising from disputes concerned with daily life, numbered more than 1,000 respectively. Next came cases of "exploitation and maltreatment between family members" and "infringement on honour, credit, etc.", amounting to over 700 respectively.

Applications totalling 193,407 for counselling concerning human rights were received by civil liberties organs during 1966.

KENYA

THE PUBLIC SECURITY (DETAINED AND RESTRICTED PERSONS) REGULATIONS 1966¹

PART II

RESTRICTED PERSONS

3. (1) If the Minister is satisfied that it is necessary for the preservation of public security to exercise control over the residence and movement of any person, he may order that such person shall reside in the area therein specified, or in any place to which he may be ordered by a removal order to remove or be removed, in accordance with and subject to such conditions as may be specified in the order.

(2) Where a restriction order has been made in respect of any person, that person shall forthwith remove or be removed to the area specified as aforesaid (if not already, at the date of the order, within such area), and shall reside in the area so specified, or in any such place as aforesaid, in accordance with and subject to the provisions of these Regulations and such conditions as aforesaid, for so long as the order continues in force.

(3) The Minister may at any time vary or revoke a restriction order.

4. Without prejudice to the generality of regulation 3 of these Regulations, the conditions specified in a restriction order made in respect of any person may:

(a) Prohibit, restrict or control the possession, use, acquisition or disposal by him of any specified movable property;

(b) Restrict his association or communication with other persons, and the receipt and dispatch by him of postal, telegraphic and other communications;

(c) Require him to reside in a particular house or building within the area to which he is restricted, and to remain in such house or building during such hours of darkness as may be specified in the order;

(d) Prohibit or restrict his movement or presence within or without the area to which he is restricted, or any part thereof;

(e) Require him to report at specified intervals to a specified authority.

5. (1) The Minister may, at his discretion, issue to a restricted person a permit to leave temporarily the area to which he is restricted, subject to such conditions as he may think fit to impose, and such conditions shall be specified in the permit.

(2) Without prejudice to the generality of paragraph (1) of this regulation, a permit issued under this regulation may direct that the restricted person shall, during the whole or any specified part of the period of his absence from the area:

(a) Remain in police or prison custody; or

(b) Be accompanied by and comply with the directions of such person, or report himself at such times or intervals, at such places and to such persons, as may be specified in the permit.

(3) A permit issued under this regulation shall specify the purpose for which it is issued and the period during which the restricted person is thereby authorized to remain outside the said area.

(4) Particulars of every permit issued under this regulation shall be forthwith sent to the security officer.

(5) Upon a permit expiring or being revoked by the Minister, the restricted person shall forthwith become subject to all the terms of the restriction order.

PART III

DETAINED PERSONS

6. (1) If the Minister is satisfied that it is necessary for the preservation of public security to exercise control, beyond that afforded by a restriction order, over any person, he may order that that person shall be detained.

(2) Where a detention order has been made in respect of any person, that person shall be detained in a place of detention in accordance with these Regulations, for as long as the detention order is in force, and, while so detained, shall be deemed to be in lawful custody.

(3) The Minister may at any time revoke a detention order.

¹ Published as Legal Notice No. 12 in *Kenya Gazette Supplement No. 67 (Legislative Supplement No. 41)*, Special Issue, 25 July 1966.

7. (1) The Minister may, at his discretion, issue to a detained person a permit to leave the place of detention for a fixed period or until the permit is revoked by the Minister in writing, subject to such conditions as he may think fit to impose, and such conditions shall be specified in the pass.

(2) The provisions or regulation 5 of these Regulations shall apply *mutatis mutandis* to a permit issued under this regulation and to a detained person as they apply to a permit issued under that regulation and a restricted person.

PART IV

REVIEW TRIBUNAL

8. (1) There is hereby established a tribunal, called the Review Tribunal, which shall be the tribunal for reviewing and making recommendations on the cases of restricted persons under section 25 (4) and (5), and on the cases of detained persons under section 27 (2) and (3), of the Constitution of Kenya.²

(6) A decision of the Tribunal shall be made by a majority of the votes of the members present and voting, and, in the event of any equality of votes, the presiding member shall have and exercise a casting vote in addition to his original vote.

(9) Without prejudice to section 27 (2) (d) and (e) of the Constitution of Kenya, a restricted person or detained person shall have the right to make written submissions to the Tribunal and, if he so desires, to be heard in person by the Tribunal when his case is under consideration; and the Tribunal may, if it so sees fit, require the attendance before it of any such person whose case is under consideration.

9. Every recommendation made by the Tribunal to the Minister under section 25 (5) or 27 (3) of the Constitution of Kenya shall be signed by each member of the Tribunal participating in the recommendation, and, where any such member dissents from the recommendation or any part thereof, such dissent, the extent thereof and the reasons therefor shall be recorded in the recommendation by the dissenting member.

PART V

SUPPLEMENTAL

10. (1) Where a restriction order or detention order is made in respect of any person, the security officer shall, as soon as reasonably practicable and in any case not more than five days after commencement of his restriction or detention,

cause a copy thereof to be delivered to such person, together with a statement in writing in a language that he understands, specifying in detail the grounds upon which he is restricted or detained, and of the provisions of section 25 (4) and (5), or section 27 (2) and (3), as the case may be, of the Constitution concerning review.

(2) Nothing in this regulation shall be construed as requiring the security officer or any other public officer, unless thereunto authorized or directed by the Minister, to disclose any fact, information or document the disclosure of which, in the opinion of the security officer or, as the case may be, of such other public officer would be likely to prejudice the preservation of public security or would otherwise be contrary to the public interest.

11. The security officer shall be responsible for:

(a) The general control and administration of all areas of restriction;

(b) The security and proper treatment of all restricted persons; and

(c) The general security and well-being of all detained persons.

12. (1) The security officer shall maintain or cause to be maintained a record in respect of every restricted person and every detained person, . . .

(2) It shall be lawful for any administrative officer, police officer or prison officer to search, and to take or cause to be taken the fingerprints, palmprints or photograph of any restricted person and any detained person, and to use or cause to be used such force as may be reasonably necessary for that purpose, and any prints and photographs so taken shall be recorded in such manner as the security officer may direct.

13. The Minister or the security officer may at any time order:

(a) The removal of a restricted person from the area of restriction to which he is for the time being restricted to another area of restriction; or

(b) The removal of a detained person from the place of detention in which he is for the time being detained to another place of detention.

14. Where any person is, by or under these Regulations, ordered to remove or be removed or to remain or be detained in any place or area, then, if at any time while that order remains effective that person is outside that place or area otherwise than under and in accordance with the terms and conditions of a permit issued under these Regulations, he shall forthwith remove to that place or area, and may be removed thereto in custody by any administrative officer, police officer or prison officer, and, for the purpose of effecting such removal, any such officer as aforesaid may keep such person in custody in such place and for such period as may be necessary to make arrangements for such removal, and may use such force as may be reasonably necessary; and

² For extracts from the Constitution of Kenya, see *Yearbook on Human Rights for 1964*, pp.171-179.

any such person while so kept in custody shall be deemed to be in lawful custody.

16. Any administrative officer, police officer or prison officer may, without warrant, arrest any person whom he suspects on reasonable grounds of having committed an offence under these Regu-

lations or any rules made thereunder, or search any person on whom or any place or thing in or on which he suspects on reasonable grounds that any evidence of the commission of an offence under these Regulations or any rules made thereunder may be found.

THE PUBLIC SECURITY (DETAINED AND RESTRICTED PERSONS) RULES 1966³

2. (1) In these Rules, except where the context otherwise requires, "Commissioner" means the Commissioner of Prisons;

PART II

APPOINTMENT AND DUTIES OF CAMP STAFF

3. The Commissioner shall be responsible for the general control and administration of all places of detention and for ensuring that these Rules are complied with in regard thereto.

6. (1) The Commissioner shall make available such number of detention officers as he thinks necessary to ensure the safe custody of detained persons in places of detention and for the control and proper governance and administration of places of detention.

(2) It shall be the duty of detention officers to do all things that are necessary for preventing detained persons escaping and for maintaining good order in the place of detention, and for ensuring that these Rules are observed as far as it is within their competence to do so.

PART III

GENERAL PROVISIONS RESPECTING PLACES OF DETENTION

7. (1) The officer in charge may require detained persons to do such work as he considers necessary for the purpose of keeping their accommodation, furniture and utensils clean and of maintaining the place of detention in good order and in a clean condition.

(2) (a) Every detained person in a place of detention may volunteer to work, on work approved by the Commissioner.

(b) The total hours of work in such cases shall not exceed eight in any one day.

(c) A detained person who volunteers to work shall be eligible to participate in an earnings scheme as provided for in rule 19 of the Prisons Rules 1963⁴ and shall be placed in a progressive stage system of privileges as authorized by the Commissioner.

(3) A detained person shall not be required to do work before he has eaten his morning meal, nor if he is on a penal diet.

8. A medical officer may take, or order the taking of, such steps, including the compulsory inoculation or vaccination of detained persons, as he considers necessary to avoid the spread of any disease or infection in or from any place of detention.

9. Ministers of religion shall be admitted to the place of detention at proper and reasonable times to visit detained persons who wish to see them, at such hours and at such places as the officer in charge may allow, in the sight and hearing of a detention officer.

10. A police officer may, with the approval of the officer in charge and on production of an order in writing from a police officer not below the rank of Sub-Inspector, visit a detained person in the sight and hearing of a detention officer.

11. Subject to rules 9 and 10 of these Rules, no person shall be permitted to enter or be within the limits of any place of detention except detained persons, detention officers and those persons (hereinafter referred to as visitors) who have been authorized in writing by the Commissioner or by the officer in charge to enter.

12. (1) No visitor shall converse or hold any intercourse with a detained person in a place of detention unless his written authority expressly permits him to visit that particular detained person.

(2) Every visitor shall, unless the officer in charge in writing exempts him wholly or in part from this requirement, during the whole of his visit be kept within the sight and hearing of the officer in charge or a detention officer appointed by him for the purpose, and where such officer does not understand the language spoken, of an interpreter.

³ Published as Legal Notice No. 241 in *Kenya Gazette Supplement No. 73 (Legislative Supplement No. 46)*, 16 August 1966.

⁴ For extracts from the Prisons Rules 1963, see *Yearbook on Human Rights for 1963*, p. 194.

13. (1) If anything is found as a result of a search under rule 12 of these Rules which is prohibited or which, in the opinion of the officer in charge, is likely to be dangerous to the life or health of any detained person or to facilitate escape from the place of detention, he may impound such thing, and the person in whose possession it is found shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

(2) Where any person is convicted of an offence under paragraph (1) of this rule, the court may, in addition to imposing any of the penalties therein provided, direct that the thing so impounded be forfeited.

(3) The officer in charge shall cause to be entered in the visitor's book the name and address of every person presenting himself for admission to the place of detention as a visitor, and he, and any detention officer, may at any time demand the name and address of a visitor or intending visitor.

(4) Where a detention officer has reason to suspect that a visitor or person presenting himself for admission to the place of detention as a visitor is carrying or has about his person anything the possession of which in a place of detention is prohibited, or which is likely to be dangerous to the life or health of any person in the place of detention or to facilitate escape from the place of detention, he may search such visitor or cause him to be searched, but no detained person or other visitors shall be present during the search, nor shall any more force be used than is necessary for the purpose; and if any intended visitor refuses to permit himself to be searched he shall be denied admission and the grounds of such denial and the particulars thereof shall be entered in the visitor's book.

(5) The officer in charge may require a visitor whose continued presence in the place of detention is considered to be prejudicial to the good governance of the place of detention or whose visit he considers to have been of sufficient duration to leave the place of detention, and may cause any visitor who refuses or fails to comply with such a requirement to be removed from the place of detention.

14. (1) So far as may be reasonably practicable and subject to the directions of the officer in charge as regards quantity, a detained person may secure such articles for his personal use as are consistent with good order and discipline.

(2) The officer in charge shall impound anything found in the place of detention the possession of which is prohibited or which, in his opinion, is likely to be dangerous to health or life, or to facilitate escape.

15. (1) The officer in charge may, so far as is consistent with the proper discipline of the place of detention and the preservation of public secur-

ity, allow a detained person the use of books and papers received or procured through him or with his consent.

(2) The officer in charge may impound any book or paper which in his opinion contains any objectionable matter, and any person aggrieved by such action may appeal to the Commissioner.

16. Save as is otherwise provided by these Rules, no detained person shall at any time be in possession of any weapon, spirituous liquor, or intoxicating or poisonous drug, or any unauthorized letter, food, clothing or other article.

17. Subject to rule 24 of these rules, detained persons may receive and send letters at the discretion of the officer in charge.

18. (1) Every letter addressed to or written by a detained person shall be read by the officer in charge of the place of detention or by a detention officer deputed by him, and if such officer considers the contents objectionable the letter shall not be forwarded, or the objectionable part thereof shall be erased, at the discretion of the officer.

(2) Where a letter written by a detained person is withheld under paragraph (1) of this regulation, the detained person shall be informed, and he may be given the opportunity of rewriting the letter, omitting the objectionable matter.

(3) A letter addressed to a detained person whose contents are considered objectionable shall be returned to the writer with an invitation to write another letter which does not contain the objectionable matter.

(4) The Minister may prohibit a particular detained person from receiving or writing letters, where he is of the opinion that it is desirable to do so in the interests of the preservation of public security, and where he does so he shall notify the Commissioner who shall cause that person to be informed thereof; and all letters which that person is prohibited from receiving shall be returned to the writer with a notification of the prohibition.

(5) The officer in charge shall keep a register of letters to and from detained persons, and shall record therein any prohibition under paragraph (4) of this rule, and any action taken in withholding letters or returning letters to the writer.

(6) No detained person shall be allowed to communicate with the Press.

19. Every detained person who is not undergoing punishment shall be entitled to attend such school classes as may be organized by the officer in charge for the place of detention in which he is, and to make use of any library established in the place of detention by the officer in charge in accordance with such library rules as the officer in charge may make.

20. [Deals with rules for the regulation of the management of places of detention.]

21. (1) No detention officer shall allow any undue familiarity between a detained person, nor shall he discuss his duties or any matters of discipline or administration within the hearing of a detained person.

(2) No detention officer shall communicate with a detained person except in accordance with these Rules or the instructions of the Minister.

22. (1) A detention officer may use such force against a detained person as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a place of detention, but he shall not use any more force than is necessary.

(2) A detention officer shall not deliberately act in a manner calculated to provoke a detained person.

23. A detention officer may use any weapons which have been issued to him, including firearms, against a detained person if the detained person:

(a) Is escaping or attempting to escape and refuses, when called upon, to return; or

(b) Is engaged with other persons in breaking out or attempting to break out of any part of a

place of detention and continues to break out or attempts to break out when called upon to desist; or

(c) Is engaged with others in riotous behaviour in a place of detention and when called upon refuses to desist; or

(d) Is endangering the life of, or is likely to inflict grave injury to the detention officer or to any other detention officer or person, and the use of weapons, including firearms, is the only way of controlling the detained person.

Provided that:

(i) Weapons shall not be used as authorized in paragraphs (a), (b) and (c) of this rule unless the detention officer has reasonable cause to believe he cannot otherwise prevent the escape, breaking out or riotous behaviour; as the case may be; and

(ii) The use of weapons under this rule shall as far as possible be to disable and not to kill.

24. The officer in charge shall issue rations to detained persons in his place of detention in accordance with the scales for the time being in force under the Prisons Rules 1963.

...

THE NORTH-EASTERN PROVINCE AND CONTIGUOUS DISTRICTS REGULATIONS 1966⁵

PART IV

ENTRY, SEARCH AND ARREST

10. (1) A member of the security forces or an administrative officer at any time may without warrant enter and search any premises in the prescribed area and may without warrant stop, detain and search any person, stock, conveyance, vehicle, vessel, aircraft of container found in, or entering or leaving, or seeking to enter or leave, or reasonably suspected of being about to enter or of having recently left, the prescribed area.

(2) Where any person is conducting a search in pursuance of paragraph (1) of this regulation, he may seize anything upon, in, with or in respect of which an offence has been committed or is reasonably suspected of having been committed, or which is necessary to the conduct of any investigation into an offence.

(3) Anything seized under paragraph (2) of this regulation shall be detained and dealt with according to law.

(4) Any person who is detained for the purpose of being searched shall be deemed to be in lawful custody.

11. (1) A member of the security forces or an administrative officer may without a warrant arrest:

(a) Any person (whether found within the prescribed area or not) whom he reasonably suspects of having committed an offence under these Regulations, or an offence affecting the preservation of public security in the prescribed area; or

(b) Any person found in the prescribed area whom he reasonably suspects of aiding, abetting, harbouring, succouring or consorting or associating with any such person as aforesaid; or

(c) Any person found in the prescribed area whom he reasonably suspects of having committed an offence under any written law.

(2) A person who is arrested under paragraph (1) of this regulation may be detained for a period not exceeding twenty-eight days from and including the day of his arrest for the purpose of inquiries and pending a decision as to whether he should be charged with an offence;

Provided that he shall be released within forty-eight hours after his arrest unless his continued detention under this paragraph is authorized in writing by a police officer not below the rank of Assistant Superintendent or by a commissioned officer of the armed forces.

(3) Where a person is authorized to be detained under paragraph (2) of this regulation for a period not exceeding twenty-eight days, then he shall not be detained under this regulation after the expiration of that period unless a police officer in

⁵ Published as Legal Notice No. 264 in the *Kenya Gazette Supplement* No. 78 (Legislative Supplement No. 49), 6 September 1966.

charge of a province authorizes in writing his continued detention for a further period of twenty-eight days, nor shall he be so detained under this regulation after the expiration of such further period.

(4) Any person who is detained under this regulation shall be detained in a police station or in any other place generally or specially appointed in that behalf by the Minister or by a person authorized by him in writing in that behalf, and any person while so detained shall be subject to all the regulations, rules, orders and provisions governing persons detained therein, and shall be deemed to be in lawful custody.

PART V

POWERS AS TO BUILDINGS AND STOCK

12. A member of the security forces (not being a police officer below the rank of corporal, a member of the armed forces below the rank of corporal in the army or the equivalent rank in the other services, or an administrative police officer) or an administrative officer, where he considers it necessary in the interests of public security, may destroy or authorize the destruction of any building or structure:

- (a) In the prohibited zone; or
- (b) In the prescribed area where the occupant of the building has consorted with, or has been found in the company of, another person whom he knows or has reasonable cause to believe to be a person who intends to act, or is about to act, or has recently acted, in a manner prejudicial to the preservation of public security.

13. (1) A member of the security forces (not being a police officer below the rank of corporal, a member of the armed forces below the rank of corporal in the army or the equivalent rank in the other services or an administrative police officer) or an administrative officer may seize and detain any stock:

- (a) Found in the prohibited zone; or
- (b) Found in the prescribed area where the owner of the stock has consorted with, or has been found in the company of, another person whom he knows or has reasonable cause to believe to be a person who intends to act, or is about to act, or has recently acted, in a manner prejudicial to the preservation of public security.

(2) Any stock seized under paragraph (1) of this regulation:

- (a) If seized in the prohibited zone, shall be forfeited and may be destroyed; or
- (b) If seized outside the prohibited zone, shall be taken before a magistrate (who shall make such order in regard thereto as he may think fit), or may be destroyed if the member or officer is of the opinion that to take it before a magistrate will hamper the security forces or endanger them.

PART VI

OTHER POWERS

14. Where it appears to a member of the security forces (other than an administrative police officer) or an administrative officer necessary or expedient so to do, in the interests of the preservation of public security, he may requisition any kind of transport or vessel found in the prescribed area for such period as he considers necessary and on such terms as he considers just.

15. (1) Where it appears to an administrative officer that, as a result of any circumstances which endanger the existence or the well-being of the whole or any part of the inhabitants in any region of the prescribed area, it is necessary or desirable for the maintenance of the health, safety and well-being of such inhabitants or for the good rule and government of such region so to do, he may by direction in writing require such work or services to be done by specified inhabitants or a specified class of inhabitants.

Provided that no such direction, or directions, shall require any person to perform such work or services for a period exceeding, or for periods which in the aggregate exceed, sixty days in any year.

16. (1) A member of the security forces or an administrative officer may use any arms and ammunition against any person in the prescribed area, to such extent as is reasonably justifiable in the circumstances of the case:

- (a) For the defence of any person from violence or for the defence of property; or
- (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) In order to prevent the commission by that person of a criminal offence; or
- (d) For the purpose of suppressing a riot, insurrection or rebellion, or an armed invasion or armed incursion from outside Kenya.

and such use may, to such extent as aforesaid, be directed to disabling or killing that person.

(2) Without prejudice to paragraph (1) of this regulation, a member of the security forces or an administrative officer may, to the extent and for the purposes specified in that paragraph, take such measures within the prohibited zone, including means dangerous or fatal to human life, as he considers necessary to ensure that no person prohibited from being in, entering or attempting to enter the prohibited zone shall be in, enter or attempt to enter the prohibited zone.

PART VIII

RESTRICTION AND DETENTION
OF PERSONS

22. (1) If the Minister is satisfied that it is necessary for the preservation of public security in the prescribed area to exercise control over the residence and movement of any person, he may order that such person shall reside in the area specified in the order, or in any place to which he may be ordered by a removal order to remove or be removed, in accordance with and subject to such conditions as may be specified in the order.

(2) Where a restriction order has been made in respect of any person, that person shall forthwith remove or be removed to the area specified as aforesaid (if not already, at the date of the order within such area), and shall reside in the area so specified, or in any such place as aforesaid, in accordance with and subject to the provisions of this Part and such conditions as aforesaid, for so long as the order continues in force.

(3) The Minister may at any time vary or revoke a restriction order.

(4) Regulation 4 (concerning conditions in restriction orders) and regulation 5 (concerning permits to leave areas of restriction) of the Public Security (Detained and Restricted Persons) Regulations 1966 shall apply in relation to restriction orders and restricted persons, *mutatis mutandis*, as they apply to restriction orders and restricted persons within the meaning of those Regulations.

23. (1) If the Minister is satisfied that it is necessary for the preservation of public security in the prescribed area to exercise control, beyond that afforded by a restriction order, over any person, he may order that such person shall be detained.

(2) Where a detention order has been made in respect of any person, that person shall be detained in a place of detention in accordance with this Part, for as long as the detention order is in force, and, while so detained, shall be deemed to be in lawful custody.

(3) The Minister may at any time revoke a detention order.

(4) Regulation 7 of the Public Security (Detained and Restricted Persons) Regulations 1966 shall apply in relation to detained persons, *mutatis mutandis*, as it applies to detained persons within the meaning of those Regulations.⁶

⁶ See p. 229.

24. (1) Where a restriction order or a detention order is made in respect of any person, the Minister shall cause to be delivered to that person, as soon as practicable after the commencement of the restriction or detention, a copy of the order, together with a statement in writing of the grounds on which the order has been made and of the fact that the person has a right of appeal to the Tribunal.

(2) The statement shall contain such particulars as may, in the opinion of the Minister, be sufficient to enable the person to present an appeal to the Tribunal; and if an appeal is presented the Minister shall cause a copy of the statement to be furnished to the Tribunal.

(3) Notwithstanding paragraph (2) of this regulation, no public officer shall be required to disclose any fact, information or document the disclosure of which in the officer's opinion would be against the public interest.

25. (1) There is hereby established a tribunal, called the Appeal Tribunal, for the purpose of hearing appeals and making reviews under regulation 26 of these Regulations.

...
(5) A decision of the Tribunal shall be made by a majority of the votes of the members present and voting, and in the event of an equality of votes the member presiding shall have and exercise a casting vote in addition to his original vote.

...
(8) An appellant shall have the right to make written submissions to the Tribunal and, if he so desires to be heard in person by the Tribunal; and the Tribunal may require the appellant to attend before it.

...
26. (1) A restricted person or detained person may, within two months after the delivery of the statement of grounds under regulation 24 of these Regulations, appeal to the Tribunal against his restriction order or detention order, and the appeal shall be considered by the Tribunal.

(2) The case of every restricted person and the case of every detained person shall be reviewed by the Tribunal not more than six months after the commencement of his restriction or detention (or, if an appeal has been presented, not more than six months after the consideration of the appeal) and thereafter at intervals of not more than six months.

THE PUBLIC SECURITY
(AMENDMENT AND REVOCATION) REGULATIONS 1966⁷

2. Regulation 13 of the Public Security (Detained and Restricted Persons) Rules 1966⁸ is amended by substituting for paragraph (1) thereof a new paragraph as follows:

(1) (a) The Minister or the security officer may at any time order the removal of a restricted person from the area of restriction to which he is for the time being restricted to another area of restriction.

(b) The Commissioner of Prisons may at any time order the removal of a detained person from the place of detention in which he is for the time being detained to another place of detention.

3. The Public Security Regulations, the Public Security (Specified Districts) Regulations and the Public Security (Restriction) Regulations are revoked.

⁷ Published as Legal Notice No. 323 in *Kenya Gazette Supplement No. 100* (Legislative Supplement No. 62), 29 November 1966.

⁸ See p. 228.

KUWAIT

HUMAN RIGHTS AS GUARANTEED BY LAWS OF THE STATE OF KUWAIT¹

I. INTRODUCTION

The fundamental principles as recognized by the Universal Declaration of Human Rights have been unequivocally guaranteed by the Constitution of the State of Kuwait.² Justice, liberty, and equality have been recognized by the Constitution as the pillars of society (article 7) and while it has been made incumbent upon the State to maintain the safety and security of society (article 8) the Constitution has restricted the powers of the State connected with the legal process against individuals lest such powers should be abused (articles 29, 30, 31 and 32).

Article 2 of the Constitution states that "the religion of the State is Islam, and the Islamic *sharia* shall be a main source of legislation".

Moreover, free expression was a natural right of the Arab individual even before Islam. Consequently the individual Kuwaiti as a Moslem and a member of an Arab society, tribal by its origin, has always enjoyed free expression in speech or in writing long before the Constitution was granted. Never before was such right ever questioned.

Indeed, the Constitution (articles 35 and 36) merely guarantees legally and officially an existing and practiced right, as it does with all the human rights inherent in Islam, which the Holy Koran stated clearly and unequivocally fourteen centuries prior to the Universal Declaration of Human Rights in 1948.

Freedom of information is guaranteed and the media for passing and communicating information are regulated by the Constitution. Article 37 guarantees freedom of the press, printing and publishing in accordance with the conditions and manner specified by the law, whereas article 39 guarantees the secrecy of communication by post, telegraph and telephone, forbidding censorship of communication or disclosure of contents except in the circumstances and manner specified by law. Other media through which information can be exchanged and communicated, the public and free expression of opinion, public meetings, pro-

cessions and gatherings, as well as the freedom to form associations and unions on a national basis and by peaceful means, are guaranteed by the Constitution (articles 43 and 44).

The right to petition the public authorities, by an individual over his signature or by duly constituted organizations and bodies corporate, are also guaranteed by the Constitution (article 45).

II. FREEDOM OF THE PRESS

In normal times, the press is not censored prior to publication and distribution of the material. When the Law of Printing and Publishing is violated,³ the authority concerned either sends a written warning, calling the attention of the editor, if the offence is minor, or the case is referred to the courts for legal action, if the offence is major. The authority cannot resort to arbitrary action. The plaintiff and the defendant stand on an equal footing before the judiciary for the verdict.

In fact the authorities and the local press co-operate widely, and most of their differences are resolved in a spirit of co-operation, although the press is always critical.

Since the Constitution was approved and promulgated by the Amir of Kuwait, only a few contraventions of the Law of Printing and Publishing have compelled the authorities to take legal action against the press. Those violations were not even major offences, such as inciting against the system of Government or encouraging revolt with violence. The cases are the following:

1. *Al-Reessalah*, a weekly newspaper, was sued for printing in the supplement of issues No. 226 dated 10 April 1966 (pages 46 and 47) and No. 228 dated 24 April 1966 (pages 46 and 47) pictures in violation of article 26 of the Law of Printing and Publishing (No. 3, 1961). But the authority withdrew the case on 22 May 1966 under verbal assurances from the editor not to repeat the offence.

¹ Note furnished by the Government of Kuwait.

² For extracts from the Constitution of Kuwait, see *Yearbook on Human Rights* for 1962, pp. 171-172.

³ Extracts from the Law of Printing and Publishing appear below.

2. *Al-Reessalah*, in its issue No. 256, dated 6 November 1966, published an unwarranted, baseless and violent attack against the Cultural Attaché at the Kuwait Embassy in Cairo. The Ministries of Education and of Foreign Affairs protested and requested the Ministry of Guidance and Information to take legal action against the newspaper for violation of article 29 (Law No. 3, 1961). Finally the Court of Appeal amended the sentence of the criminal court against the editor from imprisonment and suspension of the paper to a fine of K.D. 100.

3. *Al-Hadaf*, a weekly newspaper, in issue No. 280, dated 6 October 1966, published a news item which the Ministry of Foreign Affairs considered baseless and insulting to the head of a diplomatic mission abroad. The Ministry requested the Ministry of Guidance and Information to take legal action against the said paper for violation of article 19 (Law No. 3, 1961). But the Public Prosecutor in his letter No. PP-3/277-6846, dated

31 December 1966, ruled stay of proceedings and the case ended there.

4. *As Seyassah*, a weekly newspaper, in issue No. 71, dated 17 October 1966, published an article about Kuwaiti investors in Intra Bank that the Ministry of Foreign Affairs considered violating articles 26 and 29 of Law No. 3, 1961; it requested the Ministry of Guidance and Information to sue the paper. The Public Prosecutor in his letter No. PP-3/277-6846, dated 31 December 1966, ruled stay of proceedings. The plaintiffs respected the said ruling.

III. INTERNATIONAL AGREEMENTS

Kuwait became a party to the Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111) by instrument of ratification deposited on 11 December 1966.

LAW No. 3/1961, PROMULGATING THE LAW OF PRINTING AND PUBLISHING

EXTRACTS

Chapter III

PROHIBITED MATTERS

Section 23

It is prohibited to criticise the person of the Ameer of Kuwait and no statement may be attributed to him without the written permission of the Department of Printing and Publishing.

Section 24

Publication of news of official secret contacts is prohibited and publication of agreements or treaties concluded by the Government of Kuwait prior to their publication in the *Official Gazette* is also prohibited except with a special permission from the Department of Printing and Publishing.

Publication of any material prejudicial to Heads of States or disturbing the relations between Kuwait and the Arab or friendly countries is also prohibited.

Section 25

The publication of news affecting the value of national currency or causing confusion about the economic situation is prohibited.

Publications of bankruptcy of merchants, firms, banks or money exchangers is prohibited except with a special permission from the competent Court.

Section 26

The publication of any material violating the rules of decency or impairing the honour of persons or their personal liberties is prohibited.

The publication of any material divulging a secret which may prejudice the reputation, wealth or the commercial name of a person, or the publication of any material intended to threaten him or compel him to pay money or offer a certain benefit to others or deprive him of the freedom of action is also prohibited.

Section 27

The publication of any material instigating the perpetration of crimes or inciting hatred or disseminating discord among the members of the society is prohibited.

Section 28

The editor and the writer of the article shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding one thousand rupees, or both such penalties if the paper publishes any of the materials prohibited in the foregoing five Sections.

In the event of repetition, the sentence may be increased to a period not exceeding one year or a fine not exceeding two thousand rupees, or to both such penalties. The Court may in this case decide the suspension of the paper for a period not exceeding one year, seizure of the published number and confiscation and destruction of the original writing and blocks. The Court may also cancel the licence of the paper.

Section 29

If a libellous attack on the conduct of a man in public position is published, the editor as well as the writer of the article shall be liable to the

penalty imposed for libel in the Penal Code, unless the writer proves his good intention in believing that the facts imputed to the man in public position were true; that such a belief was based on reasonable grounds after verification and investigation; that he tended merely to protect public interest and that he restricted his attack to the portion necessary for the protection of this interest.

Section 30

If the paper publishes instigation to overthrow the Government and urging a change of the system of government by force or illegal means; or invocation to embrace communism and revolt against the social or economic order of the country; or opinions tending to ridicule, scorn or underestimate any religion or creed, the editor and the writer of the article shall be liable to the penalty imposed in the Criminal Code for such perpetrated offences.

Section 31

In the cases stipulated in the two preceding Sections the Court may order suspension of the paper for a period not exceeding one year; seizure of the published number, and confiscation and destruction of the original writing and blocks. The Court may also cancel the licence of the paper.

Section 32

The Department of Printing and Publishing may, after obtaining permission from the President of the High Court of Appeal, and until a court decision has been delivered, suspend a paper for publishing what may be deemed to constitute an offence under the foregoing provisions.

Section 33

The Court having jurisdiction to try the offences stipulated in this Chapter is the Criminal Court at the Court of First Instance, and its decisions are appealable to the High Court of Appeal.

Legal actions against such offences may not be initiated if three months expire after the date of publication. Cases of civil libel shall be dismissed if not brought to Court within the said period, unless

there existed *force majeure* circumstances preventing the initiation of legal action.

Section 34

The Department of Printing and Publishing may warn the editor if he published any material in violation of the provisions of this Law. Such a warning shall not prevent, if necessary, the trial of the responsible persons before the competent Court.

Section 35

A paper may be suspended for a period not exceeding one year, or its licence may be cancelled by order of the Council of Ministers if it is proved that such a paper had been serving the interests of a foreign State which conflict with the national interest, or if it is proved that a non-political paper had deviated from its objects and indulged in political matters.

Furthermore, a paper may be suspended by order of the Council of Ministers for a period not exceeding one year if it published anything in violation of the prohibition stipulated in Section 23, the last paragraph of Section 24 and Sections 27 and 30 of this Law.

The order of suspension or cancellation of the licence, as the case may be, may be appealed to the Council of Ministers within ten days from the date of notification of the said order to the proprietor or editor of the paper and the decision of the Council of Ministers in the appeal shall be final.

The order of suspension or cancellation of the licence shall not prevent, if necessary, the trial of the responsible persons before the competent Court.

Section 36

If in spite of a court decision or an administrative order issued under the provisions of this Law suspending a paper or cancelling its licence, such a paper continues to be published under its own name or under another name, the editor, beneficiary, printer and publisher shall be liable to imprisonment for a period not exceeding one year or to a fine not exceeding one thousand rupees or to both such penalties.

LEBANON

HUMAN RIGHTS IN LEBANON¹

At a time when human rights are almost everywhere the subject of impassioned debate on the principles and practice of basic freedoms in internal and international relations, it is reassuring to examine Lebanese law.

Lebanon's legislation reveals genuine concern to safeguard first and foremost the human person and human freedoms.

In this connexion, the role of the Lebanese judiciary is of prime importance. If individual rights are to be safeguarded, it is not enough for them to be solemnly proclaimed or even inscribed in texts of positive law; at the stage of application an independent judicial authority must intervene, imposing severe penalties for any infringements of such rights. This fundamentally protective role played by Lebanese judges is made clear by the judgements referred to in this note.

PRESS

When it appears that the suspension of a publication is illegal and occasions damages, the Conseil d'Etat is required to award the journalist compensatory damages (C.E., No. 645, 18 May 1966, *Rec.*, p. 138).²

UNLAWFUL GAIN

(1) All work actually performed must be equitably remunerated. Therefore, when any individual actually gives any hours of instruction in an official establishment, the Administration must remunerate him equitably, and cannot plead any irregularity of form or incompetence on the part of the authority which ordered the plaintiff to teach (C.E., No. 1399, 7 October 1965, *Rec.*, p. 242).

¹ Note prepared by Mr. Hassan-Tabet Rifaat, Doctor of Laws, Member of the Conseil d'Etat, Assistant Professor in the Faculty of Law and the Institute of Social Science.

² The abbreviation "*Rec.*" stands for the Administrative Series (*Recueil administratif*) issued in Arabic by maître Josef Chidiac.

(2) The principle of unlawful gain was likewise invoked by the administrative tribunal in favour of one of its employees who, at the request of several administrative departments, had been able to obtain, in record time, the amount of water required to supply a large town in Southern Lebanon. The Administration could not plead any irregularity of form in order to withhold reimbursement of the expenses which he had had to meet in the discharge of his task. The withholding of reimbursement would have constituted an unlawful gain (C.E., No. 888, 7 June 1966, *Rec.*, p. 213).

PHARMACEUTICAL PROFESSION PRINCIPLES OF SAFEGUARD

The Conseil d'Etat, in two decisions handed down in 1965, clarified two points concerning the pharmaceutical profession. By virtue of decision No. 24 of 12 January 1965 (*Rec.*, p. 72), it ruled that the Administration could not, in the absence of a legislative provision, impose an additional requirement for the granting of authorization to open a pharmacy; it thus annulled a regulation requiring that the authorization given by the Minister of Health should be subject to approval by the Council of Ministers.

The second decision concerned the delicate question of the minimum number of inhabitants for whom a pharmacy may be established. The problem involved the interpretation of a law which was in itself restrictive: article 12 of the Act concerning the Pharmaceutical Profession (Act dated 31 October 1950) stipulates that at Saïda, the chief town of Southern Lebanon, permission to open a pharmacy will be granted only for a minimum of 5,000 inhabitants, and the question was whether this figure covered only persons registered in Saïda or was intended to cover all those who resided in the suburbs and outlying areas but shopped in Saïda. The Conseil d'Etat upheld the latter interpretation (C.E., No. 328, 24 February 1965, *Rec.*, p. 73).

EQUALITY AND THE CIVIL SERVICE

The Conseil d'Etat solemnly affirms the importance which it attaches to the principle of equality,

and holds that there can be no discrimination between civil servants employed by the same agency (C.E., No. 136, 23 January 1965, *Rec.*, p. 251).

Thus the legislator alone may take action which affects the principle of equality (C.E., No. 1050, 18 August 1966, *Rec.*, p. 30).

INDUSTRIAL ASSOCIATIONS

(1) The decision taken by the Director-General of the Ministry of Social Affairs annulling the decision by which an industrial association had rejected a particular application is invalid, since it emanates from an authority which is not competent. Constitutionally, competence in the matter rests with the Minister (C.E., No. 1216, 22 June 1965, *Rec.*, p. 193).

(2) On 12 October 1966 the Conseil d'Etat handed down a decision which is of the greatest importance from the standpoint of freedom to form industrial associations. It underlines the clear-cut difference between the private and the public sectors. The former is based essentially on the concepts of equality and co-operation between labour and capital so as to prevent the one from dominating the other; the public sector, on the other hand, is governed by the need to safeguard the well-being of the nation. Therefore, the authorities must be allowed sufficient freedom to enable them to work towards greater social justice. This being so, administrative jurisprudence holds that employees of autonomous agencies are governed in this matter not by the provisions of the labour code but by special provisions which together forbid them to join professional associations (C.E., No. 213, 12 October 1966, *Rec.*, p. 198).

FREEDOM OF ASSOCIATION

The safeguarding of freedom of association, like that of other public freedoms, depends on the way in which the judge deals with administrative acts which infringe it; in order that he may act with full knowledge of the circumstances, he bases his decision on a number of factors, the most important being the file on which the Administration's decision is based.

In a decision handed down in 1962, the Conseil d'Etat adopted a conciliatory attitude toward the Administration; the latter, having invoked as a pretext the secret nature of an inquiry leading to the disbanding of a sports club, had refused to submit relevant details; the judge did not insist, and accepted as statements of fact allegations which could not be confirmed from the documentary evidence (C.E., No. 719, 31 October 1962, *Rec.* 1963, p. 29).

About ten years earlier, the administrative tribunal had been uncompromising in dealing with the safeguarding of a public freedom. On that occasion it had had to take a decision in a similar case, involving another sports club disbanded on

the pretext that its activities were not compatible with the objectives for which it had been constituted. The Administration, on the strength of information gathered by members of its staff, had accused the club of engaging in political activity, for the furtherance, *inter alia*, of communist principles, and had ruled that it shall be disbanded. That decision had been submitted for consideration by the administrative tribunal, which had examined the evidence with the greatest care and had ruled that the decree should be annulled, on the ground that nothing in the evidence enabled the Administration's allegations to be corroborated (Cass. ch. adm., No. 126, 24 October 1952, *Revue judiciaire libanaise*, 1966, p. 198).

One cannot but praise the rigour with which the administrative tribunal censured the Administration's conduct in 1952, thereby demonstrating its concern to ensure that restrictions on freedom of association were kept within extremely strict limits.

In a decision of 1966, the Conseil d'Etat seems to have reverted to its uncompromising approach to the examination of documentary evidence. In this case, it refused to concur in the Administration's claim that a benevolent society was involved in politics and that the majority of its members belonged to a political party; on the contrary, having scrupulously examined the documents presented in evidence, it ruled that the body concerned had, by acting two years prior to its dissolution to oust five of its members who were affiliated with the party, demonstrated that it wished to remain aloof from any political activity. The Conseil d'Etat also ruled that there were no grounds for asserting that the members of the society concerned were affiliated with any political party or that it engaged in political activities (C.E., No. 633, 16 May 1966, *Rec.*, 1966, p. 133).

EXCEPTIONAL CIRCUMSTANCES³

The legal provisions which are normally applicable yield to the exigencies of public order and the need to preserve the continuity of the nation whenever the latter is seriously threatened. In such cases, Lebanese jurisprudence applies a fairly broad concept of exceptional circumstances.

In a decision handed down in 1960, the Lebanese Conseil d'Etat absolved the Administration from all liability for damages incurred during the internal disturbances of 1958, on the ground that the public authorities had taken all the measures in their power, having regard to their capabilities and the circumstances. It was not possible, the Conseil d'Etat added, to post a sentry at every door or to appoint a bodyguard for every person; in the absence of "grave error", there was

³ See H. T. Rifaat, "Commentary on exceptional circumstances", in the review *Proche Orient, Etudes juridiques*, May-August 1967 (pp. 463-476). This review is published by the Faculty of Law and Economic Sciences, Beirut.

no liability (C.E., No. 354, 7 December 1960, *Rec.* 1961, p. 3).

The Conseil d'Etat subsequently ruled that "in the majority of cases, exceptional circumstances absolve the public authorities from all liability, particularly those services . . . which cannot incur liability save in cases of grave error". It accordingly took the position that the magnitude of the internal events of 1958 had impeded the normal functioning of the security services, making it exceptionally difficult and uncertain (C.E., No. 1227, 1 August 1963, *Rec.* 1964, p. 46).

This concept of exceptional circumstances was confirmed by the Conseil d'Etat in decision No. 101 of 22 January 1967, which appears to constitute a departure from the concept embodied in a decision taken only nine months before (C.E., No. 568, 26 April 1966); in the latter decision the principle of equality before the public authorities had been invoked to condemn the Administration despite the urgency of exceptional circumstances. This concept was rightly abandoned in decision No. 101 of 22 January 1967, as indicated above.

RIGHT OF PRIVATE OWNERSHIP

(1) In a notable decision, the Conseil d'Etat of Lebanon ruled null and void a decision of the municipal authorities designating as a public thoroughfare a private road encumbered only by an easement in favour of the adjacent owner, on the ground that "the right of private ownership is protected by the Constitution and by the law" (C.E., No. 1367, 1 October 1965, *Rec.*, p. 196).

(2) The civil courts as the guardians of private ownership, are the courts which rule on any violation of such ownership.

An administrative judge therefore declared himself incompetent to rule on a request for

compensation submitted by the owner of property occupied by the United States troops which landed in Lebanon in 1958 (C.E., No. 1371, 30 November 1965, *Rec.*, p. 224).

(3) When, despite the annulment by the administrative tribunal of a requisition order relating to two properties, the municipal authority had the buildings on those properties demolished, it violated the right of private ownership and was required to make restitution. The Court of Cassation, the supreme judicial court, found against the municipality and ordered payment of damages set at slightly over £L20,000 bearing interest at 4 per cent, to run from the date on which the action was brought (Cassation, 29 April 1965, *Rec.*, 1966, p. 6).

(4) On 6 April 1966, the Court of Appeals at Beirut made a decision affecting the right of private ownership. The police had occupied an orchard which they had encircled with barbed wire and had fortified. The owner sued the State, and the court of first instance found against the State, ordering it to pay a sum of £L17,000, bearing interest at 3 per cent to run from the date of adjudication. The State appealed, whereupon the Court of Appeals upheld the finding of the court of first instance, thus affirming the role of the ordinary courts as "guardians of private ownership".

(5) When the Administration, with the intention of reducing the amount of compensation to owners of expropriated properties, included in the alignment approval and expropriation order a provision imposing a servitude *non aedificandi* in respect of the property expropriated, it was guilty of an abuse of procedure and the order was annulled (C.E. No. 958, 25 May 1965, *Rec.*, p. 185).

LESOTHO¹

THE CONSTITUTION OF LESOTHO²

Chapter I

THE KINGDOM AND ITS CONSTITUTION

1. (1) Lesotho shall be a sovereign democratic kingdom.

...

Chapter II

PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

4. (1) Whereas every person in Lesotho is entitled, whatever his race, tribe, place of origin or residence, political opinions, colour, creed or sex, to fundamental human rights and freedoms, that is to say, to each and all of the following:

- (a) The right to life;
- (b) The right to personal liberty;
- (c) Freedom of movement and residence;
- (d) Freedom from inhuman treatment;
- (e) Freedom from slavery and forced labour;
- (f) Freedom from arbitrary search or entry;
- (g) The right to respect for private and family life;
- (h) The right to a fair trial of criminal charges against him and to a fair determination of his civil rights and obligations;
- (i) Freedom of conscience;
- (j) Freedom of expression;
- (k) Freedom of assembly and association;
- (l) Freedom from arbitrary seizure of property;
- (m) Freedom from discrimination; and
- (n) The right to equality before the law and the equal protection of the law,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that protection as are contained in those provisions,

being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

(2) For the avoidance of doubt and without prejudice to any other provision of this Constitution it is hereby declared that the provisions of this Chapter shall, except where the context otherwise requires, apply as well in relation to things done or omitted to be done by persons acting in a private capacity (whether by virtue of any written law or otherwise) as in relation to things done or omitted to be done by or on behalf of the Government of Lesotho or by any person acting in the performance of the functions of any public office or any public authority.

5. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Lesotho of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is necessary in the circumstances of the case:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

6. (1) Every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorized by law in any of the following cases, that is to say:

(a) In execution of the sentence or order of a court, whether established for Lesotho or for some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of the order of the High Court or the Court of Appeal punishing him for con-

¹ Basutoland became the independent State of Lesotho on 4 October 1966.

² Published as the Schedule to the Lesotho Independence Order 1966, in *Statutory Instruments*, 1966, No. 1172, by Her Majesty's Stationery Office, London, 1966.

tempt of that court or of another court or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Lesotho;

(f) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Lesotho, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Lesotho or for the purpose of restricting that person while he is being conveyed through Lesotho in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Lesotho or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Lesotho in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that he has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody

in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Without prejudice to the generality of any other provision of this Constitution or any other law by virtue of which a person is entitled to redress for a contravention of this section, any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

7. (1) Every person shall be entitled to freedom of movement, that is to say, the right to move freely throughout Lesotho, the right to reside in any part of Lesotho, the right to enter Lesotho, the right to leave Lesotho and immunity from expulsion from Lesotho.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For the imposition of restrictions in the interests of defence, public safety, public order, public morality or public health on the movement or residence within Lesotho of any person or any person's right to leave Lesotho;

Provided that a person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in this paragraph except to the extent to which he satisfies the court that the provision or, as the case may be, the thing done under the authority thereof does not restrict the movement or residence within Lesotho or the right to leave Lesotho of the person concerned to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in this paragraph; or

(b) For the imposition of restrictions, by order of a court, on the movement or residence within Lesotho of any person or on any person's right to leave Lesotho either in consequence of his having been convicted of a criminal offence under the law of Lesotho or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Lesotho;

(c) For the imposition of restrictions on the freedom of movement of any person who is not a citizen of Lesotho;

(d) For the imposition of restrictions on the acquisition or use by any person of land or other property in Lesotho;

(e) For the imposition of restrictions upon the movement or residence within Lesotho or on the right to leave Lesotho of any public officer;

(f) For the removal of a person from Lesotho to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he has been convicted under the law of Lesotho; or

(g) For the imposition of restrictions on the right of any person to leave Lesotho that are necessary in a practical sense in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3) (a) of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be investigated by an independent and impartial tribunal presided over by a person appointed by the Chief Justice;

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any investigation by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Nothing contained in or done under the authority of any provision of the customary law of Lesotho shall be held to be inconsistent with or in contravention of this section to the extent that that provision authorizes the imposition of restrictions upon any person's freedom to reside in any part of Lesotho.

8. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution.

9. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably required in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) Any labour required during any period when Lesotho is at war or a declaration of emergency under section 21 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required by law as part of reasonable and normal communal or other civic obligations.

10. (1) Every person shall be entitled to freedom from arbitrary search or entry, that is to say, he shall not (except with his own consent) be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of mineral resources or the development or utilization of any other property in such a manner as to promote the public benefit;

(b) For the purpose of protecting the rights or freedoms of other persons;

(c) That authorizes an officer or agent of the Government of Lesotho or of a local government authority or of a body corporate established by law for public purposes to enter on the premises of any person for the purpose of inspecting those premises or anything thereon in connection with any tax, rate or due or for the purpose of carrying out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) That authorizes, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the entry upon any premises by order of a court.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for any of the purposes specified in paragraph (b), paragraph (c) or paragraph (d) of that subsection.

11. (1) Every person shall be entitled to respect for his private and family life and his home.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the rights and freedoms of other persons.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the right guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for the purpose specified in paragraph (b) of that subsection.

12. (1) If any person is charged with criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in adequate detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot

understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within reasonable time.

(9) Except with the agreement of all parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(a) May by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of

justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) May by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(a) Subsection (2) (a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) Subsection (2) (e) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of accused persons are to be paid their expenses out of public funds; or

(c) Subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) Nothing contained in subsection (2) (d) of this section shall be construed as entitling a person to legal representation at public expense.

(14) In this section "criminal offence" means a criminal offence under the law of Lesotho.

13. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person

attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

(6) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (5) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (5) of this section or for the purpose specified in paragraph (b) of that subsection.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

14. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) For the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the freedom guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for any of the purposes specified in paragraph (b) or paragraph (c) of that subsection.

15. (1) Every person shall be entitled to, and (except with his own consent) shall not be hindered in his enjoyment of, freedom of assembly and association, that is to say, freedom to assemble and associate with other persons and in particular to form or belong to trade-unions and other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons; or

(c) For the purpose of imposing restrictions upon public officers.

(3) A person shall not be permitted to rely in any judicial proceedings upon such a provision of law as is referred to in subsection (2) of this section except to the extent to which he satisfies the court that that provision or, as the case may be, the thing done under the authority thereof does not abridge the rights and freedoms guaranteed by subsection (1) of this section to a greater extent than is necessary in a practical sense in a democratic society in the interests of any of the matters specified in paragraph (a) of subsection (2) of this section or for any of the purposes specified in paragraph (b) or paragraph (c) of that subsection.

16. (1) No property, movable or immovable, shall be taken possession of compulsorily, and no interest in or right over any such property shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:

(a) The taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for:

(a) The determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and

(b) The purpose of obtaining prompt payment of that compensation;

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

...

17. (1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence, sex, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law to the extent that that law makes provision:

(a) With respect to persons who are not citizens of Lesotho; or

(b) For the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description; or

(c) For the application of the customary law of Lesotho with respect to any matter in the case of persons who, under that law, are subject to that law; or

(d) For the appropriation of public revenues or other public funds; or

(e) Whereby persons of any such description as is mentioned in subsection (3) of this section may be made subject to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin or residence, sex, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) No person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 10, 11, 13, 14 and 15 of this Constitution, being such a restriction as is authorized by paragraph (a) or paragraph (c) of section 7 (3), section 10 (2), section 11 (2), section 13 (5), section 14 (2) or section 15 (2), as the case may be.

(9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(10) The provisions of this section shall be without prejudice to the generality of section 18 of this Constitution.

18. Every person shall be entitled to equality before the law and to the equal protection of the law.

19. (1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of

section 6, section 17 or section 18 of this Constitution to the extent that the Act authorizes the taking during any period when Lesotho is at war or when a declaration of emergency under section 21 of this Constitution is in force of measures that are necessary in a practical sense in a democratic society for dealing with the situation that exists in Lesotho during that period.

(2) When a person is detained by virtue of any such law as is referred to in subsection (1) of this section the following provisions shall apply, that is to say:

(a) He shall, as soon as reasonably practicable after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;

(c) Not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be investigated by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the investigation of the case of the detained person; and

(e) At the hearing of his case by the tribunal appointed for the investigation of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any investigation by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2) (d) or subsection (2) (e) of this section shall be construed as entitling a person to legal representation at public expense.

20. (1) If any person alleges that any of the provisions of sections 4 to 19 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(a) To hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) To determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section

and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 4 to 19 (inclusive) of this Constitution;

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 4 to 19 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

...

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

21. (1) The Prime Minister may, by proclamation which shall be published in the Gazette, declare that a state of emergency exists for the purposes of this Chapter.

22. ...

(2) Nothing contained in any of the provisions of section 7, section 16 or section 17 of this Constitution shall be construed as affecting any law for the time being in force relating to the allocation of land or the grant of any interest or right in or over land or as entitling any person to any greater such interest or right than he would otherwise have and, without prejudice to the generality of the foregoing, nothing done under the authority of Chapter VIII of this Constitution³ shall be held to be inconsistent with or in contravention of any of the provisions of any of those sections.

(3) In relation to any person who is a member of a disciplined force raised under a law made by any legislature in Lesotho, nothing contained in or done under the authority of the disciplinary law of

that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 5, 8 and 9.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Lesotho, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

Chapter III

CITIZENSHIP

23. (1) Every person who, having been born in Basutoland, is on 3rd October 1966 a citizen of the United Kingdom and Colonies shall become a citizen of Lesotho on 4th October 1966.

(2) Every person who, having been born outside Basutoland, is on 3rd October 1966 a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Lesotho in accordance with the provisions of subsection (1) of this section, become a citizen of Lesotho on 4th October 1966.

(3) Every person who, on 3rd October 1966, is a citizen of the United Kingdom and Colonies:

(a) Having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalized in Basutoland as a British subject before that Act came into force; or

(b) Having become such a citizen by virtue of his having been naturalized or registered in Basutoland under that Act,

shall become a citizen of Lesotho on 4th October 1966.

24. Any woman who, on 3rd October 1966, is or has been married to a person:

(a) Who becomes a citizen of Lesotho by virtue of section 23 of this Constitution; or

(b) Who, having died before 4th October 1966 would, but for his death, have become a citizen of Lesotho by virtue of that section,

shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.

25. (1) Subject to the provisions of subsections (2) and (3) of this section, every person born in Lesotho after 3rd October 1966 shall become a citizen of Lesotho at the date of his birth.

(2) A person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth:

(a) Neither of his parents is a citizen of Lesotho and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho; or

(b) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

³ Dealing with the allocation of land.

(3) Unless he would thereby become stateless, a person born in Lesotho after 3rd October 1966 shall not become a citizen of Lesotho at the date of his birth by virtue of this section if his father is not on that date a Commonwealth citizen.

26. A person born outside Lesotho after 3rd October 1966 shall become a citizen of Lesotho at the date of his birth if at that date his father is a citizen of Lesotho otherwise than by virtue of this section or of section 23 (2) of this Constitution.

27. Any woman who, after 3rd October 1966, marries a citizen of Lesotho shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.

28. (1) Any person who, upon the attainment of the age of twenty-one years, is a citizen of Lesotho and also a citizen of some country other than Lesotho shall cease to be a citizen of Lesotho upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Lesotho by virtue of section 23 (2) or section 26 of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(2) Any person who:

(a) Has attained the age of twenty-one years before 4th October 1966; and

(b) Becomes a citizen of Lesotho on that day by virtue of section 23 of this Constitution; and

(c) Is immediately after that day also a citizen of some country other than Lesotho,

shall cease to be a citizen of Lesotho upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Lesotho by virtue of section 23 (2) of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed.

(3) A citizen of Lesotho shall cease to be such a citizen if:

(a) Having attained the age of twenty-one years, he acquires the citizenship of some country other than Lesotho by voluntary act (other than marriage); or

(b) Having attained the age of twenty-one years, he otherwise acquires the citizenship of some country other than Lesotho and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed.

(4) A woman who:

(a) Becomes a citizen of Lesotho by registration under the provisions of section 24 or section 27 of this Constitution; and

(b) Is immediately after the day upon which she becomes a citizen of Lesotho also a citizen of some other country,

shall cease to be a citizen of Lesotho upon the specified date unless she has renounced the citizenship of that other country, taken the oath of allegiance, and made and registered such declaration of her intentions concerning residence as may be prescribed.

(5) For the purposes of this section, where, under the law of a country other than Lesotho a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed.

(6) In this section "the specified date" means, in respect of a person to whom subsection (1) or (2) or (3) (b) or (4), as the case may be, of this section refers, such date as may be specified in relation to that person by or under an Act of Parliament.

30. (1) Parliament may make provision for the acquisition of citizenship of Lesotho by persons who are not eligible or who are no longer eligible to become citizens of Lesotho under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Lesotho any person who is a citizen of Lesotho otherwise than by virtue of section 23 (1), section 23 (2), section 25 or section 26, of this Constitution, unless he would thereby become stateless.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Lesotho.

31. ...

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 4th October 1966 and the birth occurred after 3rd October 1966 the national status that the father would have had if he had died on 4th October 1966 shall be deemed to be his national status at the time of his death.

...

Chapter IV

THE KING

32. (1) There shall be a King of Lesotho who shall be the Head of State.

...

Chapter V

PARLIAMENT

*Part I**Composition of Parliament*

40. There shall be a Parliament which shall consist of the King, a Senate and a National Assembly.

41. The Senate shall consist of the twenty-two Principal Chiefs and Ward Chiefs and eleven other Senators nominated in that behalf by the King;

Provided that a Principal Chief or a Ward Chief may, by notice in writing to the President of the Senate, designate any other person to be a Senator in his place either generally or for any sitting or sittings of the Senate specified in the notice and may, by notice in like manner, vary or revoke any such designation.

42. The National Assembly shall consist of 60 members elected in accordance with the provisions of this Constitution.

43. (1) Lesotho shall, in accordance with the provisions of section 50 of this Constitution, be divided into constituencies and each constituency shall elect one member to the National Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) Subject to the provisions of subsections (3) and (4) of this section, every person who, at the date of his application to be registered under a law in that behalf:

- (a) Is a citizen of Lesotho; and
- (b) Has attained the age of twenty-one years; and
- (c) Possesses such qualifications as to residence as may be prescribed by Parliament

shall be qualified to be registered as an elector in elections to the National Assembly under a law in that behalf; and no other person may be so registered.

(3) No person shall be qualified to be registered as an elector in elections to the National Assembly who, at the date of his application to be registered:

- (a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or State; or
- (b) Is under sentence of death imposed on him by any court in Lesotho; or
- (c) Is, under any law in force in Lesotho, adjudged or otherwise declared to be of unsound mind.

(4) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an

offence by the court trying an election petition shall not be qualified to be registered as an elector in elections to the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(5) Subject to the provisions of subsections (6) and (7) of this section, every person who is registered in any constituency as an elector in elections to the National Assembly shall be qualified to vote in such elections in that constituency in accordance with the provisions of any law in that behalf; and no other person may so vote.

(6) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of an election in any constituency shall not be qualified to vote in that election in that constituency.

(7) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to vote in any election to the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

44. (1) Subject to the provisions of section 45 of this Constitution, a person shall be qualified to be nominated as a Senator by the King or designated by a Principal Chief or a Ward Chief as a Senator in his place if, and shall not be so qualified unless, at the date of his nomination or designation, he is a citizen of Lesotho.

(2) Subject to the provisions of section 45 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be so qualified unless, at the date of his nomination for election, he:

- (a) Is a citizen of Lesotho; and
- (b) Is registered in some constituency as an elector in elections to the National Assembly and is not disqualified from voting in such elections; and
- (c) Is able to speak and, unless incapacitated by blindness or other physical cause, to read and write either the English or the Lesotho language well enough to take an active part in the proceedings of the National Assembly.

45. (1) No person shall be qualified to be nominated as a Senator by the King or designated by a Principal Chief or a Ward Chief as a Senator in his place and no person shall be qualified to be elected as a member of the National Assembly if, at the date of his nomination or designation or, as the case may be, at the date of his nomination for election, he:

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or State; or

(b) Is under sentence of death imposed on him by any court in Lesotho; or

(c) Is, under any law in force in Lesotho, adjudged or otherwise declared to be of unsound mind; or

(d) Is an unrehabilitated insolvent, having been adjudged or otherwise declared insolvent under any law in force in Lesotho; or

(e) Subject to such exceptions and limitations as may be prescribed by Parliament, has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person who, at the date of his nomination for election, holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of electors for the purposes of such an election shall not be qualified to be elected as a member of the National Assembly.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the National Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(4) Parliament may provide that, subject to such exceptions and limitations as may be prescribed by Parliament, a person shall not be qualified to be elected as a member of the National Assembly if:

(a) He holds or acts in any office or appointment that is so prescribed;

(b) He is a member of any naval, military or air force that is so prescribed; or

(c) He is a member of a police force.

(5) No person shall be qualified to be elected as a member of the National Assembly who, at the date of his nomination for election as such a member, is a Principal Chief or a Ward Chief or is otherwise a Senator.

(6) In subsection (1)(e) of this section "government contract" means any contract made with the Government of Lesotho or with a department of that Government or with an officer of that Government contracting as such.

Part 2

Legislation and procedure in Parliament

62. (1) Any person who sits or votes in either House of Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so shall be guilty of an offence and liable to a fine not exceeding 100 rands, or such other sum as may be prescribed by Parliament, for each day on which he so sits and votes in that House.

(2) Any prosecution for an offence under this section shall be instituted in the High Court and shall not be so instituted except by the Director of Public Prosecutions.

Chapter VI

ALTERATION OF CONSTITUTION

70. (1) Subject to the provisions of this section, Parliament may alter this Constitution.

LIECHTENSTEIN¹

DECREE OF 9 MAY 1966 CONCERNING SPECIAL PROTECTION FOR JUVENILE AND FEMALE WORKERS²

A. JUVENILE WORKERS

Article 1

WORK PROHIBITED FOR JUVENILES

Juveniles within the meaning of article 82, paragraph 2, of the Workers' Protection Act, LGBl. 1946/4, shall be debarred from the following types of work:

(a) The operation and maintenance of equipment such as machines, power units and transport equipment, and the handling of tools in so far as experience has shown that they involve considerable risk of accidents or that the physical or mental capacity of the juveniles would be overtaxed;

(b) Work involving a considerable risk of fire, explosion, accident, illness or poisoning;

(c) The operation and maintenance of steam and hot water boilers, other than steam boilers heated by gaseous or liquid fuels or electricity as specified in article 8, paragraph 1 (a) and (b), of the Decree of 9 April 1925 concerning the installation and operation of steam boilers and containers, and such hot water boilers as are equivalent to these steam boilers in design, content and pressure;

(d) The operation and maintenance of pressure containers whose contents are inflammable or liable to explode and may endanger health;

(e) Underground work in tunnels and mines;

(f) Work involving severe vibration;

(g) Work involving welding and cutting torches and the operation or their accessory gas equipment, and electric welding;

(h) The sorting out of junk and scrap, such as rags, paper and cardboard, of uncleansed and non-disinfected laundry, and of hair, bristles and pelts;

(i) Work at very high or very low temperatures;

(k) Lifting, carrying and moving heavy loads;

(l) Work in enterprises concerned with film projection, or in circuses and exhibitions;

(m) Services to customers in hotels, boarding houses, inns, etc., catering establishments and places of amusement.

Article 2

AUTHORIZED EXCEPTIONS

1. If there are compelling reasons, the Government may authorize exceptions to article 1 (b), (g), (l) and (m) of this Decree for certain training and apprenticeship purposes. Such authorization may be accompanied by special requirements for the protection of juveniles concerned.

2. If the trainee or apprentice passes his final examination before reaching the age at which he would be eligible for the work specified in article 1 (b) and (m) of this Decree, the prohibitions referred to therein in respect of the acquired trade shall not apply.

B. FEMALE WORKERS

Article 3

WORK PROHIBITED FOR ALL FEMALE WORKERS

Female workers shall be debarred from the following types of work:

(a) The operation and maintenance of equipment such as machines, power units and transport equipment, and the handling of tools in so far as experience has shown that they involve considerable risk of accidents or that the physical or mental capacity of female workers would be overtaxed;

(b) Work involving severe vibration;

(c) Work at very high or very low temperatures;

(d) Lifting, carrying or moving heavy loads;

¹ Texts furnished by the Government of Liechtenstein.

² *Liechtensteinisches Landesgesetzblatt*, No. 11, 6 June 1966.

(e) The operation and maintenance of steam and hot water boilers, other than steam boilers heated by gaseous or liquid fuels or electricity as specified in article 8, paragraph 1 (a) and (b), of the Decree of 9 April 1925 concerning the installation and operation of steam boilers and containers, and such hot water boilers as are equivalent to these steam boilers in design, content and pressure;

(f) The operation and maintenance of pressure containers whose contents are inflammable or liable to explode and may endanger health;

(g) Underground work in tunnels and mines.

Article 4

WORK PROHIBITED FOR PREGNANT WOMEN AND NURSING MOTHERS

1. Pregnant women and nursing mothers shall be debarred from work which experience has shown to be detrimental to their health, pregnancy or nursing.

2. Pregnant women and nursing mothers shall, on their request, be released from work which they find to be onerous.

...

DECREE OF 22 AUGUST 1966 ON THE AWARD OF TECHNICAL COLLEGE AND ADVANCED TRAINING GRANTS³

Article 1

Technical college and advanced training grants within the meaning of article 25 of the State Education and Advanced Training Grants Act⁴ shall be in the amount of 50 per cent of proven education costs, to a maximum of 2,000 francs per annum, provided that the income of the applicant does not exceed 14,000 francs. If this limit is exceeded, grants shall be pro-rated in accordance with article 12, paragraph 2 of the said Act.

...

³ *Ibid.*, No. 19, 12 October 1966.

⁴ *Ibid.*, No. 13, 26 April 1961.

CONVENTION ON OLD-AGE, SURVIVORS' AND INVALIDITY INSURANCE BETWEEN THE PRINCIPALITY OF LIECHTENSTEIN AND THE SWISS CONFEDERATION⁵

The Convention was concluded at Vaduz on 3 September 1965 and entered into force on 1 July 1966.

⁵ *Ibid.*, No. 13, 21 June 1966. For extracts from the Convention, see p.467.

DECREE OF 16 MAY 1966 CONCERNING THE REGULATION OF HOLIDAYS IN COMMERCIAL AND INDUSTRIAL ENTERPRISES

Deemed to have entered into force on 1 January 1966⁶

Article 1

SCOPE

This Decree applies to private and public commercial trade and industrial undertakings.

Article 2

VACATION ENTITLEMENT

1. Employers shall grant their workers at least two weeks' vacation with pay per year, and at least three weeks in the case of juvenile workers up to the end of their nineteenth year and apprentices up to the end of their twentieth year.

⁶ *Ibid.*, No. 12, 7 June 1966.

2. Incoming and departing workers shall be given vacations in proportion to their length of service in the calendar year of their entry or departure. Vacation entitlement shall begin three months after the last entry into service.

3. Vacations shall normally be taken consecutively and in the course of the year of service in question. Juvenile workers must be given at least two consecutive weeks.

4. Employers shall determine the time for vacations and for that purpose shall take into account the workers' wishes so far as they are compatible with the interests of the enterprise.

5. Entitlement to unused vacations shall cease at the end of the calendar year.

Article 3

REMUNERATION DURING VACATION

1. The vacation week shall correspond to the normal working week. If there is a public holiday during the vacation period, it shall not count as part of the vacation.

2. Employers shall pay their workers full wages for the vacation periods with appropriate compensation for losses in benefits in kind. Such benefits shall be calculated at the rate assessed by the tax authorities.

3. Workers who depend entirely or partly on gratuities shall receive twelve times the daily amount of their assessed earnings as declared to the tax authorities, or twelve times the daily earnings which they receive in addition to the

fixed amount paid by their employer. This shall be without prejudice to compensation for uncollected payments in kind.

4. Where vacation remuneration is paid in the form of holiday stamps, it must amount to at least 5 per cent.

Article 4

PROHIBITION ON PAYMENTS IN LIEU OF VACATIONS

During the period of employment cash payments or other benefits shall not be given in lieu of vacations.

Article 5

PROHIBITION ON GAINFUL EMPLOYMENT

During their vacations workers shall not accept gainful employment in their occupation.

Article 6

EXCEPTIONS

Under a collective or standard agreement an arrangement which departs from the provisions of article 2, paragraphs 1, 3 and 4, and article 3, paragraph 2, may be introduced through a collective agreement but only if it is at least equivalent for the employees as a whole.

...

LUXEMBOURG

ACT OF 22 APRIL 1966 TO MAKE UNIFORM PROVISION FOR THE ANNUAL LEAVE WITH PAY OF EMPLOYEES IN THE PRIVATE SECTOR¹

SUMMARY

Section 1 provides that every employee shall be entitled to vacation leave with pay every year.

Under section 2, the provisions of this Act shall apply to all wage earners and salaried employees and to all persons working for the purposes of their vocational training.

The length of the leave period shall be at least 18 working days a year (section 4) and entitlement to leave shall be acquired after three month's uninterrupted work for the same employer (section 6).

As stated in section 15, an employee shall not be permitted to do any paid work while on leave; otherwise he shall forfeit the allowance provided for in section 14 which, *inter alia*, provides that the employee shall be entitled in respect of every day's leave to an allowance equal to his average daily wages over the three month's immediately preceding the commencement of the leave.

¹ *Mémorial*, Series A, No. 21, 28 April 1966. The text of the Act in French and a translation thereof in English have been published by the International Labour Office as *Legislative Series* 1966-Lux. 1.

MADAGASCAR

ARTICLES OF INCORPORATION OF TELEVISION MALAGASY, A MIXED COMPANY

Approved by Decree No. 66-134 of 16 March 1966¹

FORM. PURPOSE. NAME. OFFICES. DURATION

Art. 1. A joint public and private company shall be formed under the name *Télévision Malagasy*. It shall be governed by these articles and by the laws and regulations concerning mixed companies of this kind, and, in their absence, by the legislation governing incorporated companies.

The Malagasy State shall be represented in this company by the *Société Nationale d'Investissement*.

Art. 3. The purpose of the company shall be the installation and operation of black and white television in Madagascar, including the regular broadcasting of televised news, educational and cultural programmes, as well as programmes of entertainment and features.

Its activities may later be extended to the installation and operation of colour television.

¹ *Journal officiel de la République malgache, Nouvelle série*, No. 470, 26 March 1966.

ACT No. 66-008 OF 5 JULY 1966 AMENDING VARIOUS ARTICLES OF THE CODE OF CRIMINAL PROCEDURE²

Article 1. Articles 36, 68, 103, 127, 136, 197, 223, 225, 228, 229, 231, 232, 233, 236, 244, 285, 286, 307, 322, 363, 372, 398, 410, 441, 445, 461, 465, 466, 467, 468, 469, 470, 472, 489, 524, 575 and 610 of the Code of Criminal Procedure are hereby amended or supplemented as follows:

"Art. 36. Cognizance of petty offences shall be taken by police courts, courts of first instance or sections of courts, as appropriate.

"The competent court shall be the court with jurisdiction over the domicile of the offender or the court with jurisdiction over the place at which the offence has been committed.

"Art. 68. At hearings in the correctional court (*tribunal correctionnel*) or in the court of appeal, the accused must be assisted by a counsel if the penalty for the offence is imprisonment for a period exceeding five years or if he is liable to rigorous imprisonment.

"The same shall apply if the accused is suffering from a disability likely to impair his defence.

"The provisions of articles 65 (paragraphs 2 and 3), 66 and 67 shall be applicable to all accused persons referred to in this article.

"Art. 103. The validity of a warrant for committal to prison or arrest shall be terminated by a court decision or fulfilment of the penalty imposed.

*"Nevertheless, subject to the provisions of article 231 of this Code, the period of validity of a warrant for committal to prison issued by a judicial officer of the *ministère public* shall not exceed three months reckoning from the date of entry of receipt of the prisoner in the prison register.*

"...

"Art. 136. Where he acts in the territory of a commune in which a court or a section of a court sits, an officer of the criminal police may not hold a person at his disposal for the

² *Ibid.*, No. 487, 16 July 1966. For extracts from the Code of Criminal Procedure, promulgated by Ordinance No. 62-052 of 20 September 1962, see *Yearbook on Human Rights for 1962*, pp. 183-186.

purposes of the preliminary investigation for more than forty-eight hours, excluding Sundays and holidays.

"After that period has elapsed, the person so held must compulsorily be released or brought before a judicial officer of the *ministère public*.

"If the judicial officer of the *ministère public* is not at his residence, the period shall be extended to three days.

"Where the residence of the officer of the criminal police is situated outside the boundaries defined above, he may request authorization from a judicial officer or an official of the *ministère public* in his administrative district to extend the surveillance of the person held for an additional period not exceeding forty-eight hours. This authorization must be confirmed in writing and attached to the record.

"After the authorized period has elapsed, the person held must compulsorily be set free or brought before a judicial officer or an official of the competent *ministère public*.

"Art. 197. A civil claimant may be represented at any time by an advocate or a proxy holding a special written power of attorney.

"He may lodge written and signed statements with the registry of the court before the hearing, requesting that the ruling be given in his absence.

"Art. 223. In the cases provided for in article 178, paragraphs 2, 3 and 4 of this Code, the judicial officer of the *ministère public*, after questioning the offender as to his identity, shall inform him of the allegations against him. After listening to his explanations, the judicial officer of the *ministère public* may issue a warrant for committal to prison against the accused person, under the conditions laid down in articles 102 and 103.

"Art. 225. An official of the *ministère public*, in the cases referred to in article 223 of his Code, shall proceed as indicated in that article, but may only issue a detention warrant valid for fifteen days.

"The official of the *ministère public* shall immediately inform the judicial officer of the *ministère public* to whom he is subordinate, shall request him to issue an order for committal to prison, if there are grounds for doing so, and shall execute his instructions in accordance with the provisions of articles 164 to 170 of this Code.

"Art. 228. If the penalty for the offence is imprisonment for a period exceeding five years or if the accused is liable to rigorous imprisonment, the judicial officer shall invite him to select a defence counsel; failing this, he shall have one designated *ex officio* by the president of the court.

"Art. 229. If it becomes apparent that additional investigations are required in order to discover any complicity, further particulars

regarding the circumstances of the offence, information on the accused person's previous record or any other point to be ascertained by the court, the following procedure shall be adopted:

"Art. 231. When such additional investigations are completed, the judicial officer of the *ministère public*, if he considers, for *de facto* or *de jure* reasons, that there are no grounds for prosecution, shall give a *nolle prosequi* ruling in the manner provided for in article 99 and shall withdraw the order for committal to prison, if one has been made. He shall rule on restitution of any articles seized, in compliance with the provisions of article 286 of this Code.

"If the charges are confirmed, the accused shall be summoned to appear at the first appropriate sitting.

"He must appear before the court within a period of three months following the date of his entry into prison or be provisionally released from custody, failing which all subsequent proceedings shall be null and void.

"When the case has been duly referred to the court in accordance with the preceding paragraph in the ruling on the substance of the case cannot be made before expiry of the period established in article 103, paragraph 2, of this Code, the court must decide, if necessary, *ex officio*, if the accused is to be kept in detention or provisionally released.

"In a section of a court, when the accused in summoned in connexion with an offence punishable by imprisonment for a period exceeding five years, the validity of the warrant for committal to prison may be extended by order of the judicial officer of the *ministère public* up to the time of the first appropriate sitting; such extension may not exceed two months.

"In the event of a sentence of imprisonment, the warrant for committal to prison shall have the effect of an ordinary warrant for committal, in accordance with the provisions of article 106, paragraph 1, of this Code.

"Art. 232. In the cases provided for in article 178, paragraph 1, of this Code, the judicial officer of the *ministère public*, after questioning the person concerned as to his identity, shall inform him of the allegations against him.

"After hearing his explanations, the judicial officer may issue a warrant for the committal of the accused person, under the conditions laid down in articles 102 and 103.

"Art. 233. An official of the *ministère public*, in the cases referred to in the preceding article, shall proceed as indicated above and, if there are grounds for doing so, shall issue a detention warrant, valid for fifteen days.

"The official of the *ministère public* shall immediately inform the judicial officer of the

ministère public to whom he is subordinate, shall request him to issue a warrant for committal to prison, if there are grounds for doing so, and shall execute his instructions in compliance with the provisions of articles 164 to 170 of this Code.

"Art. 236. If the judicial officer of the *ministère public* considers, for *de facto* or *de jure* reasons, that there are no grounds for prosecution, he shall give a *nolle prosequi* ruling in the manner provided for in article 99 and shall withdraw the warrant for committal to prison, if one has been issued. He shall likewise rule on restriction of any articles seized, in compliance with the provisions of article 286 of this Code.

"Art. 244. In courts of first instance which have no examining judge, the duties of such a judge shall be entrusted to a member of the court or to an alternate judicial officer designated by order of the Minister of Justice. (The remainder unchanged.)

"Art. 285. The examining judge, once he considers the investigation completed, shall communicate the file to the *procureur de la République*, who shall make his address to the court within not more than three days. In cases not involving a serious offence or a correctional offence incurring a statutory penalty of imprisonment for a period exceeding five years, such communication shall be optional in sections of the court where there is no permanent alternate. The provisions of article 59 shall be observed in all cases.

"Art. 286. Paragraph 3 (amended as follows):

"The examining judge shall give a ruling at the same time on restitution of any articles seized. Such restitution must be denied if it is in the interests of public policy or morality. He shall likewise give a ruling on costs, in accordance with the provisions of article 120 of this Code.

"Art. 307. If the arraignment chamber considers that the facts do not constitute a serious offence, correctional offence or petty offence, or if the offender is unknown or if there are not sufficient charges against the accused, it shall declare that there are no grounds for prosecution.

"Accused persons held in detention pending trial shall be released.

"The arraignment chamber shall, in the same decision, give a ruling on restitution of any articles seized, in compliance with the provisions of article 286 of this Code. It shall still be competent to give any ruling on such restitution after the order of non-suit.

"Art. 322. An appeal by the accused person or by the civil claimant must be made by lodging a declaration with the registry of the court or of the section of the court, within three days of notification of the order.

"The declaration of appeal by the accused person in detention shall be communicated to the clerk of the court by the chief warden of the prison."

...

ACT No. 66-020 of 19 DECEMBER 1966 RATIFYING THE CHARTER OF THE AFRICAN AND MALAGASY COMMON ORGANIZATION, SIGNED AT TANANARIVE ON 28 JUNE 1966 BY THE AFRICAN AND MALAGASY HEADS OF STATE AND GOVERNMENT³

Art. 1. The ratification of the Charter of the African and Malagasy Common Organization, signed on 28 June 1966 at Tananarive by the fourteen African and Malagasy Heads of State and Government, is hereby authorized.⁴

...

³ *Journal officiel de la République malgache*, No. 512, 24 December 1966. For extracts from the Charter, see p. 462.

⁴ The fourteen Heads of State and Government are those of the Federal Republic of Cameroon; the Republic of the Congo; the Democratic Republic of the Congo; the Republic of the Ivory Coast; the Republic of Dahomey; the Republic of Gabon; the Republic of Upper Volta; the Malagasy Republic; the Islamic Republic of Mauritania; the Republic of Niger; the Central African Republic; the Rwandese Republic; the Republic of Senegal; and the Republic of Chad.

ACT No. 66-022 OF 19 DECEMBER 1966 PROMULGATING THE SECOND, THIRD AND FOURTH PARTS OF THE CODE OF CIVIL PROCEDURE AND AMENDING CERTAIN ARTICLES OF THE FIRST PART OF THE SAID CODE⁵

Art. 1. The second, third and fourth parts of the Code of Civil Procedure, concerning the enforcement of sentences, sundry procedures and general provisions which appear in annex I following the present Act, are hereby promulgated.

Art. 2. Articles 1, . . . are hereby amended or supplemented as follows:

"Art. 1. The following two paragraphs shall be added to Article 1:

'Except where a contrary clause or convention applies, any alien, even if he is not resident in Madagascar, may be summoned before the Malagasy courts for obligations contracted by him on the territory of the Republic towards Malagasy nationals.

'Any Malagasy national may be brought before a Malagasy court for any obligation contracted in a foreign country, even towards an alien.'

" . . . "

⁵ *Journal officiel de la République malgache, Nouvelle Série*, No. 514, 31 December 1966.

MALAYSIA

NOTE¹

1966 was a fruitful year for Malaysia from the point of view of the promotion and protection of human rights. Two measures have been implemented in the form of legislation. One of these is the Children and Young Persons (Employment) Act, 1966, and the other is the Workers (Minimum Standard of Housing) Act, 1966. The former provides, among other things, that no child or young person shall be required or permitted to be engaged in employment which would be detrimental to the interest of the child or young

person. It also regulates the working hours of children and young persons. The latter prescribes the minimum standards of housing for workers and requires employers to provide nursery and to allot land for workers and their dependants in a place of employment. Under section 12 (2) (a), the Minister responsible could make regulations, prescribe the minimum requirement for various classes of buildings including temporary buildings to be used for housing workers and for nurseries and to provide for the minimum sanitary requirements, water and other matters pertaining to health in respect of such buildings. Extracts from both Acts appear below.

¹ Note and texts of Acts furnished by the Government of Malaysia.

WORKERS (MINIMUM STANDARDS OF HOUSING) ACT, 1966

Act of Parliament No. 39 of 1966, assented to on 28 April 1966

PART I

HOUSING

2. (1) Nothing in this Part shall apply to any place of employment or part thereof, situated within the area of a Municipality, Town Council or unless the Minister by order otherwise declares, to any place of employment situated within the area of any other local authority having power to control the erection of buildings within that area.

(2) Upon the commencement of an order made under sub-section (1), any written law in force in such area, relating to the control of erection of buildings, shall as respects the said place of employment, cease to have effect.

3. The Minister may by order exempt from all or any of the provisions of this Act any employer or class of employers or any building or class of buildings specified in the order.

4. (1) Except as provided in sub-section (2) no employer shall house or cause or permit to be housed any worker in any building (either owned by or in possession of such employer) which does not comply with the provisions of this Act or any regulations made thereunder.

(2) Any building, which immediately before the commencement of this Act was used for the housing of workers by an employer and was erected or converted in accordance with the requirements of any written law in force at the time of its erection or conversion, may continue to be used by such employer.

5. (1) In relation to a building which is to be erected or converted for the housing of workers or for use as a nursery there shall be submitted by the employer to the Commissioner for the approval of the approving authority as hereunder provided in sub-section (2), the plans of the building and of its site, and no work relating to the aforesaid building shall be begun unless and until the plans so submitted have been approved.

(2) The approving authority aforesaid shall:

(a) In the case of a plan of a building, be the Commissioner; and

(b) In the case of a plan of the site of the building, be the Medical Officer of Health.

(3) For the purpose of securing that the minimum standards required under this Act or any regulations made thereunder are complied with, the approving authority may approve such plans subject to such conditions (including alterations of the plans) as he may deem fit to impose thereon.

6. (1) The Commissioner shall cause to be inspected:

(a) By a Medical Officer of Health, any building used for the housing of workers on a place of employment which by reason of its design, site, size, sanitation, the quantity and standard of the water supplies provided for the occupants of such building or other conditions appear to the Commissioner to be likely to endanger health; and

(b) By the Executive Engineer, any building used for the housing of workers on a place of employment which by reason of its construction, state of repair or condition appears to the Commissioner to be likely to endanger the safety of any person.

...

7. (1) A building originally built for a purpose other than the housing of workers shall not be used for, or be converted for the purpose of, the housing of workers, unless an application in that behalf has been made to and approved by the Commissioner.

...

8. (1) The Minister may by order declare any building or class of buildings unsuitable for the housing of workers;

Provided that no such order shall be made unless notice of the intention to make the same has been published in the *Gazette* at least six months prior to the making of such order, and before making such order there is taken into consideration any objection which may have been made to the making thereof;

Provided further that in respect of any building or class of buildings which is already in existence, no order made under this section shall operate against such building or a building within that class unless such building or the building within that class has been in existence for at least twenty-five years.

(2) At the expiration of two and a half years from the making of the order under sub-section (1) no employer shall house or cause to be housed, any worker in his employment in a building or class of buildings in respect of which an order under sub-section (1) has been made, and any employer contravening the provisions of this sub-section shall be guilty of an offence and shall on conviction be liable to a fine of one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

9. (1) Where there are workers residing on the place of employment and such workers have together no less than 10 dependants living with them, the Commissioner may by writing require the employer of such workers to construct at the aforesaid place of employment within such reasonable time as may be specified therein a nursery of a size capable of accommodating such number of workers' dependants as may be specified therein; and on being so required the employer shall construct such nursery accordingly.

(2) The employer shall maintain the nursery aforesaid and shall accommodate therein during the period in which the workers are away working for the employer the dependants of such workers;

Provided that he shall not accommodate therein such dependants in excess of the number specified in the requirement mentioned in sub-section (1).

(3) On each day a dependant is accommodated at the nursery, he shall be provided by the employer at his own expense with such feed of milk as may be prescribed.

(4) In this section "dependant" means a dependant under the age of three years.

(5) An employer who without reasonable cause fails to comply with the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred dollars and to a further fine of fifty dollars for every day the offence continues.

10. (1) Where there are workers and their dependants residing on the place of employment, the employer of such workers shall set aside land which has been cleared, for allotment to such workers for cultivation, grazing or partly cultivation and partly grazing;

Provided that an employer shall not for the purpose of compliance with this sub-section be required to excise any permanent cultivation which has been planted at least 12 months previously.

(2) A worker with dependants residing on the place of employment, who has been employed for a period of not less than six months by the employer aforesaid shall be entitled to have allotted to him an area of one-sixteenth of an acre of the land so set aside.

(3) If an area of land allotted for cultivation (whether wholly or partly) shall remain unplanted for a period of six months from the date of the allotment, or if a worker uses the area of land allotted to him for a purpose different from that for which it was allotted or if he does not use it at all for the purpose for which it was allotted and such user or non-user as the case may be continues for a period of six months, the employer may terminate such allotment and thereafter may allot such area of land to another worker.

(4) In relation to the setting aside of land under this section:

(a) Land allotted to workers shall be situated as near as possible to the house of such workers; and

(b) Land for grazing shall, except with the permission in writing of a Medical Officer of Health, be situated at a distance of not less than two hundred yards from the houses of the workers.

(5) The Commissioner for Labour may for sufficient reason by writing under his hand exempt to such extent as may be stated in such exemption any employer from compliance with this section on such terms and conditions and for such period as he may deem fit.

(6) An employer who contravenes the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred dollars and to a further fine of fifty dollars for every day the offence continues.

(7) In this section "place of employment" in relation to the allotment of land set aside means an estate or such other place as may be prescribed by the Minister to be a place of employment to which this section applies.

11. A worker engaged in such employment as may be prescribed by the Minister, shall not be required to make any payment in respect of any housing, nursery or allotment of land provided for the aforesaid worker under this Act.

PART II

REGULATIONS

12. (1) The Minister may make regulations for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing the Minister may make regulations:

(a) To prescribe the minimum requirements for various classes of buildings (including temporary buildings) to be used for the housing of workers and for nurseries and to provide for the minimum sanitary requirements, water supplies and other matters pertaining to health in respect of such buildings;

(b) To prescribe the minimum equipment and staff for nurseries and the type and amount of milk to be provided for the dependants, defined in sub-section (4) of section 9, and accommodated therein under that section;

(c) To prescribe the procedure for the submission and approval of plans of buildings and their sites; and

(d) To prescribe anything which may be prescribed under this Act.

(3) Until revoked or otherwise amended the regulations set out in the First Schedule to this Act shall have effect and for the purpose of this Act shall be deemed to have been made under this section.²

...

² The First Schedule, entitled "Workers (Minimum Standards of Housing) Regulations, 1966", deals *inter alia* with permanent dwellings, temporary dwellings and the procedure relating to submission and approval of plans.

CHILDREN AND YOUNG PERSONS (EMPLOYMENT) ACT, 1966

Act of Parliament No. 40 of 1966, assented to on 28 April 1966

EMPLOYMENT

2. (1) No child or young person shall be, or be required or permitted to be, engaged in any employment other than those specified in this section.

(2) A child may be engaged in any of the following employments, that is to say:

(a) Employment involving light work suitable to his capacity in any undertaking carried on by his family;

(b) Employment in any public entertainment, in accordance with the terms and conditions of a licence granted in that behalf under this Act;

(c) Employment requiring him to perform work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel;

(d) Employment as an apprentice under a written apprenticeship contract approved by the Commissioner with whom a copy of such contract has been filed.

(3) A young person may be engaged in any of the following employments, that is to say:

(a) Any employment mentioned in sub-section (2); and in relation to paragraph (a) of that sub-section any employment suitable to his capacity (whether or not the undertaking is carried on by his family);

(b) Employment as a domestic servant;

(c) Employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association;

(d) Employment in an industrial undertaking suitable to his capacity;

(e) Employment on any vessel under the personal charge of his parent or guardian;

Provided that no female young person may be engaged in any employment in hotels, bars, restaurants, boarding houses or clubs unless such establishments are under the management or control of her parent or guardian;

Provided further that a female young person may be engaged in any employment in a club not managed by her parent or guardian with the approval of the Commissioner.

(4) The Minister may, if he is satisfied that any employment (not mentioned in sub-section (2) of sub-section (3)) is not dangerous to life, limb, health or morals, by order declare such employment to be an employment in which a child or young person may be, or permitted to be, engaged; and the Minister may in such order impose such conditions as he deems fit and he may at any time revoke or vary the order or may withdraw or alter such conditions.

(5) No child or young person shall be, or be required or permitted to be, engaged in any

employment contrary to the provisions of the Machinery Ordinance, 1953 or the Electricity Ordinance, 1949 or in any employment requiring him to work underground.

3. Notwithstanding the foregoing provisions, the Minister may in any particular case by order prohibit any child or young person from engaging or from being engaged in any of the employments mentioned in section 2 if he is satisfied that having regard to the circumstances such employment would be detrimental to the interests of the child or young person, as the case may be.

4. No child or young person engaged in any employment shall in any period of seven consecutive days be required or permitted to work for more than six days.

5. (1) No child engaged in any employment shall be required or permitted:

(a) To work between the hours of 8 o'clock in the evening and 7 o'clock in the morning;

(b) To work for more than three consecutive hours without a period of rest of at least thirty minutes;

(c) To work for more than six hours in a day or, if the child is attending school, for a period which together with the time he spends attending school, exceeds seven hours; or

(d) To commence work on any day without having had a period of not less than fourteen consecutive hours free from work.

(2) Paragraph (a) of sub-section (1) shall not apply to any child engaged in employment in any public entertainment.

6. (1) No young person engaged in any employment shall be required or permitted:

(a) To work between the hours of 8 o'clock in the evening and 6 o'clock in the morning;

(b) To work for more than four consecutive hours without a period of rest of at least thirty minutes;

(c) To work for more than seven hours in any one day or, if the young person is attending school, for a period which together with the time he spends attending school, exceeds eight hours;

Provided that if the young person is an apprentice under paragraph (d) of section 2 (2), the period of work in any one day shall not exceed eight hours; or

(d) To commence work on any day without having had a period of not less than twelve consecutive hours free from work.

(2) Paragraph (a) of sub-section (1) shall not apply to any young person engaged in employment in an agricultural undertaking or any employment in a public entertainment or on any vessel under paragraph (e) of section 2 (3).

PUBLIC ENTERTAINMENT

7. (1) No child or young person shall take part or be required or permitted to take part in any public entertainment unless there has been issued

by the Commissioner for Labour or by such other Commissioner as may be authorised in writing in that behalf by the Commissioner for Labour to the person employing such child or young person a licence in that behalf: and the Commissioner may, in addition to such conditions or restrictions as may be prescribed from time to time under section 15, impose in respect of such licence (whether at the time the licence is issued or thereafter from time to time) such conditions as he deems fit.

(2) No licence under sub-section (1) shall be granted by the Commissioner to any person where he is of the opinion that the employment is dangerous, to the life, limb, health or morals of the child or young person aforesaid.

(3) The Commissioner may cancel any licence issued under this section on any ground for which he could refuse to issue a licence or on breach of any condition thereof; and such cancellation shall take effect forthwith until and unless set aside on appeal.

(4) Any child or young person or the parent or guardian of such child or young person or any other person aggrieved by the decision of the Commissioner aforesaid may within fourteen days of the making of that decision appeal to the Minister; and the decision of the Minister shall be final.

(5) In the event of an appeal, the child or young person or the parent or guardian of such child or young person shall be entitled to be supplied by the Commissioner the reasons in writing for the cancellation of or refusal to issue a licence or for the imposition of conditions on a licence.

INQUIRY INTO WAGES

8. (1) If representation is made to the Minister that the wages of children or young persons in any class of work in any area are not reasonable having regard to the nature of the work and conditions of employment obtaining in such class of work, the Minister may, if he considers it expedient, direct an inquiry.

(2) For the purpose of such inquiry, the Minister shall appoint a Board consisting of an independent member who shall be chairman and an equal number of representatives of employers and workers.

(3) The Board shall after holding the inquiry report to the Minister its findings and recommendations; and the Minister may, after considering the report of the Board, make an order prescribing the minimum rates of wages to be paid to children or young persons or to both, employed in the class of work in the area aforesaid.

(4) Upon publication of such order, it shall not be lawful for any employer to pay any child or young person to whom the order applies, wages below the minimum rates specified in the order.

...

MISCELLANEOUS

...

14. (1) Any person contravening any of the provisions of this Act or of any regulations or order made thereunder or who being the parent or guardian of a child or young person knowingly acquiesces in any such contravention in respect of such child or young person shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars or to both and, in the case of a second or subsequent offence, shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three thousand dollars or to both.

(2) After the conviction of any person for an offence under sub-section (1) the Commissioner shall, if the person convicted is the holder of a licence under the Theatres and Places of Public Amusement Enactment, 1936 of the Federated Malay States or under any other corresponding written law in force, inform the licensing authority concerned of the particulars of such conviction and the licensing authority may take such action as it considers appropriate.

15. (1) The Minister may make regulations for carrying out any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing, the Minister may make regulations to prescribe:

(a) The form of licence to be issued under section 7 and the conditions and restrictions to be attached to such licence;

(b) The times which children and young persons employed shall be entitled to take off from work for meals or as rest periods; and

(c) The procedure to be followed by any Board appointed under sub-section (2) of section 8 of this Act.

(3) The regulations contained in the Third Schedule shall have effect unless and until replaced or amended by regulations made under this section, and shall be deemed to be regulations made under this section.³

...

³ The Third Schedule, entitled "Children and Young Persons (Employment) Regulations, 1966" deals *inter alia* with conditions of labour and public entertainments.

MALTA

JUDICIAL DECISION¹

Freedom of expression – Freedom of Conscience – Malta (Constitution) Order in Council, 1961, articles 13 and 14 (now replaced by sections 41 (1) and 42 of the Constitution of Malta)

The Hon. Dr Paul Borg Olivier and another, Appellants, v. The Hon. Dr Anton Buttigieg, Respondent

The Judicial Committee
of the Privy Council
19 April 1966

The Facts: The respondent was the editor of a newspaper called *The Voice of Malta*, published weekly by the Malta Labour Party, and also President of the Malta Labour Party and a member of the Legislative Assembly of Malta. His party was in opposition.

In 1955, that is, some years before the events which more particularly gave rise to the case, a circular (No. 34/55) had been sent from the Office of the Prime Minister which referred to political discussions by government employees during working hours. The circular was in these terms:

“... ”

“Reports are continually being received to the effect that Government employees of various categories, particularly manual workers, indulge in political discussions during working hours. Such behaviour betrays a serious lack of discipline among the employees concerned and reflects no credit either on them or on the supervisory staff.

“... I am informed that this may account in part for the poor output still being given by certain employees.

“... Please therefore instruct all Heads of Departments in your Ministry to warn all employees that these discussions at work are strictly prohibited. Stern disciplinary measures, involving if necessary immediate discharge, will be taken against irresponsible individuals transgressing these instructions.

“... ”

On 26 May 1961, the Church authorities in Malta condemned *The Voice of Malta* and two other newspapers.

On 25 April 1962, a Medical and Health Department circular (No. 42/62) gave rise to the present proceedings. Issued by the second appellant, who was Chief Government Medical Officer at the time, it was addressed to the administrative officers of St. Luke's Hospital in the following terms:

“... ”

“The attention of all employees is again drawn to the instructions contained in OPM Circular No. 34 of 22 August 1955 ...

“The entry in the various hospitals and branches of the Department of newspapers which are condemned by the Church authorities, and the wearing of badges of political parties, are strictly forbidden.

“You are requested to ensure that the directions contained in the above-mentioned OPM Circular and in paragraph 2 above are strictly observed by all the employees of the Department.

“... ”

No criticism was made of the first paragraph of the letter. The respondent took exception to the second paragraph, for inasmuch as *The Voice of Malta* was, condemned by the Church authorities there was a definite prohibition of its entry into the various hospitals and branches of the department.

The respondent instituted an action before the First Hall of Her Majesty's Civil Court in Malta contending that the order, in so far as it affected *The Voice of Malta* constituted a breach of sections 13 and 14 of the Malta (Constitution) Order in Council, 1961, relating to freedom of conscience and freedom of expression² and he invoked the enforcement procedure laid down in section 16 of the Constitution of his rights of freedom of conscience and expression. The said Court, (Xuereb, J.) by judgement dated 11 March

¹ Summary of judicial decision furnished by the Government of Malta.

² See *Yearbook on Human Rights for 1961*, pp. 421-422.

1963 held: that the circular contravened the rights of freedom of expression and of freedom of conscience, declared the said prohibition without any effect and ordered the declaration to be brought to the cognizance of the persons affected by means of a fresh circular.

The appellants appealed against the judgement and order of First Hall, Civil Court to the Court of Appeal of Malta (Mamo, C. J., Gouder and Camilleri, J. J.) which, by judgement delivered on 10 January 1964, dismissed with costs the appellants' appeal. By leave of the Court of Appeal of Malta the appellants appealed to the Judicial Committee of the Privy Council.

(Lord Morris of Borth-Y-Gest, Lord Pearce, Lord Pearson) *held*: that the respondent was not deprived of his liberty of conscience nor was he denied a free exercise of any mode of religious worship, but that the strict prohibition imposed by the circular amounted to a hindrance of the respondent in the enjoyment of his freedom to impart ideas and information without interference (freedom of expression); that the prohibition imposed by the appellants went far beyond the scope of reasonable order to regulate the conduct of Government employees during their working hours; that the prohibition was discriminatory in that it imposed a partial ban upon the possession of certain newspapers only. The Appeal was dismissed with costs.

MAURITANIA

NOTE¹

ACT No. 66,138 OF 13 JULY 1966 SUPPLEMENTING ARTICLE 22 OF ACT No. 63,109 OF 27 JUNE 1963 GOVERNING PUBLICATION AND ORGANIZATION OF DEPOSIT OF COPIES

Art. 1. Article 22 of Act No. 63,109 of 27 June 1963 governing publication and organization of deposit of copies shall be supplemented by a third paragraph reading as follows:

"Any particularist propaganda of a racial or ethnic nature, conducted by methods enumerated in article 18 or by any other method of dissemination, shall be punishable by imprisonment for six months to five years and a fine of 50,000 to 5,000,000 francs".

EXPLANATORY STATEMENT

Article 1, paragraph 3, of the Constitution² provides that any particularist propaganda of a racial or ethnic nature shall be punishable by law. Nevertheless, so far, there has been no legal provision to suppress this type of propaganda.

It is this gap which the present bill is intended to fill.

¹ Note communicated by the Government of the Islamic Republic of Mauritania.

² For extracts from the Constitution of Mauritania, see *Yearbook on Human Rights for 1961*, pp. 224-225.

Since propaganda necessarily implies a certain form of publicity, the new provisions will be inserted in Act No. 63,109 of 27 June 1963, known as the Press Act.

The offence has been defined in accordance with the text of the Constitution. However, most of the offences dealt with in Act No. 63,109 of 27 June 1963 are punishable only if they have been committed "by writings or printed matter sold, distributed, offered for sale or exhibited in public places or meetings, or by posters or notices exhibited to the public, or by speeches or threats uttered in public places or meetings" (article 18). We felt it necessary to suppress also particularist propaganda of a racial or ethnic nature conducted by any other method of dissemination, for example, by oral instructions given in small meetings which could not be described as public meetings.

In view of the gravity of the offences, the penalty has been made the same as that for distribution of tracts harmful to the national interest (article 17), incitement to certain crimes or offences (article 19) and dissemination of false reports (article 22, paragraphs 1 and 2).

MOROCCO

NOTE¹

There was no judicial decision last year affecting human rights as defined in the Universal Declaration of Human Rights. A royal legislative decree of 17 Rejeb 1386 (1 November 1966) on legal assistance was, however, promulgated.² This decree, which was published in the *Bulletin officiel* of 16 November 1966, extends the scope of legal assistance and comes within the purview of articles 8 and 10 of the Universal Declaration.

¹ Note communicated by the Government of Morocco.

² The royal legislative decree amended articles 267, 268, 269, and 270 of Dahir No. 1-58-261 of 1 chaabane 1378 (10 February 1959) constituting the Code of Criminal Procedure. For a summary of that Dahir, see *Yearbook on Human Rights for 1959*, pp. 207-208.

NETHERLANDS

NOTE¹

A. LEGISLATION

1. PROTECTION AGAINST ARBITRARY INTERFERENCE IN PRIVATE AFFAIRS

On 31 October 1966 a bill protecting the secrecy of telephone conversations was introduced in the Second Chamber. It deals with the matter exhaustively and prohibits any person whatsoever from using a technical device to tap a telephone conversation or from passing on any information so obtained, except when so instructed by one of the parties.

The prohibition shall not apply to the following:

(a) The interception of a radio-telephone conversation using a normal receiver;

(b) Tapping a conversation transmitted by the listener's own instrument unless it is clearly being used for an improper purpose;

(c) Tapping the wire in order to verify whether the telephone has been properly installed;

(d) Wire-tapping by the public authorities as part of a criminal investigation or in the interest of national security.

The wire-tapping referred to in sub-paragraph (d) shall be subject to certain restrictions: the official in charge of a criminal investigation may, when so instructed by the examining magistrate, tap telephone conversations to which the accused is or is believed to be a party, but only for purposes of the investigation and when he is charged with a serious offence. In cases *in flagrante delicto* or serious offences, the public prosecutor or the examining magistrate may also obtain information from the telephone service concerning conversations to which the accused has been or is believed to have been a party.

Tapping of telephone conversations in the interest of national security is authorized only on special instructions (and for one connexion only) from the Prime Minister, the Minister of the Interior, the Minister of Justice and the Minister of Transport and Waterways.

2. EUROPEAN SOCIAL CHARTER

The European Social Charter, drawn up by the Council of Europe in 1961 and signed by the Netherlands, was submitted to the Second Chamber for approval in 1966, except for certain provisions which were temporarily excluded, such as article 6, paragraph 4, on the right of workers and employers to take collective action in the event of conflicts of interest, including the right to strike.

3. SOCIAL SECURITY

The Disability Insurance Act of 18 February 1966 covers the compulsory general insurance of employed persons against the risks of incapacity for work due to disability, industrial accident or occupational disease. This law supersedes the Disability Insurance Act and the Mine Workers Disability Insurance Act and the regulations on long-term benefits under the Industrial Accident Insurance Act, the Agricultural and Horticultural Accident Insurance Act and the Seamen's Accident Insurance Act. It is now therefore immaterial whether the incapacity for work is due to an industrial accident.

Any person who has been incapacitated for work for fifty-two consecutive weeks is entitled to benefits under the Disability Insurance Act. During those fifty-two weeks, the person concerned may in principle claim benefits in cash or in kind under the sickness insurance scheme.

The amount of disability benefit depends on the degree of disability and the amount of wages lost by the insured persons. Benefits are periodically adjusted to general wage levels.

In addition to regular benefits, the new law provides for special measures to maintain, restore or increase work capacity.

B. ADMINISTRATIVE MEASURES

1. PROTECTION OF LABOUR

(a) The Royal Decree of 18 February 1966 amended the Decree on Agricultural Safety and

¹ Note transmitted by the Netherlands Government.

improved the existing provisions governing first aid equipment for agricultural workers.

(b) The Royal Decree of 2 June 1966 standardized the system of medical examination for fourteen-year-old boys working aboard deep-sea fishing vessels.

2. REDRAFTING OF THE CONSTITUTION

At the end of 1963 the Government informed Parliament that it would consider to what extent it might be possible to redraft the 1814 Constitution, which has been amended for the thirteenth time in 1963.² Its initiative was taken in response to parliamentary criticism to the effect that the numerous amendments had upset the logical order of the Constitution and that many provisions were either out of date or comprehensible only to specialists in the subject. There had also been demands, both in Parliament and outside, that certain fundamental provisions of constitutional law should be amended.

It soon transpired that the Government's promise was of great importance since it allowed the expression of various unvoiced, or at least unpublished views, on the merits of changing the political *status quo*, and held out some hope of their being put into effect. Indeed, from that moment, there has been a steady flow of criticisms and suggestions on the subject of the organization of the State and the functioning of the administration. As a result, there has been more debate than ever before on the relationship between the electorate and Parliament, between Parliament and the Government, the influence of the electorate on Government policy, the electoral system, the two-chamber system, the publicizing of Government operations, regulations for examining complaints about legislation and administration, the guarantees provided by fundamental rights and, in particular, the limits of the right to freedom of expression. These and other subjects were given publicity in the Press, radio and television, in political party reports, in political speeches, etc. The political activity that was aroused was reflected in the increasing number of popular demonstrations and in the founding of new political parties.

Various objections and different suggestions were made on several of the issues. For the purpose of bringing about an orderly discussion on how to approach the problem of redrafting the Constitution, the Government decided, as a first stage in the preparatory work, to draw up a draft Constitution as a basis for discussion. Certain officials in the Ministry of the Interior were instructed to prepare the draft and it was completed at the beginning of 1966. Without assuming any responsibility for the content of the document, the Government decided to publish it as a way to provoke a full debate on it. It was

published in the form of a book in May 1966 and consists of a draft Constitution with ninety short articles (the present Constitution has 205) followed by a 180-page commentary. The book was widely distributed: it was sent to all newspapers and magazines, to university professors, political parties, interest groups. It was also put on sale in bookshops.

As the numerous reactions noted by the Ministry of the Interior partly indicate, the Government's move was effective, and the publication of the book has widened the field of discussion on a new Constitution.

In addition, the Government asked a large number of bodies such as political parties, the National Consultative Councils (which include non-civil service experts and representatives of interest groups) and associations concerned with constitutional law to suggest ways and means of redrafting the Constitution. Their suggestions are to be published and are expected to encourage the exchange of views. Since work on a new Constitution will continue for some years to come, the reactions received will be very important and the work will reflect the ideas of large sectors of the population.

In view of the purpose of the *Yearbook*, all that need be said about the new draft is that provisions relating to human rights, which are scattered throughout the text of the present Constitution, have all been grouped together in chapter 1, and are thus given great emphasis. In addition to the established principle of the inviolability of the secrecy of letters entrusted to the mail or to other public carriers, the draft provides that the secrecy of telephone conversations shall be inviolable. With respect to certain human rights, it more clearly defines the safeguards against restrictions that may be imposed by the public authorities. Finally, it should be noted that a provision was inserted to the effect that official regulations incompatible with the provisions of chapter 1 shall not be applicable. This provision gives fundamental human rights in the Netherlands the same status as that provided for under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950), which, under the present Netherlands Constitution, already supercedes official regulations.

The following developments should be seen against the background of the political activity referred to above:

(a) The establishment in 1966 of a committee of non-civil service officials, acting on behalf of the Minister of the Interior to consider, *inter alia*, the need to amend the regulations which prohibit the public showing of films without authorization from an independent national film censorship board (which is granted on the ground that they do not offend public morality or public order); and

(b) The establishment of a working party of officials to examine the question whether the right to demonstrate, which now is often subject to authorization by the burgomaster under police regulations, should be regulated by law.

² For extracts from the Constitution of 1814, as amended on 30 November 1887, see *Yearbook on Human Rights for 1946*, pp. 206-207. The amendments of 1963 appear in the *Yearbook for 1963*, p. 216.

NETHERLANDS ANTILLES**LEGISLATION****1. LEGAL STATUS OF WOMEN**

A territorial ordinance was promulgated in 1966, amending the Civil Code of the Netherlands Antilles. The new provisions represent another step towards equality in the legal status of men and women in marriage. For example, the new article 339 confers parental authority to the father and mother jointly, whereas under the terms of the old article 349 of the Civil Code it was exercised by the father only. The new provisions will come into force as soon as the Code of Civil Procedure has been amended to that effect.

2. SOCIAL SECURITY

(a) The Territorial Ordinance of 6 January 1966 governs the right of a worker, or his beneficiaries, to claim compensation for industrial accidents.

(b) The Territorial Ordinance of 6 January 1966 governs the right of a worker to sickness benefits.

NEW ZEALAND

NOTE¹

I. LEGISLATION

1. *Alcoholism and Drug Addiction Act 1966*

This Act applies to any person whose persistent and excessive indulgence in alcoholic liquor or addiction to intoxicating, stimulating, narcotic or sedative drugs is causing or is likely to cause serious injury to his health or is a source of harm, suffering, or serious annoyance to others or renders him incapable or properly managing himself or his affairs. It provides for the setting up of institutions for the care of such persons and also provides: (a) that such persons may apply to the Courts themselves for an order of committal; (b) that relatives of such persons (or other reputable persons) may so apply; and (c) that the Courts may on conviction for a crime commit such persons to these institutions. There is a *proviso*, however, that no person shall be detained in an institution of this sort involuntarily for more than two years.

2. *Consumer Council Act 1966*

This Act provides for the setting up of a Consumer Council whose functions are to protect and promote the interests of consumers of goods and services by whatever lawful means appear to it expedient, and by doing so to encourage the improvement and development of industry and commerce.

3. *Crimes Amendment Act 1966*

This Act makes some important changes in the law governing criminal procedure among which are:

(a) In every criminal trial defence counsel has the right to address the jury last, whether or not evidence is called for the defence and whether or not the Attorney-General or the Solicitor-General appears for the Crown at the trial;

(b) There shall be a right of appeal, with the leave of the Court of Appeal, in respect of certain preliminary matters that may arise before trial;

(c) The Attorney-General, or any prosecutor with the leave of the Attorney-General, shall have the right to appeal to the Court of Appeal against

the sentence passed on the conviction of any person on indictment, unless the sentence is one fixed by law.

II. COURT DECISIONS

1. *Jeffer v. New Zealand Dairy Production and Marketing Board and Others* (1966) 3 All E.R. 833

The Privy Council decided that an administrative tribunal charged with the duty of considering evidence may not delegate this function to a committee.

2. *R. v. Davidson* (1966) N.Z.L.R. 626

In this case it was decided that where a sentence on conviction of a criminal is to be varied it is important that the prisoner should be present, particularly where the sentence is to be increased.

3. *N. v. B.* (1966) N.Z.L.R. 224.

In this case it was held that although the contents of a case report furnished to a Children's Court by a Child Welfare Officer are admissible in evidence at all stages in all judicial proceedings in all Children's Courts (even though not sworn), such a report should not be put in evidence without the knowledge of counsel for the child and without counsel being afforded an opportunity of perusing it and in a proper case cross-examining the author and calling evidence in rebuttal or mitigation of the evidence contained in the report.

4. *Woolston v. Police* (1966) N.Z.L.R. 680.

It was held in this case that where a person has been convicted summarily of an offence and appeals to the Supreme Court on a point of law it would be unfair for the Court to amend the information in such a way as to remove any possibility of the appellant succeeding on his point of law.

5. *Re W. (A Protected Person)* (1966) N.Z.L.R. 380.

Section 119E of the Mental Health Act 1911 gives the Court a very wide discretion and powers

¹ Note furnished by the Government of New Zealand.

far beyond its jurisdiction in lunacy under the Royal Prerogative which in general is limited to doing that which is for the benefit of the lunatic. Under the Section the Court is empowered to make settlements for the benefit of persons other than the mentally defective or protected person.

The words "person dependent" in section 119E (5) (d) (i) of the Act are not limited to persons who are actually in receipt of financial assistance from the mentally defective or protected person at the time when their state of dependency falls to be determined. They are wide enough to cover any

persons who would naturally rely on or look to the mentally defective or protected person, rather than to others, for anything necessary or desirable.

6. *Re M. and others (Infants)* (1966) N.Z.L.R. 1053.

The Supreme Court has power to entertain an application for custody by the father of an illegitimate child and to grant custody accordingly. The principal consideration is the best interests of the child and not the wishes of the mother.

NICARAGUA¹

DECREE No. 1190

Amendments to the Constitution and the Electoral Act²

Article 1

The Political Constitution of the Republic is hereby amended as follows:

(1) Article 63 shall read as follows:

"Art. 63. Property is inviolable. No one may be deprived of his property save by judgement of a court, in virtue of a general contribution, or for reasons of public utility or social interest defined in accordance with the law and after fair compensation in cash."

"For purposes of agrarian reform, compensation for uncultivated large estates may be paid in the form of bonds for which the dates of maturity, rates of interest and conditions shall be determined by law."

(2) Article 104 shall read as follows:

"Art. 104. Only diplomas relating to a profession or university degree shall be issued and recognized."

"Nationals obtaining academic degrees abroad shall be granted professional status and shall be authorized to practise their profession on production of proof of the authenticity of their degrees and the fact that they were obtained in universities recognized as such in the State concerned."

"The recognition of the status of alien professional workers qualified abroad shall be subject to reciprocity, where possible, the opinion of the Autonomous National University having first been obtained."

"This provision shall be regulated by law."

(3) Article 105 shall read as follows:

"Art. 105. The National University shall enjoy educational, economic and administrative autonomy, with full legal competence to acquire rights

and incur obligations. Its property and income shall enjoy the same guarantees as those of individuals and shall be exempt from local, municipal and State taxes. Its organization, operation and attributions shall be determined by law. The State shall contribute to the maintenance, development and expansion of the Autonomous National University by means of an annual grant of not less than 2 per cent of the revenue derived from regular State taxes, to be paid to the University under the General Budget of the Republic."

"The State shall promote the formation of the Autonomous National University's own capital, and the University shall not apply or assign its assets and resources to purposes extraneous to its normal activities."

"The Court of Accounts shall examine its balance-sheets, budgets, statements of income and expenditure and accounts generally, in accordance with the law."

"The Autonomous National University shall not be subject to the provisions contained in title VIII, chapter IV, of the Constitution or in article 331 thereof."

(4) Article 116 shall read as follows:

"Art. 116. The State prohibits the formation and activities of the Communist Party and parties upholding similar ideologies, and of any other internationally organized party. Individuals belonging to those parties may not discharge any public office, without prejudice to such other penalties as may be determined by law."

"The State shall protect any lawful activity directed towards the re-establishment of Central American unity."

(5) Article 126 shall read as follows:

"Art. 126. The enumeration of rights, duties and guarantees made in the Constitution does not exclude those others which are inherent in the human person or are derived from the established form of government."

(6) Article 152 shall read as follows:

"Art. 152. The term of office of deputies shall be five years."

¹ Texts furnished by the Government of Nicaragua.

² *La Gaceta*, No. 100, 7 May 1966. For extracts from the Constitution of Nicaragua of 1 November 1950 and from the Electoral Act of 21 December 1950, see *Yearbook on Human Rights for 1950*, pp. 205-212 and pp. 213-215 respectively.

(7) Article 153 shall read as follows:

"*Art. 153.* It is the exclusive right of the Chamber of Deputies to examine charges presented by its own members, or by private individuals, against the President and Vice-Presidents of the Republic, deputies, senators, Judges of the Courts of Justice, Judges of the National Electoral Council, the President of the National Council of Labour, Ministers and Vice-Ministers of State, diplomatic agents and the President of the Court of Accounts; and, if the charge appears well-founded, to submit the corresponding impeachment to the Chamber of the Senate.

"Impeachment of the aforementioned officials by the Chamber of Deputies shall require the affirmative vote of two thirds of its members.

"Impeachment of the aforementioned officials for either official or ordinary-law offences committed during their term of office must in all cases be submitted to the Chamber of Deputies, even if the accused has ceased to hold office. In the case of official offences, the right to take action terminates one year after the official has ceased to hold office."

(8) Article 155 shall read as follows:

"*Art. 155.* The term of office of popularly elected senators shall be five years. The same term applies to the presidential candidate of the party which received the second highest number of votes in the election."

(9) Article 160 shall read as follows:

"*Art. 160.* The Congress in plenary session has the following powers:

"(1) To regulate the order of business at its meetings and all matters concerning its internal organization;

"(2) To elect one of the Vice-Presidents to serve as President of the Republic in the event of the President's temporary or permanent inability to serve;

"(3) To elect one of its members to serve as President of the Republic in the event of the inability of the President and of the two Vice-Presidents to serve;

"(4) To elect the Judges of the Courts of Justice, the Electoral Judge whom it is empowered to elect, and the President and lawyer-members of the National Council of Labour, with their respective alternates;

"(5) To accept the resignations of the President and Vice-Presidents of the Republic, whether they are in office or about to assume office, the Judges of the Courts of Justice, the Electoral Judge appointed by it and the members whom it elects to the National Council of Labour, and to take cognizance of the inability of these officials to discharge their offices;

"(6) To receive the constitutional oath of the officials it elects, or to delegate this power;

"(7) To take cognizance of a veto by the Executive Power;

"(8) To take cognizance of amendments to the Constitution and to Constitutional Laws;

"(9) To take cognizance of the report submitted by the Executive Power concerning measures taken during the suspension of constitutional guarantees."

(10) Article 161 shall read as follows:

"*Art. 161.* The deputies and the Executive Power have the right of initiative in proposing laws and legislative resolutions or declarations. In matters within their competence, the Judicial Power represented by the Supreme Court of Justice, and the Electoral Power represented by the National Electoral Council, also have such initiative."

(11) Article 180 shall read as follows:

"*Art. 180.* The Executive Power shall be exercised by a citizen with the title of President of the Republic, who shall act with his Ministers, separately or in Council, except in those cases in which he may act alone.

"There shall be two Vice-Presidents who shall deputize for the President in such cases and in such manner as are determined by the Constitution.

"The prohibitions concerning the election of the President contained in article 186 of this Constitution shall apply to the election of the Vice-Presidents."

(12) Article 181 shall read as follows:

"*Art. 181.* The President of the Republic and the two Vice-Presidents shall be elected by a majority of the direct popular vote."

(13) Article 184 shall read as follows:

"*Art. 184.* The terms of office of the President and Vice-Presidents of the Republic is five years, and shall begin and end on the first day of May; when the term ends on that date, the outgoing President shall transfer the office to the President of the Congress for the sole purpose of the latter's giving possession to the incoming President, or, if he is unable to serve, to the person called upon to replace him. If for any reason the outgoing President does not attend, the President of the Congress shall give possession to the person elected or called upon to replace him."

(14) Article 189 shall read as follows:

"*Art. 189.* In the event of the temporary or permanent inability to serve or the indefinite incapacity of the person elected President, the new Congress shall choose to serve as President, temporarily or permanently, as the case may be, one of the two Vice-Presidents, and if the Vice-Presidents are unable to serve any one of the popularly elected members who is not a relative of the person elected President or of the person who

served as President within the fourth degree of consanguinity or affinity in the term immediately preceding."

(15) Article 271 shall read as follows:

"Art. 271. Industrial, commercial, cultural or social State services may be administered by autonomous bodies, where so provided by law for the greater efficiency of the service concerned and for the public good."

(16) Article 277 shall read as follows:

"Art. 277. The government of the National District shall be the responsibility of the President of the Republic, who shall exercise it as determined by law."

(17) Article 278 shall read as follows:

"Art. 278. The government of municipalities shall be the responsibility of Municipal Councils consisting of three councilmen popularly elected every five years, with proportional representation of the parties participating in their election, in accordance with the electoral quotient. The respective alternates to fill any vacancies that may occur shall also be elected at the same time. Each Council shall be presided over by a Mayor, who shall be elected annually by the Council itself either from among its own members or otherwise and who may be re-elected."

(18) Article 280 shall read as follows:

"Art. 280. The cases and the manner in which members of Municipal Councils shall be replaced shall be determined by law."

(19) Article 282 shall read as follows:

"Art. 282. Municipalities shall enjoy economic and administrative autonomy, subject to the supervision of the Executive Power. Both the National District and the municipalities are empowered to enact local laws and excise taxes.

"The excise tax schedules and budgets of the National District and the municipalities require the approval of the Executive Power."

(20) Article 286 shall read as follows:

"Art. 286. Municipal Councils shall freely appoint their own employees."

(21) Article 288 shall read as follows:

"Art. 288. The exercise of municipal government and the attributions of its officials and employees shall be regulated by law."

(22) Article 310 shall read as follows:

"Art. 310. Any party contesting the election which is not represented in the National Electoral Council, in Regional Electoral Councils or in Electoral Directorates may appoint a representative to each of those bodies with the right to vote throughout the period of the electoral process.

"At meetings of Regional Councils and Electoral Directorates, the presence of the Chairman and of any two Judges of the body concerned shall suffice to constitute a quorum.

"The National Electoral Council, Regional Electoral Councils and Electoral Directorates, when acting as tribunals, shall proceed in the manner of jurors in appraising the facts and shall take decisions in accordance with the law. The term of office of their members shall be five years, with the exceptions provided for in the Electoral Act.

"Decisions of Electoral Councils and Directorates shall be taken by a majority vote, their pronouncements being subject to the provisions of the Electoral Act."

(23) Article 333 shall read as follows:

"Art. 333. Whenever officials belonging to the minority party are to be elected or appointed, either in the cases referred to in the preceding Articles or in any other case, the person elected or appointed shall be one of the three candidates nominated for each post by the Chairman and Secretary of the national legal Board of directors of the Minority Party.

"Where the Minority Party is to submit the names of three candidates in the manner prescribed, it shall do so within a reasonable period of time; and if the national legal governing board of directors of the Minority Party, being duly notified, allows eight days to elapse without submitting the three names, the person responsible for making the choice shall freely elect or appoint a candidate."

(24) Article 334 shall read as follows:

"Art. 334. Whenever the Constitution uses the term 'minority party', the reference is to the political party which received the second highest number of votes in the direct popular elections for the President of the Republic.

"If only one political party contests the election for supreme authorities, there shall be no occasion for the representation of minorities in any of the cases referred to in the Constitution and in the laws. In cases where officials are to be elected or appointed, the organ or authority responsible shall make the appointment freely."

(25) Title XVII, single chapter, of the transitional provisions, shall read as follows:

"TITLE XVII

"Single Chapter

"TRANSITIONAL PROVISIONS

"Art. 336. Pending the promulgation of the Organic Law of the Autonomous National University referred to in article 105, the University shall be governed by Executive Decree No. 38 of 25 March 1958.

"*Art. 337.* These constitutional amendments do not affect the terms of office of elected or appointed officials who are now serving."

Article 2

The Electoral Act is hereby amended as follows:

(1) Article 14 shall read as follows:

"*Art. 14.* The National Electoral Council shall consist of five members known as Electoral Judges, one of whom shall be elected by an absolute majority of the Congress in plenary session; one other shall be elected by majority vote by the Supreme Court of Justice; one other shall be appointed by the political party which received the highest number of votes in the preceding election for supreme authorities; one other shall be appointed by the political party which received the second highest number of votes in the same election, and one other shall be appointed by the political party which makes application by a petition bearing the largest number of persons qualified to vote in the forthcoming election for supreme authorities, provided that the petition is accepted by the Council. Each of the Judges of the Council shall have an alternate, and all shall take office in the presence of the President of the Supreme Court of Justice, or the person acting as such, and shall proceed to organize themselves by electing as Chairman the person elected by the Congress or the person elected by the Supreme Court of Justice.

"The office of Electoral Judge is incompatible with the exercise of any other office remunerated out of State or municipal funds.

"The boards of directors of the political parties entitled to appoint Electoral Judges shall forward certification of the appointment to the Supreme Court of Justice before the first day of August of the year immediately preceding the year of the election for supreme authorities, except in the case of the political party whose petition has been accepted with the largest number of qualified signatures, which shall do so within ten days following the date on which the National Electoral Council notifies it of the relevant declaration.

"Any political party contesting the election which is not represented in the National Electoral Council, as previously organized, may appoint a representative to the Council with the right to vote throughout the period of the electoral process."

(2) Article 19 shall read as follows:

"*Art. 19.* The term of office of Electoral Judges shall be five years, beginning on the first day of August of the year immediately preceding the year of the election for supreme authorities, save in the exceptional case referred to in the last part of the third paragraph of article 14, where the term of office shall begin upon the assumption of office and shall end at the same time as that of the other Judges. Appointments and decisions made previously by the Judges who had been appointed shall have full legal effect."

(3) Article 25 shall read as follows:

"*Art. 25.* Persons serving on Regional Electoral Councils shall be remunerated by the State. The General Budget shall indicate the respective salaries. The term of office of the Chairmen and Electoral Judges shall be five years, beginning on the first day of August of the year immediately preceding the year of the election for supreme authorities, except in the case of the political party whose petition is accepted after that date and which is entitled to appoint Electoral Judges, where the term of office shall begin upon the assumption of office and shall end at the same time as that of the other Judges. In this case, the Judge shall take office within ten days following the date of his appointment. Appointments and decisions made previously by a quorum of the Electoral Council shall have full legal effect."

(4) Article 29 shall read as follows:

"*Art. 29.* The term of office of members of Electoral Directorates is five years and shall begin on the thirtieth day of September of the year preceding the year of the elections for supreme authorities except where the petition of the petitioning party which is entitled to appoint Electoral Judges is accepted after that date, in which case the term of office shall begin when the member takes office, which shall be within fifteen days following the date of his appointment and shall end at the same time as that of the other members. Appointments and decisions made previously by a quorum of the Directorate shall have full legal effect."

(5) Article 31 shall read as follows:

"*Art. 31.* Notification of appointments of Electoral Judges of the Electoral Directorates must be transmitted to the Regional Electoral Council in a note signed by the Chairman and Secretary of each board of directors of the parties before the thirtieth day of September of the year in which they are to take office, except in the case referred to in the third paragraph of article 14, where the notification shall be transmitted within the period indicated in that article."

(6) Article 40 shall read as follows:

"*Art. 40.* Registration of all citizens shall take place every five years.

"This registration shall take place on the Sundays of the month of November of the year preceding the year of the elections for supreme authorities."

(7) Article 61 shall read as follows:

"*Art. 61.* Not less than sixty days before the date of the elections, each political party shall have the right to present to the National Electoral Council its list of candidates for the offices of President and Vice-Presidents of the Republic, senators, deputies, and members of Municipal Councils throughout the Republic.

"The nominations shall be made in accordance with the Constitution and with the by-laws of each party."

"If a political party fails to present its list of candidates within the legal time-limit and does not contest the elections for supreme authorities it shall lose its status as a political party and the Judges whom it has appointed shall cease to hold office."

(8) Article 65 shall read as follows:

"Art. 65. The elections for President and Vice-Presidents of the Republic, senators, deputies, and members of Municipal Councils throughout the

Republic shall be held within a single day, which shall be the first Sunday in February of the year in which the terms of office expire, as prescribed in the Constitution.

"When an election cannot take place in any area of the country on the prescribed date, the National Electoral Council shall set a new date on which it is to be held, which shall be not later than sixty days after the original date."

...

NIGERIA

THE CONSTITUTION (SUSPENSION AND MODIFICATION) DECREE 1966

Decree No. 1 of 1966, deemed to have entered into force on 17 January 1966¹

1. (1) The provisions of the Constitution of the Federation mentioned in Schedule 1 of this Decree are hereby suspended.

(2) Subject to this and any other Decree, the provisions of the Constitution of the Federation which are not suspended by subsection (1) above shall have effect subject to the modifications specified in Schedule 2 of this Decree.

2. (1) The provisions of the constitution of each Region which are mentioned in Schedule 3 of this Decree are hereby suspended.

(2) Subject to this and any other Decree, the provisions of the constitution of a Region which are not suspended by subsection (1) above shall have effect subject to the modifications specified in relation to that constitution in Schedule 4 of this Decree.

3. (1) The Federal Military Government shall have power to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.

(2) The Military Governor of a Region:

(a) Shall not have power to make laws with respect to any matter included in the Exclusive Legislative List; and

(b) Except with the prior consent of the Federal Military Government, shall not make any law with respect to any matter included in the Concurrent Legislative List.

(3) Subject to subsection (2) above and to the Constitution of the Federation, the Military Governor of a Region shall have power to make laws for the peace, order and good government of that Region.

...

4. (1) The power of the Federal Military Government to make laws shall be exercised by means of Decrees signed by the Head of the Federal Military Government.

(2) The power of the Military Governor of a Region to make laws shall be exercised by means of Edicts signed by him.

...

5. (1) A Decree is made when it is signed by the Head of the Federal Military Government, whether or not it then comes into force.

(2) An Edict is made when it is signed by the Military Governor of the Region to which it applies, whether or not it then comes into force.

...

6. No question as to the validity of this or any other Decree or of any Edict shall be entertained by any court of law in Nigeria.

...

¹ *Supplement to Official Gazette, Extraordinary*, No. 20, vol. 53, 4 March 1966, Part A.

THE CIRCULATION OF NEWSPAPERS DECREE 1966

Decree No. 2 of 1966, deemed to have come into force on 17 January 1966²

1. (1) Any provision made before the coming into force of this Decree by a local government council, a city or town council or any other municipal authority which prohibits or restricts the distribution or general sale of any newspaper

in any part of Nigeria shall cease to have effect on the coming into force of this Decree.

(2) Any person who after the coming into force of this Decree, whether alone or with any other person, and whether as a member of a municipal authority or otherwise, does anything calculated to prevent or restrict the distribution or general sale of any newspaper in any part of Nigeria shall be guilty of an offence and be liable on conviction

² *Ibid.*, No. 6, vol. 53, 26 January 1966, Part A.

to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding three years, or both.

(3) In this section:

“newspaper” has the meaning assigned by section 2 of the Newspapers Act except that it

includes a newspaper published by or under the authority of the Government;

“provision” includes an order, regulation or bye-law.

...

SUPPRESSION OF DISORDER DECREE 1966

Decree No. 4 of 1966, entered into force on 11 February 1966³

PART I

OFFENCES AGAINST PUBLIC ORDER

1. Any person who commits any offence against public order under Schedule 1 of this Decree shall be liable on conviction to be sentenced either to death or to imprisonment for a term not exceeding twenty-one years.

2. (1) Except in the case of an offence alleged to have been committed within an area which was at the material time a military area within the meaning of this Decree, a person charged with an offence against public order under Schedule 1 of this Decree shall be tried summarily by a single judge of the High Court within whose jurisdiction the offence was committed.

(2) It is hereby declared that the provisions of section 117 of the Constitution of the Federation relating to appeals to the Supreme Court from decisions in criminal proceedings before a High Court sitting at first instance, and in particular subsection (2) (e) of that section (by virtue of which such an appeal lies as of right from a sentence of death), apply to decisions of a High Court in proceedings for any offence under Schedule 1 of this Decree.

PART II

MILITARY AREAS

3. (1) If it appears to the Head of the Federal Military Government that widespread public disturbances are occurring in any part of Nigeria, he may proclaim any area which appears to him to be affected by the disturbances to be a military area for the purposes of this Decree.

...

(3) As soon as he is satisfied, as regards any military area, that it is no longer necessary for that area to be a military area, the Head of the Federal Military Government shall by order published in the *Federal Gazette* direct that the area shall cease to be a military area for the purposes of this Decree as from such date as may be specified in the order.

(4) In this Decree “military area” means any area which has been proclaimed to be such under subsection (1) above, and which has not ceased to be such by virtue of an order made under subsection (3) above.

...

15. If, as regards any five or more persons gathered together in any place within a military area, any police officer or member of the armed forces is not satisfied that the occasion for the gathering is a lawful and proper one, he may order the gathering to disperse; and if the order is not obeyed, he may use such force as may be necessary to disperse the gathering.

16. Within a military area any police officer or member of the armed forces may without a warrant arrest:

(a) Any person who in his presence commits any offence under Schedule 1 or 2 of this Decree; or

(b) Any person whom he suspects upon reasonable grounds of having committed any such offence.

17. (1) In any military area any police officer of or above the rank of inspector, or any member of the armed forces who by virtue of section 19 (b) of this Decree has the powers of an inspector of police, may without a warrant at any time enter and search any premises in which he has reasonable cause to believe that there is, or is likely to be:

(a) A person who has committed, or is suspected of having committed, any offence under Schedule 1 or Schedule 2 of this Decree; or

(b) Any explosive, ammunition, firearm (or any component part thereof) owned, possessed or kept contrary to law, or any offensive weapon,

and where any such person or thing is found, may arrest the person or seize the thing, as the case may be.

(2) Any person who enters any premises under subsection (1) above:

(a) May be accompanied by such other persons being police officers or members of the armed forces as he thinks necessary for the purpose;

(b) May use such force as may be necessary to enter and search the premises;

³ *Ibid.*, No. 12, vol. 53, 11 February 1966, Part A.

(c) Shall, where possible, take with him a respectable person resident in the district in which the premises are situated; and

(d) Shall, before leaving the premises, make out and sign a written report on the search, and shall include therein particulars:

- (i) Of any damage done to the premises in the course thereof, and
- (ii) Of any article seized for removal from the premises,

and shall read the report to the person (if any) in charge of the premises and the person (if any) whom in accordance with paragraph (c) above he took with him, and shall afford to each of them an opportunity of countersigning the report or adding to it a signed note stating the respects (if any) in which he disagrees with it.

(3) Anything seized under subsection (1) above may be detained in accordance with such directions as may be given by the military area executive committee; but section 11 (4) of this Decree shall, with the necessary modifications, apply to things so seized.

(4) In this section "premises" include a dwelling house, vehicle, ship or any other place.

18. (1) If the chairman of the military area executive committee is satisfied that any person in a military area is or recently has been concerned in acts prejudicial to public order, or in the preparation or instigation of such acts, and that by reason thereof it is necessary to exercise control over him, he may by order in writing direct that that person be detained in a civil prison or a police station, whether within the military area or not; and it shall be the duty of the superintendent or

other person in charge of any civil prison, or the police officer in charge of any police station, as the case may be, if an order made in respect of any person under this section is delivered to him, to keep that person in custody until the order is revoked or the military area in question ceases to be a military area, whichever first occurs.

(2) On making an order under this section in respect of any person, the chairman of the military area executive committee in question shall forthwith inform the Military Governor of his action and of the circumstances which led him to take it; and, without prejudice to the power of the said chairman to revoke the order at any time, the Military Governor may himself at any time, after consultation with the said chairman, revoke the order.

(3) For the purposes of subsection (1) above, the chairman of the military area executive committee may take into account acts and activities which occurred before the area in question became a military area.

(4) An order made under subsection (1) above shall be full authority for any police officer or member of the armed forces to arrest the person to whom the order relates and to remove him to a civil prison or police station.

(5) Any person detained in pursuance of an order made under subsection (1) above shall be deemed to be in lawful custody.

(6) Nothing in this section shall be construed as requiring a person to be released from custody if he is liable to be detained by virtue of any enactment not contained in this Part of this Decree.

...

THE PUBLIC ORDER DECREE 1966

Decree No. 33 of 1966, entered into force on 24 May 1966⁴

1. (1) Every scheduled society named in Parts 1 and 2 of the Schedule to this Decree is hereby dissolved.

(2) The Head of the Federal Military Government shall have power to designate any society or association of three or more persons which, in his opinion, has identical or similar objective to that of a scheduled society and such society or association shall, for the purposes of this Decree, be deemed to be dissolved as from the date of the notice of such designation in the *Federal Gazette*.

(3) A scheduled society shall cease to carry out any activities, duties or functions for which it was formed or as may be conferred on the society by its constitution or rules.

(4) No person shall manage, take part in or encourage the management of such society.

(5) No person shall take part in any meeting of such scheduled society whether or not such meeting takes place in public or in private premises.

(6) No person shall take part in any procession conducted by any such society or any person associated with the society or acting in furtherance of the aims of such society.

2. (1) As from the date of commencement of this Decree, no new association shall, by whatever name or title it may be called, be formed.

(2) No person shall form or manage, take part in or assist in the formation or management of any such new association.

(3) Any new association formed after the date of commencement of this Decree shall be deemed to be a scheduled society within the meaning of this Decree and shall be so designated in accordance with section 1 (2) above.

⁴ *Ibid.*, No. 51, vol. 53, 24 May 1966, Part A.

(4) In this section, "new association" means any new society or association of three or more persons having an identical or similar objective to that of a scheduled society.

3. (1) No person shall, with a view to furthering any political interest whatsoever, or to causing annoyance, public disorder or a breach of the peace:

(a) Display or advertise in any form whatever, signs or symbols of any scheduled society, its flags, insignia or emblems; or

(b) Whether by spoken words or in writing or any other form whatsoever, utter or shout publicly any political slogan, political name or nick-name of any member of the community or of any member of a scheduled society.

(2) Any person who displays or advertises signs or symbols, flags, insignia or emblems of a scheduled society, or utters or shouts any political slogan, political name or nick-name of any member of the community or of a member of a scheduled society shall be deemed to have done so with the intent stated in this section, unless he shall prove the contrary.

4. (1) Any police officer authorised in writing by the designated officer may enter, with the assistance of such number of other police officers, constables or persons as may be deemed necessary in any appropriate case, any house, building or any place whatsoever in which such designated officer has reason to believe that a meeting of a scheduled society or of persons who were or are members of such society is being held.

(2) The police officer may:

(a) Arrest or cause to be arrested any person found in such house, building or place, whom he has reasonable cause to believe is or was connected with such society or is connected with the purposes of such society or meeting;

(b) Search or cause to be searched such house, building or place;

(c) Seize or cause to be seized all insignia, banners, arms, books, papers, documents and other chattels of the society, which he may have reasonable cause to believe to belong to any such society or to be in any way connected with the purposes of the society or meeting.

5. (1) Any procession of three or more persons which, in the opinion of the designated officer is of a political nature shall, notwithstanding anything in any other law, be deemed to be an unlawful procession, and such designated officer shall, after making or causing to be made a command in the name of the Head of the Federal Military Government in such words as he thinks fit to the persons in the procession to disperse peaceably, thereafter take such steps as are reason-

ably necessary to disperse them if, within five minutes after the command, they fail to commence to disperse.

(2) Any persons who, being so assembled, continue together to the number of three or more, and do not disperse themselves within the space of a quarter of an hour after the giving of the command, are guilty of an offence, and each of them is liable on conviction, to imprisonment for a term of three years.

...

7. Any insignia, banners, arms, books, papers, documents, flags, emblems or other chattels belonging to any scheduled society seized by the police at any meeting in accordance with section 4 (2) (c) above or during any procession, shall, notwithstanding section 6 above, be forfeited to the State and such articles shall be delivered to the designated officer or to the nearest police station, and shall be dealt with in such manner as the Head of the Federal Military Government may direct.

8. The Head of the Federal Military Government shall, notwithstanding sections 1 and 2 above, have power to dissolve, by an order published in the *Federal Gazette*, any tribal or cultural society or association of three or more persons existing before or after the commencement of this Decree, not being a scheduled society, which, in his opinion, is carrying on any activity similar to that of a scheduled society or which is used as platform for such activity; and the provisions of this Decree shall apply in relation to such tribal or cultural society or association as they apply to a scheduled society.

...

10. (1) Subject to subsection (2) below, nothing in this Decree shall apply to any town development union (membership of which is open to all the persons formed for the purposes of sports or religious, cultural, charitable or co-operative purposes, or under the Trade Unions Act, or other similar society or association having a non-political objective.

(2) The benefit of subsection (1) above shall not apply to any union, society or association mentioned in that subsection which engages in or carries on any activity similar to that of a scheduled society or is used as a platform for engaging in or carrying on such activity.

11. Section 2 of this Decree (which prohibits the formation of new political associations) shall have effect until 17 January 1969 unless sooner revoked or extended by notice in the *Federal Gazette*.

...

TRIBUNALS OF INQUIRY DECREE 1966

Decree No. 41 of 1966, entered into force on 2 June 1966⁵

1. (1) The Head of the National Military Government (in this Decree referred to as "the proper authority") may, whenever he deems it desirable, by instrument under his hand (hereafter in this Decree referred to as "the instrument") constitute one or more persons (hereafter in this Decree referred to as "member" or "members") a tribunal to inquire into any matter or thing or into the conduct or affairs of any person in respect of which in his opinion an inquiry would be for the public welfare. The proper authority may be the same instrument or by an order appoint a secretary to the tribunal who shall perform such duties as the members shall prescribe.

5. Subject to the provisions of this Decree, a tribunal shall have and may exercise any of the following powers, that is to say:

(a) The power to procure all such evidence, written or oral, and to examine all such persons as witnesses as the tribunal may think it necessary or desirable to procure or examine;

(b) The power to require such evidence to be given on oath as is required of a witness testifying before a magistrate's court;

(c) The power to summon any person in Nigeria to attend any meeting of the tribunal to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all just exceptions. Summonses . . . shall be served by the police or by such person as the members may direct;

(d) The power to issue a warrant to compel the attendance of any person who, after having been summoned to attend fails or refuses or neglects to do so and does not excuse such failure or refusal or neglect to the satisfaction of the tribunal, and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure or refusal or neglect to obey the summons, and also to fine such person a sum not exceeding ten pounds, such fine to be recoverable in the same manner as a fine imposed by a magistrate's court. A warrant . . . may be executed by any member of the Police force and by any person authorised by a native or customary court, or a native or local authority to effect arrests;

(e) The power to admit any evidence, whether written or oral, notwithstanding that such evidence might have been inadmissible in civil or criminal proceedings before a court, and power to act on such evidence;

(f) The power to appoint any person, whether or not such person is in the government service, to

act as interpreter in any matter brought before it and to translate any books, papers or writings produced to it;

(g) The power to enter upon any land or premises personally or by any agent or agents duly authorised in writing by the members, for any purpose which, in their opinion, is material to the inquiry, and in particular, for the purpose of obtaining evidence or information or of inspecting or taking copies of any documents required by, or which may be of assistance to, the tribunal, and for safeguarding any such document or property which in the opinion of the members ought to be safeguarded for any purpose of the inquiry.

8. Evidence taken under this Decree shall be inadmissible against any person in any civil or criminal proceedings whatever, except in the case of a person charged with giving false evidence before the members.

9. Any person who:

(a) Threatens, insults or injures any person for having given evidence or on account of the evidence given before a tribunal; or

(b) Hinders or attempts to hinder any person, or by threats deters or attempts to deter any person, from giving evidence before a tribunal; or

(c) Gives false evidence upon oath before a tribunal; or

(d) Being duly appointed as interpreter, under this Decree, wilfully gives false interpretation of any evidence or makes an untrue translation of any book, paper or writing;

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding two years.

10. Any person who, after service on him of a summons to attend as a witness or to produce a book, document or any other thing and, notwithstanding any duty of secrecy however imposed, fails or refuses or neglects to do so or to answer any question put to him by or with the concurrence of the tribunal shall be guilty of an offence, and liable on summary conviction to a fine of one hundred pounds or to imprisonment for a term of six months.

Provided that no person shall be bound to incriminate himself and every witness shall, in respect of any evidence written by him for or given by him before the members, be entitled to the same privilege to which he would have been entitled if giving evidence before a court of justice.

11. (1) Any person who commits an act of contempt, whether the act is or is not committed in the presence of the members sitting in an inquiry, shall be liable:

⁵ *Ibid.*, No. 56, vol. 53, 7 June 1966, Part A.

(a) On summary conviction before a court of competent jurisdiction to a fine of one hundred pounds or to imprisonment for a term of three months; or

(b) On the order of the tribunal to a fine of ten pounds, such fine being recoverable in the same manner as if it were imposed by a magistrate.

(2) An appeal shall lie to the High Court within whose area of jurisdiction the act concerned was committed against any order made by a tribunal under subsection 1 (b) of this section as if such order were a decision of a magistrate against which an appeal lay.

(3) Where an act of contempt is alleged to have been committed but not in the presence of the members sitting in an inquiry, the tribunal may by summons . . . require the offender to appear before the tribunal, at a time and place specified in

the summons, to show cause why he should not be judged to have committed an act of contempt and be dealt with accordingly. Summonses issued under this subsection shall be served by the police or by such other person as the tribunal may direct.

(4) If any person who has been summoned in accordance with subsection (3) of this section fails or refuses or neglects to attend at the time and place specified in the summons, the tribunal may issue a warrant . . . to compel the attendance of such person and order such person to pay all costs which may have been occasioned in compelling his attendance or by his failure or refusal or neglect to obey the summons, and may in addition fine such person a sum of ten pounds, such costs and fine to be recoverable in the same manner as if they were imposed by a magistrate's court.

. . .

NORWAY

NOTE¹

A. STATUTES

1. *Act of 3 June 1966 (No. 2) concerning an Amendment to the Act of 2 December 1955 on provisional extension of the term of copyright protection for literary, musical and artistic works*

This Amendment provides that the duration of copyright for literary, musical and artistic works which would normally expire in the period 1962-1967 shall nevertheless continue to run until 31 December 1968 unless the Government decides otherwise. The background for this, as for a similar Amendment in 1962, is the possibility that within the next few years, extensions to the provisions of the Berne Convention on the duration of copyright protection may be made. It has been found reasonable that the protection afforded many well-known Norwegian works of art should not be removed before this question is clarified.

2. *Act of 10 June 1966 (No. 8) on Amendments to the Act of 5 May 1927 on Industrial Disputes*

This amendment establishes, *inter alia*—in accordance with usual practice—that infringements of wage agreements and illegal stoppage of work on the part of individual Trades Union members involve liability for damages. It is further established that not only conditions of payment and employment but also rights and obligations under wage agreements which were in operation at the outbreak of a dispute are to remain in force as long as a labour conflict does not have to be implemented.

The regulations concerning competency to initiate legal proceedings are set out more clearly.

3. *Act of 17 June 1966 (No. 4) on Amendments to the Municipal Elections Act of 10 July 1925*

This Amendment gives access to a Municipal Council to decide that a Municipal Election be held on two consecutive days, a Sunday and the following Monday. The principal rule remains, however, that a Municipal Election shall be held on one day only (Monday).

Further, the Act gives general access for persons in prison to vote in advance. In addition, a regulation that a person who has been outside the realm over 48 months prior to Election Day is not eligible to make his vote in advance, has been revoked. Norwegian citizens, residing abroad who having normal voting rights, will therefore now have full opportunity to vote in advance.

The Act also contains a number of technical amendments concerning the carrying out of Municipal Elections.

4. *Act of 17 June 1966 (No. 12) on National Insurance*

This Act, which came into force on 1 January 1967, is the first stage in the establishment of a comprehensive national insurance scheme, financed mutually and administered centrally. In its first phase, the National Insurance Scheme replaces the present old-age, disability, widow's and mother's pensions and maintenance pensions for children, and rehabilitation assistance. In a later phase, health, unemployment and accident benefits will also be integrated into the National Insurance Scheme. The National Insurance Scheme is financed by contributions from members and employers and by grants from the municipalities and the State.

With certain exceptions, the National Insurance Scheme covers all persons resident in Norway, plus certain categories of persons not resident in the country such as all Norwegian seamen aboard Norwegian vessels. It is not permissible for anyone not to belong to the scheme even if they are insured by other means or have secured themselves the right to a pension commensurable to the national pensions. The general rule is that a person must have been resident in the country to be eligible for benefits, although this does not apply in the case of the old-age pension.

The National Insurance Scheme gives the following benefits:—old-age pension, rehabilitation benefits, disability pension, children's pension, and certain special benefits connected with rehabilitation, disability or death. Most of the benefits are scaled in proportion to a basic sum, which in 1967 will be N.Crs. 5,400, but will be adjusted annually in relation to alterations in the consumer price

¹ Note furnished by the Government of Norway.

index. Further, the presupposition is that Parliament shall every other year review the question of special increases in the basic sum in order to give pensioners a share in the general rise in the standard of living.

A person attaining seventy years of age is entitled to an old-age pension which consists of a basic pension and a supplementary pension. The basic pension is based on the basic sum (see above), with deductions if the pensioner has a spouse who also receives a pension, and with additions if he maintains children under the age of eighteen or a spouse who does not have an old-age or disability pension.

The supplementary pension is calculated on the basis of the number of years the pensioner has received a salary or other earned income and the amount of this income, up to a fixed sum. Stipulations for "additional compensation" make a Norwegian national who, on 1 January 1967, is over 30 years of age, eligible for a full supplementary pension even if this would not have been earned in accordance with the normal rules.

Rehabilitation assistance is given, *inter alia*, in the form of periods of residence, medical examinations, training and treatment in social medicine departments of hospitals or other approved rehabilitation institutions, or in the form of grants or loans, for starting up a business. A rehabilitation allowance, an amount equivalent to the disability pension, is given on certain conditions to persons of 18 years or older who have been incapacitated for work for one year.

The disability pension is given to those of 18 years or over whose earning capacity, after rehabilitation appropriate to the case has been carried out, remains reduced because of illness, injury or disability. The full disability pension corresponds normally to the old-age pension a person would have received if he had continued to work until attaining 70 years of age. Supplements for a spouse or children are granted more or less along the same lines as for the old-age pension. The disability pension is calculated in proportion to the full disability pension and corresponds to the degree of reduction in earning capacity. A pension is not granted if earning capacity is reduced less than 50 per cent.

When an insured person dies, a lump-sum grant is made, consisting of 15 per cent of the basic sum, or 40 per cent of the basic sum if the deceased leaves a spouse or had the custody of children.

The surviving spouse is eligible for a transitional grant in the period immediately following the death if he or she is unable to find suitable employment or is unable to maintain himself or herself because of having to look after children, or until such time as the widowers' or widows' pension is granted. The transitional grant is equivalent to the widowers' or widows' pension. An assistance grant is given if the surviving spouse has to leave supervision of the children to others because of employment outside the home or because of training for a career. A person in need

of education or training so as to be able fully or partially to support himself is eligible for grants to cover the expenses involved. A surviving spouse under the age of 70 is eligible for a widowers' or widows' pension if the marriage had lasted for at least five years, or if the person concerned has or has had children with the deceased or has care of the deceased's children. The amount of the widowers' or widows' pension is calculated on the basic sum, with a supplement of 55 per cent of the supplementary pension which the deceased would have been eligible for as an old-age or disability pensioner, and with deductions if the surviving spouse can be expected to earn an income above a certain sum. When the surviving spouse becomes eligible for the old-age pension, the widowers' or widows' pension is replaced by the old-age pension. This is calculated on the basic sum, with supplements in proportion to the supplementary pension the two spouses would have been eligible for as old-age pensioners. The same applies if the surviving spouse becomes eligible for a disability pension.

Unmarried women who, for at least five years, have of necessity had supervision and care in the home of their parents or other near relatives, can on certain conditions be granted an allowance equivalent to the widowers' or widows' pension on termination of their duties.

A children's pension is given to children under the age of 18 whose father or mother is dead. If one of the parents is dead, the pension for the first child is 40 per cent and for each subsequent child 25 per cent of the basic sum. If both parents are dead, the pension for the first child is equivalent to the full widowers' or widows' pension whichever of these would have been the largest. The pension for the next child is 40 per cent and for each subsequent child 25 per cent of the basic sum.

Unmarried mothers are granted an allowance on the birth of their children equivalent to a third of the basic sum. They are also eligible for an assistance grant, grants for education, etc., and transitional grants under the same rules as for surviving spouses.

5. *Act of 17 June 1966 (No. 18) on Amendments to the Health Insurance Act of 2 March 1956*

Under the provisions of this Amendment, the National Health Services are required to bear the expenses incurred by an insured person in connection with normal medical check-ups during pregnancy. This Amendment is in accordance with previous practice.

6. *Act of 16 December 1966 (No. 3) on Amendments to the Act of 26 April 1957 on Advance Contributions for the upbringing of children*

With the coming into force of the National Insurance Act, the Act on Maintenance Allowances for Children was revoked. Maintenance allowances for children who have lost one or both parents is superseded by the Children's Pension under the National Insurance Scheme. The Act

concerning Maintenance Allowances had, however, also contained provisions under which such allowances could be granted to children born out of wedlock when maintenance allowances had not been awarded by the Courts, or to children born out of wedlock abroad when maintenance awards had not been made by the Courts or when contributions imposed were not paid. The Act on Advance Contributions has now been extended also to include such cases. The amount of advance contribution is at present N.Crs. 1,200 per annum.

7. *Act of 16 December 1966 (No. 9) on Appeals to the Insurance Tribunal*

This Act provides for the setting up of a joint court of appeal, the Insurance Tribunal, for the statutory insurance and pension schemes and also for municipal and private pension schemes in accordance with further provisions. The Tribunal will be located in Oslo and will have the status of an independent administrative body. The legality of the Insurance Tribunal's decisions can be tried in the normal courts of law. A dispute coming within the sphere of the Insurance Tribunal can be brought before the ordinary courts only after the matter has been decided by the Insurance Tribunal. Assessments by expert bodies can be tried fully by the Insurance Tribunal, while the courts can only try the legality of the Insurance Tribunal's decisions.

The Insurance Tribunal is composed of permanent members and laymen who are called in in each individual case. Of the permanent members, at least three shall be jurists, one a doctor and one a rehabilitation expert. Laymen are appointed for a term of four years by the Government. In each individual case, the Insurance Tribunal shall be composed of five or of three members. In cases where the Tribunal is composed of five members, at least two shall be laymen and where it is composed of three members, at least one shall be a layman. In cases of a distinctly juridical character, the Tribunal can consist of three legal experts. In cases thought likely to establish a precedent and in cases which raise complicated or particularly doubtful questions of law or of evidence, the court can be composed of seven members, of whom three shall be legal experts and—if the Tribunal's chairman so decides—one a medical expert and/or one a rehabilitation expert.

Under the provisions of the Act, the Insurance Tribunal bears the responsibility for seeing that the case is sufficiently documented. It is incumbent upon the body which decided the matter in the first instance to make all necessary particulars available and to assist the party making the appeal in his preparations for doing so. The Act contains detailed rules on the handling of the proceedings, which shall normally be in writing although it may be decided that the principal proceedings shall be oral. The Insurance Tribunal can also take into consideration in its decision circumstances which have not been invoked by the parties to the dispute. The Insurance Tribunal can also in its decision go beyond the claims of the parties if this would be to the advantage of the party making the

appeal. The decision of the Insurance Tribunal is reached on an ordinary majority vote, the grounds on which the decision is reached having to be specified.

B. LEGISLATIVE PRACTICE

1. *The Supreme Court of Justice: judgment of 28 March 1966*

By virtue of the provisional Act of 21 June 1956, on Obligations for Service by Dentists in the Public Dental Services, newly-qualified dentists may be directed to serve for up to 18 months in positions in the public dental services which remain unfilled in spite of advertisements made in their respect. This Act was prolonged by supplementary Acts of 29 June 1962 and 25 June 1965. The background lies in the insufficient number of dentists in proportion to requirements. In an action against the State, the Norwegian Dentists' Association claimed that the supplementary Acts were in conflict with the principles of liberty and equality in the Norwegian Constitution, with Section 105 of the Constitution on full compensation for expropriation and with article 4 of the European Convention on Human Rights concerning "forced or compulsory labour". A similar question in relation to the Act of 1956 had been raised before the Norwegian Supreme Court in the course of a criminal case in 1961. The relationship to the Convention on Human Rights had also in 1963 been brought up before the European Commission on Human Rights, which rejected the complaint by six votes against four as manifestly ill-founded.

The State was unanimously acquitted in the Supreme Court's judgement of 28 March 1966. The Supreme Court declared itself in agreement with the interpretation of article 4 of the Convention on Human Rights which the majority in the Commission on Human Rights had maintained, and found that the Supplementary Acts did not differ in this respect from the Act of 1956.

2. *The Board of Appeal of the Supreme Court of Justice: decision of 20 October 1966*

A certain student was exempted from military service following application to the Ministry of Justice, and was subsequently conscripted for civilian work. When he reported for duty, he was directed to act as an assistant in field-work for the Department of Geographic Surveys. He refused to do this, stating that he wished to do work of more direct importance for peace, for instance in the Association for the United Nations. He was then temporarily discharged.

At the request of the Ministry of Justice, the Chief Police Officer at the student's town of residence applied, under the provisions of the Conscientious Objectors' Act of 17 June 1937 (No. 10), Section 6, for a magistrate's order to have the student put to compulsory labour for sixteen months. The Magistrate's Court complied with this request.

The Board of Appeal of the Supreme Court of Justice maintained that compulsory labour in accordance with the provisions of the Conscientious Objectors' Act shall not be considered a punishment in the eyes of the law. The Magistrates Court decision in the matter was thus not in conflict with section 96 of the Constitution. The Board of Appeal maintained further that neither from the provisions of the Conscientious Objectors' Act nor from its motives, could the conclusion be drawn that the lawmakers had envisaged that the administrative authorities should give priority to civilian work in organizations for the

promotion of peace before other work of importance to the community. Neither does section 109 of the Constitution justify a claim by a conscientious objector to carry out specified tasks during compulsory service.

C. INTERNATIONAL AGREEMENTS

Outside the United Nations, the specialized agencies or the Council of Europe, Norway has not in 1966 entered into any international agreements of consequence for Human Rights.

PAKISTAN

NOTE¹

1. The existing labour laws are directed towards the promotion of human rights and fundamental freedoms as enunciated in the Universal Declaration of Human Rights which, *inter alia*, deals with the economic, social and cultural aspects of human life. The provincial governments, which are responsible for the legislation and implementation of labour laws under the new constitution of Pakistan, are making all-out efforts for the promotion of respect for the observance of human rights and fundamental freedoms. Recently, both the provincial governments made improvements over the existing labour laws to bring them closer to the spirit of the Universal Declaration of Human Rights.

2. The Government of West Pakistan has also promulgated two ordinances, namely, the West Pakistan Employees Social Security Ordinance, 1965, and the Industrial Dispute (West Pakistan Amendment) Ordinance, 1965. The West Pakistan Social Security Scheme provides for cash and medical benefits in sickness, maternity and employment injury as well as disablement pension and gratuity, death grant and survivors' pension to workers in industrial and commercial enterprises. Similar legislation by the Government of East Pakistan is expected very soon.

3. Persuasive measures are also employed to implement the Revised Labour Policy of the Government of Pakistan, so as to ensure human rights to the working class. Provision of fair-price shops and medical, recreational and educational facilities for the workers are some other measures which provide additional relief to the working class.

4. Further, the right of association and the right to organize are ensured to the worker. The representatives of workers are allowed to participate in the national as well as international conferences where they discuss their problems across the table.

5. In addition to the above measures, Pakistan has ratified the following six ILO Conventions which directly protect the fundamental human rights:

(1) Forced Labour Convention, 1930 (No: 20);

(2) Abolition of Forced Labour Convention, 1957 (No: 105);

(3) Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87);

(4) Right to Organize and Collective Bargaining Convention, 1949 (No. 98);

(5) Right of Association (Agriculture) Convention, 1921 (No. 11); and

(6) Discrimination (Employment and Occupations) Convention, 1958 (No. 111).

The salient features and the administrative and legislative actions taken in Pakistan to implement the provisions of these Conventions are given below:

1. *Forced Labour Convention, 1930 (No. 29)*

Salient features

The Convention provides to suppress the use of forced labour in all its forms. It defines "forced or compulsory labour" as all work or service which is exacted from the said person and for which he has not offered himself voluntarily.

But the terms "forced or compulsory labour" does not include work or service exacted in virtue of compulsory military service laws for work of a purely military character; works or service connected with normal civic obligations, and work or service exacted from a person convicted in a court of law.

2. *Abolition of Forced Labour Convention 1957 (No. 105)*

Salient features

The Convention aims at abolishing forced labour as a means of political coercion, or education or as a punishment for holding or expressing political views or views ideologically opposed to the established social, political or economic system. It provides that forced labour will not be used as a method of mobilizing and using labour for purposes of economic development or as a means of labour discipline. The Convention further forbids the use of forced

¹ Note furnished by the Government of Pakistan.

labour as a punishment for having participated in strikes or as a means of racial, social, national or religious discrimination.

Law and practice in Pakistan

Article 3 of chapter 1 of the Constitution of Pakistan² envisages that:

"1. No person shall be held in slavery, and no law shall permit or in any way facilitate the introduction into Pakistan of slavery in any form.

"2. All forms of forced labour are prohibited.

"3. Nothing in this paragraph shall be deemed to effect compulsory service.

"(a) By persons undergoing punishment for offences against law;

"(b) Required by any law for public purposes".

The above article meets the requirements of both the ILO Conventions (No. 29 and No. 105) as no law can be promulgated or policy pursued which violates the Constitution.

3. *Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)*

Salient features

The Convention guarantees: (a) the right of workers and employers to establish and join organizations of their own choice without previous authorization; (b) the right of workers' and employers' organizations to draw up their constitution and rules, elect their representatives "in full freedom", organize their administration and activities, and formulate their programme; (c) the protection of workers' organizations from dissolution and suspension by administrative authority; (d) the right to establish and join federations and confederations and to affiliate with international organizations of workers and employers; and (e) the protection of free exercise of the right to organize.

Law and practice in Pakistan

The Trade Unions Act, 1926, as amended from time to time, covers the provisions of the Convention.

4. *Right to Organize and Collective Bargaining Convention, 1949 (No. 98)*

Salient features

The Convention provides *inter alia* that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Workers' and employers' organizations shall enjoy adequate protection against any act of interference by each other in their establishment, functioning and administration. Appropriate machinery shall be established for the purpose of ensuring respect for the right to organize. The

Convention does not deal with the position of public servants engaged in the administration of State.

Law and practice in Pakistan

The Trade Unions Act, 1926, as amended by the Trade Unions (Amendment) Ordinance 1960 and 1961; the Industrial Disputes Ordinance, 1959 and the Industrial and Commercial (Standing Orders) Ordinance, 1960 cover the provisions of the Convention (98) referred to above.

5. *Right of Association (Agriculture) Convention, 1921 (No. 11)*

Salient features

The Convention provides to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

Law and practice in Pakistan

The Trade Unions Act, 1926, which applies to the workers engaged in agriculture, is in conformity with the provisions of the aforesaid Convention.

6. *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*

Salient features

The Convention provides that the ratifying country would declare and pursue a national policy designed to promote by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment for occupation with a view to eliminating any discrimination in respect of such employment or occupation. The term "discrimination" has been defined to include any adverse distinction which deprives a person of equality of treatment or opportunity in employment and occupation and which is made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin and such other adverse distinction, exclusion or preference as may be specified by the Member concerned after consultation with representative employers' and workers' organizations.

In Pakistan the Constitution itself guarantees against all forms of discrimination mentioned above. Article 17 of the Constitution of Pakistan, which deals with fundamental rights and principles of policy, says that:

"No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth."

The above principle of the Constitution also covers the provisions of the Equal Remuneration for Men and Women Workers for Work of Equal Value Convention, 1951 (No. 110), although Pakistan has not ratified it.

² Extracts from the Constitution of Pakistan appear in the *Yearbook on Human Rights for 1964*, pp. 217-220.

THE MUNICIPAL ADMINISTRATION (WEST PAKISTAN AMENDMENT) ACT, 1965

4. In the said Ordinance, for section 9, the following section shall be substituted, namely:

"9. Composition: Municipal Committee shall consist of

"(a) The Chairman of all Union Committees within the Municipality;

"(b) Such number of members to represent special interests as the Controlling Authority may specify: provided that such number shall be at least one but otherwise not exceed ten per centum of the total number of the Chairmen of the Union Committees within the Municipality; and

"(c) Such official members, not exceeding one-half of the total number of elected members, as the Controlling Authority may, in the prescribed manner, fix."

5. In the said Ordinance after section 9, as so substituted, the following new sections shall be inserted, namely:

"9 A. Election of members to represent special interests: after a general election of the Chairman of Union Committee within a Municipality, such Chairman shall, before the first meeting of the Municipal Committee, elect in the prescribed manner the members to represent special interests specified in clause (b) of section 9.

"9 B. Qualifications of members to represent special interests: any person who belongs to any such special interest as may be specified in this behalf by the Government and who is not less than twenty-five years of age on the first day of January preceding the date on which the nomination paper relating to him is filed, shall be qualified to be elected as a member of a Municipal Committee to represent special interests under section 9 A, if his name appears for the time being on the electoral roll for any electoral unit within the Municipality, and who does not suffer from any disqualification specified in section 16."

THE WEST PAKISTAN SOCIAL SECURITY ORGANIZATION

I. INTRODUCTION

1. Social security provides insurance for the low paid worker and/or his dependants against risks such as sickness, maternity and disability or death resulting from employment injury. A labourer cannot with his meagre resources, by his own ability and foresight or even in private combination with his fellow workers, effectively provide against such risk. Government has, therefore, by law established the West Pakistan Employees' Social Security Institution properly to organize and administer social security in West Pakistan. To make it more effective, participation of the employer in the scheme has been made compulsory. The obvious reason is that the employer is the direct beneficiary of increased productivity of a secured worker.

2. The administration of social security in West Pakistan is entrusted to the West Pakistan Employees' Social Security Institution, established under the West Pakistan Employees' Social Security Ordinance (No. X) of 1965. A three-tier administration is provided. At the highest level Government determines broad policy as, for example, whether or not social security should be made applicable to agricultural workers. At the next level a governing body of tripartite composition, comprising representatives of Government, employees and employers, determines the more detailed policy of the Institution and exercises general supervision over its affairs. The implementation of the policies so determined is entrusted to the Chief Executive of the Institution, who is an

officer of Commissioner's rank appointed by Government. The Commissioner, while being the secretary of the governing body, is not a voting member thereof.

II. FINANCES AND CONTRIBUTIONS

1. The West Pakistan system provides for a self-financing institution, which receives no assistance from Government. Its income is derived from contributions realized from employees and their employers at the rate of 2 per cent and 4 per cent of wages respectively for employees earning from PRs 2/- to PRs 20/- per day. Employees earning less than PRs 2/- per day make no contribution at all. The entire contribution of 6 per cent is paid by their employers. Employees earning more than PRs 20 per day are not covered.

2. This income and any other income from donations or return from investments is credited to the Employees' Social Security Fund, out of which the Institution meets its expenditure on administration, medical care and payment of cash benefits to secured persons.

III. BENEFITS

The benefits available to a secured person are:

1. *Medical care.* This includes specialist care, domiciliary visits, prenatal and post-natal care, hospitalization and provision of essential pharmaceutical supplies. For the administration of

medical care, the Institution has set up its own dispensaries and hospitals.

2. *Cash benefits.* A secured person incapacitated by sickness, maternity or employment injury is entitled, for the period of incapacity, to cash benefits equal to 50 per cent, 100 per cent and 60 per cent respectively of the last wage drawn by him or her, as the case may be. In the event of permanent disability resulting from employment injury or occupational disease, a secured person is eligible for disablement gratuity, payable in lump sum (for minor disablement) and disablement pension, payable monthly for life or as long as the disability lasts (for major disablement). The rates in both cases vary with the degree of disablement.

On the death of a secured person, the person paying for his funeral expenses is paid a funeral grant equal to thirty times the last wage drawn by the deceased but in no case less PRs 50/—.

If a secured person dies as a result of an employment injury, which includes employment accidents and occupational diseases, his dependents become eligible for the grant of a survivors' pension. This pension is terminated on the death of the dependent or remarriage, in the case of a dependent widow, or when a dependent child attains the age of sixteen years.

IV. COVERAGE

1. Social security operations commenced on 1 March 1967, with the opening of four local offices in Karachi, Landhi, Hyderabad and Lyallpur. In accordance with the policy of the Government, social security has been made applicable to the textile industry. More than 100,000 workers have been covered in the aforementioned four social security areas. By 1 September 1967, three more offices, covering another 30,000 textile workers will be opened in Nowshera, Rawalpindi and Multan. By the end of the 1967/1968 financial year the entire textile industry is expected to be covered. Thereafter the extension will be geographical in order to cover all the other industries in West Pakistan.

2. The next stage will be to extend coverage to commercial establishments and finally to agricultural workers. Refinements and improvements in the form of better medical care and higher cash benefits will be introduced from time to time.

3. It may be pointed out that the contribution rate of 6 per cent of wages is the lowest in the world and compares very favourably with neighbouring countries where conditions are similar to Pakistan.

PANAMA

DECREE LAW No. 39 ON FOREST RESOURCES¹

Part I

PURPOSES AND JURISDICTION

1. The protection, conservation, improvement and increase of forest resources is hereby declared to be compulsory throughout the country; accordingly, the rational use and management of the woods and forest land of the Nation and also of renewable resources coming within the purview of this Decree Law are hereby declared to be in the public interest and subject to the rules laid down in the appropriate regulations.

...

4. The National Government is hereby empowered to regulate the exercise of rights over publicly and privately owned woods and forest land laying down whatever limitations and restrictions may be required to ensure attainment of the purposes and objectives of this Decree Law.

...

6. For the purpose of facilitating the application of regulations and provisions to promote the efficient forest development of the country, the following classification of forest land and woods is hereby laid down:

- (a) Productive forests;
 - (b) Protective forests;
 - (c) Special forests.
- ...

Part II

GENERAL FOREST REGULATIONS

General

15. The devastation of woods and forest land and the non-rational utilization of forest products is hereby prohibited.

¹ Separate publication, 29 September 1966. A translation of the Decree Law into English has been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation*, vol. XV-No. 4, XIII/1.

16. Applications must be made in advance to the Forest Service for the working of woods by owners, tenants or holders in any capacity, and a plan of the proposed work shall be attached to the application.

17. Whenever a productive wood is being worked in a manner that is not in accordance with the work plan referred to in the foregoing article, the forest authorities may call upon the owner to prepare such a plan and, if he should fail to do so, shall apply the appropriate penalties; these may involve suspension of the working.

...

20. The competent forest authority shall authorize, restrict or prohibit tilling, clearing, burning and pasturing in all forest areas of the country, whatever the property system which applies, in accordance with the rules laid down in the regulations.

21. Forest land and woods which are part of State forest property may be neither occupied nor grazed save with the authorization of the forest authority, which may, when necessary, call upon the forces of public order to ensure compliance.

These prohibitions shall extend equally to public forest land and woods which have not yet been incorporated into State forest property, and this until such time as the requirements of articles 10 and 11 of this Decree Law have been met.

Forest Fire Prevention and Control

22. The Forest Service shall be responsible for forest fire control action and shall take fire prevention and control measures and carry out the necessary works for the rehabilitation of areas destroyed by fire.

23. Any person who is aware of the outbreak of a forest fire shall be required to report the fact immediately to the nearest authority. Official and private telephone, telegraph and radio services shall transmit fire reports urgently and free of charge.

24. If forest fires break out, the civil and military authorities and security forces shall contribute to their extinction providing transport facilities and personnel.

...

28. The Forest Service or any other competent authority is hereby empowered to call upon all able-bodied males between the ages of fifteen (15) and forty (40) years who live within thirty (30) kilometers of the place where a fire has broken out to collaborate personally in extinguishing it and to provide the fire fighting equipment required; compensation shall be paid for any damage to such equipment.

29. All the obligations and services for the prevention and control of forest fires enumerated in the foregoing articles shall be considered a public duty and no citizen or authority can avoid compliance with them.

Control of Forest Pest and Diseases

30. Owners, tenants, agents and occupiers in any capacity of forest areas and also regional and local authorities are hereby required to report forest pests and diseases immediately upon their outbreak to the Forest Service.

31. In the event of pests and diseases occurring in private forest areas, the Forest Service may give the owner co-operation and technical assistance and may in agreement with him adopt measures to protect the diseased forest stand.

32. Should the owner not agree to the procedure set forth in the foregoing article and should he fail to submit a proper technical plan for the protection of the diseased forest stand, the Forest Service shall entrust its own local departments with the preparation of a plan of action and the owner shall be required to carry it out within a specified time limit.

If the Forest Service has evidence that a wood affected by pests or disease is not being treated in accordance with the established plan of action, it may require the owner to relinquish management of the wood so it can take the measures required; the expenses resulting therefrom shall be borne by the owner or holder concerned.

33. The Forest Service shall place quarantine restrictions on forest areas and land, irrespective of legal status, within a radius of not less than three (3) kilometers from the diseased forest stand.

Whenever a forest stand area is placed in quarantine, this shall imply restriction upon the working and transport of timber products, the transit and grazing of livestock within the area and also the limitation of all works liable to facilitate the propagation of the pest or disease; the forest authority may in addition proceed with the seizure and destruction of diseased products without giving compensation of any kind.

Water and Soil Protection

34. Forest workings and the damaging or destruction of trees or shrubs in areas surrounding natural springs are hereby prohibited. For rivers, streams, lagoons and lakes this prohibition shall extend to an area not less than thirty (30) meters from and parallel to their banks.

35. The areas referred to in the foregoing article shall be declared protective woods and their management shall be subject to such limitations and restrictions as are laid down in the relevant regulations.

...

Part III

REGULATIONS GOVERNING USE, WORKING AND EXPLOITATION

38. Protective woods may be worked only for improvement purposes, save as otherwise provided in regulations.

39. The owners of protective woods, which have been declared such by executive decree, shall be compensated within not more than one (1) year for any reduction in revenue from the wood as a direct and immediate consequence of its declaration as a protective wood.

40. Special woods may not be subject to any kind of working save the specific use in the public interest for which they were created.

...

42. The Forest Service may grant exploitation permits for the extraction of one thousand (1,000) tons or cubic meters of timber from plots with specified boundaries or from areas of up to one hundred (100) hectares of forest per person and per year. These permits shall be granted direct to producers who apply for them and whose names are duly registered.

...

48. Forest working permits and concessions shall not be transferable and permit and concession holders shall be required to carry on the working under their own responsibility; any violation of these conditions shall mean that their permit and concession are null and void.

49. Persons who lack resources may be granted limited permits free of charge for the collection of forest produce.

...

52. The Forest Service shall be responsible for supervising forest exploitations and workings and shall ensure compliance with the general rules and work plans regulating each separate working; the beneficiaries of concessions and working permit and license holders shall allow the inspectors of the Forest Service to carry out their supervisory duties.

For this purpose the officers of the Forest Service shall have free access to areas being worked, to timber withdrawal areas and roads, to timber stacking areas and other facilities where they may carry out any supervisory operation.

Part IV

PROMOTION

53. To ensure optimum and maximum use and exploitation of forest resources, forest production shall be developed and the forest industry shall be promoted; to this end, the Executive shall, on the proposal of the Forest Service, lay down measures to facilitate the import of equipment and to provide financial assistance.

54. Woods deliberately planted on forest land shall be exempt from tax with effect from the promulgation of this Decree Law for such period as may be established in the regulations.

55. Expenditure incurred on improvements to forest plantations shall be deductible from income tax with effect from the promulgation of this Decree Law and the Ministry of Finance and Treasury shall issue the relevant regulations.

56. The import of equipment, instruments, chemicals, seed, stakes and forest plants and other material necessary for the reafforestation of the country and for research work by the Forest Service, shall be exempt from payment of customs duties and other fees.

Private individuals who wish to enjoy this benefit shall apply for it after submitting their plans to the Forest Service which shall give its approval before any exemptions may be granted.

57. The Forest Service may grant promotion bonuses and premiums for forest activities involving scientific work, promotion and the processing of new forest products.

Part V

THE FOREST FUND

58. The National Forest Fund is hereby created with effect from the promulgation of this Decree Law; it shall draw its funds from the general budget of the Nation and devote them to forest purposes.

...

PERU

PRESIDENTIAL DECREE No. 011-A OF 27 JULY 1966, TO LAY DOWN NEW RULES FOR THE INDIGENOUS COMMUNITIES IN PERU¹

SUMMARY

Section 1 of the Presidential Decree states that these rules shall lay down the norms establishing and regulating the organization and functioning of the indigenous communities recognised by the Constitution of the State as juridical persons or incorporated bodies, together with the rights and obligations of the said communities and their members.

The indigenous communities, as defined in section 2, are groups of peasants endowed with juridical personality as institutions in private law bound by language, tradition, usage and custom, having an ancestral system of work in common and collective ownership of land which is exercised individually since time immemorial in rotation or on a community basis.

Section 5 provides that before being able to exercise the rights conferred on it as a juridical person a community shall be entered on the official register of communities kept by the General Directorate of Communities, which shall issue a certificate of registration in each case. This registration, section 6 stipulates, shall give entitlement as a juridical person to ownership of the lands deemed to be the exclusive property of the community, the rights of third parties being reserved.

In order to be registered in the official register a community by virtue of section 7, must possess a deed or deeds of ownership over the land in question or, failing this, be in a position to prove

that it is in effective possession of the said lands from time immemorial; and the peasant families constituting the community must be united by a system of assistance and labour in common, irrespective of whether the land is farmed individually, collectively or by rotation.

Any juridical or physical person or any collectivity may lodge an objection to the official registration of a community (section 11) and an application for registration shall be refused if it is proved that the entire land which the indigenous community is presumed to own or which is in its possession is made up of privately owned farms (section 12).

The rights and duties of indigenous communities are enumerated in section 24. As provided in section 25, the indigenous communities and their members shall be defended and assisted free of charge by the legal service of the General Directorate of Communities in proceedings with any state administrative service.

Other provisions of the Decree deal with the general list of members of the community; the patrimony of the community; the administration of the communities; elections; members of the community; the rights and obligations of community members; community sanctions and honours; the observance of administrative decisions; the economic systems of indigenous communities; the boundaries and register of land of indigenous communities; the system of ownership and use of community lands; the advancement and development of the community; the evolution of the community towards the co-operative system; the community farming centres; and the community cultural and social system.

¹ *El Peruano*, No. 7633, 15 October 1966. Translations of the Decree into English and French have been published by the International Labour Office as *Legislative Series*, 1966—Per. 1.

PHILIPPINES

NOTE¹

I. LEGISLATION

In 1966 and 1967, four bills affecting the Press passed into law, namely:

(1) Republic Act No. 4623 curbs the powers of the Postmaster-General in determining the mailability of second-class mail matters and gives him forty-eight hours within which to decide questions of mailability. If he fails to decide the question within that time, the mail goes through.

(2) Republic Act No. 4363 limits the venue for libel cases from any place where the allegedly libellous material circulated to only two places: residence of the offended party or place of first publication. This reduces out-of-town harassment suits.

(3) Republic Act No. 4661 shortens the prescription period for libel from two years to one year.

(4) Republic Act No. 4883 broadens the number of newspapers that are qualified to receive legal advertising, thus strengthening the financial position of newspapers.

II. COURT DECISIONS

1. An unprecedented case in Philippine journalism and jurisprudence came up in 1966 when the

courts were asked to decide whether the broad freedoms already enjoyed by professional newspapermen extended also to university student or campus publications.

The Manila Court of First Instance ruled that Dr. Emiliano C. Ramirez, President of the Philippine Normal College, had the legal power to require submission of page proofs of the school papers (*The Torch* and *The Torch Newsette*) prior to publication.

Professor Felicitas P. Laxamana, then director of Philippine Normal College publications, took issue with President Ramirez's memorandum which enjoined the college papers to refrain from publishing controversial issues attacking the administration of government and of the college. She insisted that the pre-publication check constituted censorship. "The constitutional guarantees of a free press covered also the students", she said.

The case having been appealed to the Supreme Court, Mrs. Laxamana asked the tribunal to reverse the lower court's decision upholding the college president's power to censor school papers. The case is pending decision.

2. Philippine courts have tended to interpret libel laws liberally in favour of free expression. Thus imprisonment terms are usually waived in favour of fines.

A definite statement on this issue came recently from Supreme Court Justice Fred Ruiz Castro, who wrote: "For the past nine years... only in one instance, involving the question of pictorial pornography, did I vote for the conviction of a newspaperman, a tabloid editor. And even then, only a fine was imposed on the accused."

¹ Note based upon report on freedom of information received from the Government of the Philippines under Economic and Social Council resolution 1074 C (XXXIX) and published in the Secretary-General's *Periodic Reports on Human Rights, 1964-1967* (E/CN.4/948/Add.14).

POLAND

NOTE¹

I. LEGISLATION

1. *The right to work*

(Article 23 of the Universal Declaration of Human Rights)

Poland pursues a policy of full employment. The average number of insured employees in the national economy amounted to 9,505,000 in 1966, that is to about 30 per cent of the total population of the country. This figure does not include people occupationally active in the individual peasant economy. Their number is about 6.1 million.

In 1966, employment agencies registered a monthly average of 60,900 people temporarily out of work, that is about 0.6 per cent of the total number of people employed in the national economy, and of 125,400 openings which remained unfilled.

It should be pointed out that the situation in the labour market in 1966 was similar to that in the previous years, the deficit of male labour showing an upward tendency. In view of the economic development of the country the demand, particularly for highly-skilled personnel, is growing, as a result of which the labour force balance sheet for 1966-1970 (the current five-year plan) provides that out of the 3.22 million people who will enter into employment in this period 1.96 million will be graduates from schools of all types. They will find employment as a result of an increase in new jobs by 1,560,000 and the departure from employment in the national economy of 1,660,000 people.

2. *The right to social insurance*

(Article 25 of the Declaration)²

The Constitution of the Polish People's Republic (article 60) treats the expansion of social insurance coverage in the event of sickness, old age, disability and death as an instrument of an increasingly wider implementation of the right to health protection and assistance in the event of

sickness, disability and death of the breadwinner. These constitutional guarantees are developed and realized through an extensive insurance legislation, fully in line with the principles of the Universal Declaration of Human Rights.

The Act of 29 March 1965 on social insurance for artisans (*Journal of Laws*, 1965, No. 13, text 90), to which reference was made in our contribution to the *Yearbook on Human Rights for 1965*,³ has created a legal basis (article 47) for the extension of insurance coverage not only to artisans but also to other groups of the population not remaining in an employment relationship. Pursuant to the authorization contained in article 47 of the above-mentioned Act, the Council of Ministers extended on 1 October 1966 the provisions of the Act on social insurance for artisans to agents running—on the basis of a commission—catering enterprises within state enterprises, co-operative and social organizations, and also to agents running petrol stations.

In 1967 and 1968 work will be carried on to extend social insurance coverage, under the principles set out in the Act on social insurance for artisans, to further groups of the population which do not remain in an employment relationship.

Work has been started on legislation designed to increase the level of old age pensions by stages over a three-year period.

As regards working time, a study has been undertaken of the possibilities of shortening the working week in the entire national economy to five days.

II. JUDGEMENTS OF THE SUPREME COURT

1. A body of seven judges in a ruling of 3 November 1966 (No. III, Cz. 17/66) recognized the admissibility of an agreement on the basis of which a person who has suffered injury to his health as a result of a prohibited act is to receive damages instead of a monthly pension. However, such an agreement does not allow disclaiming of payment in respect of further damage which may arise or reveal itself in the future.

¹ Note furnished by the Government of Poland.

² For extracts from the Constitution, see *Yearbook on Human Rights for 1952*, pp. 231-235.

³ See pp. 235-236.

2. In its judgement of 4 April 1966 (II, PR. 139/66) in proceedings for compensation for physical sufferings and moral damage, the Supreme Court recognized the right to such compensation of a child born after the death of a father who lost his life in an accident at work.

3. The new law on work safety and hygiene of 30 March 1965 (*Journal of Laws*, 1965, No. 13, text 91), operative since 1 July 1965,⁴ introduced the obligation of the work establishment, in which a worker has suffered an accident, to re-employ him in the same or another work establishment.

In many decisions rendered in 1965 and relating also to cases in which the accident causing disability for work had occurred before the entry into force of the said law, the Supreme Court required from the defendant work establishment that it speedily assist the aggrieved party in finding suitable employment.

Consistently with that view, in case I PR 401/65 of 2 December 1965, the Supreme Court held that in proceedings for damages instituted by an employee against the work establishment responsible for the effects of an accident at work, the work establishment can effectively enter the plea of failure by the employee to use his remaining working ability only when there is proof that the establishment has fulfilled the duties resting upon it under article 23 of that law.

4. On 29 June 1966 the Supreme Court established and resolved that the following rule be entered into the book of legal rules:

"A contract of employment cannot be terminated before the expiry of six months

⁴ For extracts from this law, see *Yearbook on Human Rights for 1965*, pp. 234-235.

throughout the period in which, as a result of an accident at work, the employee is temporarily hindered from full execution of the work under the contract, although he can and does perform other work."

5. In its decisions the Supreme Court often refers to the necessity of awarding compensation for the entire loss suffered by the injured party to that party or to persons entitled to benefits in the event of death of the breadwinner. This tendency is reflected *inter alia*, in the opinion of the Supreme Court according to which denial to grant a disability pension under the social insurance scheme does not by itself prejudice in a negative sense the claim for a supplementary pension under the civil law (rulings: II, PR. 64/64 of 21 October 1965; I, PR. 189/66 of 26 May 1966; I, PR. 172/66 of 10 May 1966).

The Supreme Court proceeds here on the assumption that a claim for an indemnification pension will always be substantiated if it is established that the existing limitation of the injured party's working ability has diminished his earning capacity, as measured against his earning capacity prior to the accident.

III. INTERNATIONAL AGREEMENTS

A Protocol between the Government of the Polish People's Republic and the Government of the French Republic concerning old age allowances for the non-occupationally active or special allowances under the French legislation and pensions under the Polish social security legislation was signed in Paris on 28 April 1966. The Protocol came into force on 1 November 1966.

REPUBLIC OF KOREA

NOTE¹

The fundamental rights of the citizen of the Republic of Korea are guaranteed under the Korean Constitution. The provisions dealing with these fundamental rights are dealt with in chapter II of the Constitution entitled "Rights and Duties of the Citizen."²

¹ Note furnished by the Government of the Republic of Korea.

² For the text of chapter II of the Constitution, see *Yearbook on Human Rights for 1962*, pp. 246-248.

ROMANIA

NOTE¹

A. TEXTS OF OR EXTRACTS FROM NORMATIVE INSTRUMENTS ADOPTED DURING 1966

I. NEW REGULATIONS RELATING TO THE RIGHT TO RETIREMENT

(Articles 22 and 25 of the Universal Declaration of Human Rights)

1. *Act No. 27 concerning State social insurance pensions and supplementary pensions*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 85 of 28 December 1966. (Extracts from this Act are given below.)

The new retirement scheme takes the form of an appreciable increase in the income of all categories of pensioners, an improvement in the ratio of pension to rates of pay, and the abolition of the upper limit for pensions. The Act also introduces a new system for the granting of invalidity pensions in accordance with the principles applicable to the granting of old age pensions; this is a better system than existed under the old regulations.

It should be added that the pension rate is calculated on the basis of length of service, and that a supplementary pension based on employees' contributions has been introduced. As a result of these improvements, the new retirement scheme ensures that employees can expect to receive, when they retire, an income in keeping with their contribution to the development of society in Romania.

2. *Decree No 535, concerning the entitlement of the members of agricultural production co-operatives to a pension*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 38 of 24 June 1966.

The new regulation provides a solution for the very important social problem of the retirement of farm workers.

It sets up a uniform system whereby pensions are given partly in money and partly in kind; in

this way provision is made for the old men, invalids and orphans of the agricultural production co-operatives. The pension fund is made up of contributions from the co-operatives and their members.

The main provisions are as follows:

"*Art. 1.* Members of agricultural production co-operatives shall be entitled to old-age pensions and invalidity pensions. Orphaned children of members of agricultural production co-operatives shall also be entitled to pensions.

"The right to a pension laid down in the preceding paragraph shall be established by the Retirement Fund for the members of production co-operatives and its branches in accordance with the statutes of the Retirement Fund. The Retirement Fund for members of agricultural production co-operatives and its branches shall be legal entities.

"*Art. 2.* Pensions shall be calculated and paid in accordance with the conditions laid down in the statutes of the Retirement Fund and in its rules of operation; those conditions shall be approved by the Council of the National Union of Agricultural Production Co-operatives.

"The same rules shall also establish the procedure to be followed when a decision to place a person on the retired list is contested or revised.

"*Art. 3.* The money required for the payment of pensions, which shall consist of the contributions of the agricultural production co-operatives and the personal contributions of the members of the Retirement Fund, shall be pooled in a centralized fund which shall be administered by the Retirement Fund.

"The sums of money which go to make up the centralized fund shall be deposited at the National Bank of the Socialist Republic of Romania, which shall pay the Retirement Fund, as liquid assets permit, annual interest at a rate to be fixed by a decision of the Council of Ministers.

"*Art. 4.* The criteria and conditions for the granting of invalidity pensions shall be estab-

¹ Note furnished by the Government of the Socialist Republic of Romania.

lished in consultation with the Ministry of Health and Social Welfare, on the basis of the rules of operation laid down in the statutes of the Retirement Fund.

"The degree of invalidity shall be determined by the competent organs and in accordance with the procedure laid down in the legal norms relating to pensions granted under the State social insurance schemes.

"Art. 5. The pensions of members of agricultural production co-operatives are non-taxable and may not be waived for any reason. Payment may be compulsory, subject to the same conditions as apply to the earnings of co-operating members of the agricultural production co-operatives."

3. *Decision No. 2361 of the Council of Ministers concerning an increase in social insurance pensions, pensions for invalids, orphans and war widows, and social welfare allowances*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 87 of 30 December 1966.

The new regulation concerning an increase in pensions removes the discrepancy between the pension rate established under the old Act and that which has been established in accordance with the new retirement scheme introduced by Act No. 27 of 28 December 1966.

Extract:

"Art. 1. (1) As from 1 January 1967, all categories of social insurance pensions established up to that date shall be increased by 27 per cent on average, the actual amount of increase varying from 15 to 40 per cent of the existing pension rate."

4. *Decision No. 2797 of the Council of Ministers concerning an increase in military pensions*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 87 of 30 December 1966.

The same considerations prompted the increase in military pensions as prompted the increase in social insurance pensions, pensions for invalids, orphans and war widows, and social welfare allowances.

Extract:

"Art. 1. (1) As from 1 January 1967, all categories of military pensions established up to that date shall be increased by 27 per cent on average, the actual amount of increase varying between 15 and 40 per cent of the existing pension rate."

II. NEW REGULATIONS CONCERNING MATERNAL AND CHILD WELFARE

(Article 25 (2) of the *Universal Declaration of Human Rights*)

1. *Decree No. 770 on rules governing the termination of pregnancy*, published in the *Official*

Bulletin of the Socialist Republic of Romania, No. 60 of 1 October 1966.

The old laws permitted the termination of pregnancy at the mere request of the woman concerned, on the sole condition that it should be carried out in a medical establishment.

The new regulations are designed to avoid the harmful effects of repeated terminations of pregnancy on the health and reproductive ability of the woman. Accordingly, pregnancy may be terminated only in cases of absolute necessity specifically provided for by the law.

Extracts:

"Considering that the termination of pregnancy is an act which has serious consequences for the health of the woman concerned and a highly prejudicial effect on the growth of the birth rate,

"The Council of State of the Socialist Republic of Romania decrees that:

"Art. 1. The termination of pregnancy shall be prohibited.

"Art. 2. As a special exception, the termination of pregnancy shall be authorized, in conformity with the provisions of article 5, in the event that:

"(a) The pregnancy endangers the woman's life and the danger can be averted in no other way;

"(b) One of the parents suffers from a serious disease which can be inherited or which causes congenital deformities;

"(c) The woman has given birth to four children who are under her care;

"(d) The pregnancy is the result of rape or incest.

"Art. 3. Termination of pregnancy in the cases specified under article 2 may be performed during the first three months of the pregnancy.

"As an exception, when it has been established that the woman is in a serious pathological condition which is endangering her life, termination of pregnancy may be performed in the first six months of the pregnancy.

"Art. 4. In the cases specified under articles 2 and 3, termination of pregnancy shall be carried out in specialized health units by obstetricians and gynaecologists.

"Art. 5. Authorization for the termination of pregnancy shall be given by a district or city medical commission created for that purpose by a Decision of the Executive Committee of the People's Council of that region or of the cities of Bucharest and Constanta.

"Art. 6. In extremely urgent cases, where for medical reasons the pregnancy must be ter-

minated at once, the doctor shall be required to notify the *Procureur* in writing either before the operation or, where that is not possible, not longer than twenty-four hours afterwards. The *Procureur* shall then determine, on the basis of the opinion of the medical expert and all other information, whether the action taken to terminate the pregnancy was necessary.

"Art. 7. Any action taken to terminate a pregnancy in circumstances other than those specified in this Decree shall constitute an offence and shall be punished according to the provisions of the Penal Code."

2. *Decree No. 1032 concerning the implementation of article 2 of Decree No. 246/1958 on the regulations for the provision of medical treatment and medicines to women with at least three children living*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 82 of 24 December 1966.

The new normative Act extends the right to medical treatment, maintenance, medicines and medical supplies—which under the old law were provided only for pregnancy and confinement—to all women with three children living.

3. *Décision No. 2489 of the Council of Ministers on the amendment of Decision No. 880/1965 of the Council of Ministers and of the Central Trade Union Council of Romania concerning the provision of material assistance under the State social insurance scheme*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 71 of 17 November 1966.

The new regulations introduce a preferential system for the provision of material aid in pregnancy and confinement to women giving birth to their third and subsequent children. Women in this category will receive the full amount of pregnancy and confinement assistance, notwithstanding the general rule contained in Decision No. 880/1965 of the Council of Ministers, which established an upper limit for such assistance depending on the length of time for which the woman had been continuously employed.

4. *Decision No. 2498 of the Council of Ministers to abolish parental contributions for the attendance of their children at kindergartens operating on a part-time or seasonal basis*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 71 of 17 November 1966.

Under the laws which were in force until the date of publication of this normative Act, parents were required to contribute to the maintenance of all categories of kindergartens at a rate proportionate to the size of their income and to the number of their children attending such kindergartens.

By abolishing this contribution, the new regulations appreciably lighten the family's financial burden and make it even easier for housewives and mothers to take part in productive work and socio-cultural activities.

III. NEW REGULATIONS DESIGNED TO CONSOLIDATE THE POSITION OF THE FAMILY

(Article 16 of the Universal Declaration of Human Rights)

Decree No. 779 amending certain legal provisions relating to divorce, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 64 of 8 October 1960.

The new regulations are evidence of the State's concern to find the most appropriate ways of protecting marriage and the interests of mother and child.

The new divorce laws provide the courts with more effective legal instruments—both substantive and procedural—for establishing the real causes of marital disputes and making determined efforts to settle them. In this way the new regulations are more effective than the old in consolidating the family and defending the interests of children.

IV. NEW REGULATIONS CONCERNING THE ELECTION OF DEPUTIES

(Article 21 of the Universal Declaration of Human Rights)

Act No. 86 concerning the election of deputies to the Grand National Assembly and the People's Councils, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 86 of 29 December 1966.

Following the adoption of the new Constitution of the Socialist Republic of Romania, published on 21 August 1965, it became necessary to make Act No. 86, concerning the election of deputies to the Grand National Assembly and the People's Councils, conform to the constitutional principles and norms laid down in Act No. 9/1952 concerning the election of deputies to the Grand National Assembly, and to Decree No. 391/1953 concerning the election of deputies to the People's Councils.

The new regulations bring together in a single normative Act the provisions concerning the election of deputies to the representative organs—the Grand National Assembly and the People's Councils—and at the same time take into consideration the experience that has been gained and the fact that both form part of the same system, namely that of the organs of State power. It contains definite and more comprehensive provisions concerning representation, candidatures and the nomination of candidates.

Suitable provisions have been made for the holding of new elections in cases where no candidate has obtained a simple majority of all votes cast, and in cases where less than a simple majority of all voters in an election district have cast their votes.

It should be noted that the new rules allow for a considerable increase in the number of deputies in all categories of People's Councils.

The main provisions of the new Act are as follows:

"*Art. 1.* Under article 25 of the Constitution of the Socialist Republic of Romania, citizens of the Socialist Republic of Romania shall have the right to elect and to be elected to the Grand National Assembly and the People's Councils.

"The vote shall be universal, equal, direct and secret. All citizens who have reached the age of eighteen years shall have the right to vote. Citizens who have the right to vote and who have reached the age of twenty-three years can be elected as deputies to the Grand National Assembly and to the People's Councils.

"The following shall not have the right to elect and to be elected: the insane, the mentally deficient and persons deprived of these rights for a period fixed by the sentence of a court. A state of insanity or mental defectiveness shall be legally established by a court order depriving the person concerned of his legal capacity.

"*Art. 2.* Under articles 44 and 81 of the Constitution of the Socialist Republic of Romania, the Grand National Assembly and the People's Councils shall be composed of deputies elected from election districts, one deputy from each district.

"The election districts for the elections to the Grand National Assembly shall be so arranged that all have equal numbers of inhabitants.

"The election districts for the election of deputies to People's Councils shall be so arranged that all have the same number of inhabitants.

"*Art. 3.* The electors shall have the right to recall a deputy, by the same procedure whereby he was nominated and elected.

"*Art. 4.* Under article 45 of the Constitution of the Socialist Republic of Romania, the deputies to the Grand National Assembly shall be elected for a legislative term of four years, reckoned from the date of termination of the mandate of the previous Grand National Assembly.

"Under article 81 of the Constitution of the Socialist Republic of Romania, deputies of the People's Councils of the cities of Bucharest and Constanta, and of those of the various regions and districts, the main towns of the regions and districts and the urban districts, are elected for four years, and deputies of the Communal People's Council are elected for two years, reckoned from the date of termination of the mandate of the previous People's Council."

V. NEW REGULATIONS CONCERNING THE RIGHT OF PETITION ESTABLISHED BY ARTICLE 34 OF THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF ROMANIA

(Article 21 of the Universal Declaration of Human Rights)

Decree No. 534 concerning the reception, consideration and treatment of requests, claims, complaints and proposals submitted by citizens of the Socialist Republic of Romania, published in the Official Bulletin of the Socialist Republic of Romania, No. 38 of 24 June 1966.

The right of petition is embodied in the new Constitution as a fundamental civil right.

Compared with the previous regulations—Decision No. 4013/1953 of the Council of Ministers—the present regulations contain a series of new elements. The provisions relating to claims and complaints have been supplemented by rules concerning requests and proposals. There are special norms governing the increased responsibility of State organs for ensuring that the rights and legitimate interests of citizens are respected both at the stage when requests are being received and considered and at the stage when measures resulting from them are being implemented. There is a provision stipulating that petitions must be dealt with as soon as possible and within certain time limits.

The main provisions of the Decree are as follows:

"Chapter I

"GENERAL PROVISIONS

"*Art. 1.* In the Socialist Republic of Romania, the citizen's right to petition, guaranteed under the Constitution, shall be exercised by means of requests, claims, complaints and proposals addressed to the organs of State power in the State administration, to the organs of justice, to the organs of the Public Prosecutor, to institutions, to enterprises and to all State economic organizations, which shall be called in the present Decree, State organs.

"*Art. 2.* Requests, claims, complaints and proposals addressed to the State organs shall receive attention in conformity with the present Decree, in so far as no other regulations have been established by law.

"*Art. 3.* The directorate of each State organ shall be responsible for organizing, directing and supervising the procedure whereby the requests, claims, complaints and proposals are received, considered and dealt with.

*"Chapter II***"TREATMENT OF REQUESTS, CLAIMS, COMPLAINTS AND PROPOSALS**

"*Art. 4.* State organs shall be required to receive and, within the limits of their competence, to act upon the requests, claims, complaints and proposals submitted by citizens.

"When it does not lie directly within the powers of a given State organ to take action on a request, claim, complaint or proposal which has been addressed to it, that organ shall transmit the original of the same within three days to whichever organ is qualified to deal with it and shall notify the petitioner thereof within the same period.

"*Art. 5.* State organs shall be required to instruct interested persons as to the legal conditions which must be met by whatever requests those organs are competent to act upon.

"Requests shall be accompanied by any documents which may be needed before action can be taken upon them.

"*Art. 6.* Requests, claims, complaints and proposals shall be acted upon and the result communicated to the petitioner by the State organ which is fully competent to deal with them, as soon as possible and within the following number of days from the filing of the petition:

"(1) For requests, 20 days, for all State organs;

"(2) For claims, complaints and proposals:

"(a) 40 days for the central State organs;

"(b) 30 days for the executive committees of the Regional People's Councils and those of the cities of Bucharest and Constanta, and for other State organs with regional powers;

"(c) 20 days for all other executive committees of People's Councils and for State organs other than those mentioned in paragraphs (a) and (b).

"In special cases requiring extensive research, the time limits set out above may be extended by a maximum of twenty days by agreement with the directorate of the organ which is dealing with them. If a request, claim, complaint or proposal has been received for action by a higher organ, the reason for extending the time allowed shall be communicated to that organ.

"In exceptional cases, for certain requests and claims which cannot be acted upon within the time laid down by the present article, the directorates of the central State organs may approve further extensions consistent with the time actually needed for action to be taken.

"*Art. 7.* Claims, complaints and proposals relating to problems of particular importance shall be considered and dealt with directly by the directorate of the competent State organ.

"The same procedure shall be followed in cases where several claims, complaints or proposals are received relating to the same problem and originating in the same place of work.

"*Art. 8.* Claims and complaints relating to the activities of members of the directorate of a State organ shall be studied and dealt with by the organ immediately superior to the organ concerned.

"*Art. 9.* The persons responsible for considering requests, claims and complaints shall invite the petitioner to provide them with explanations wherever necessary. In the event that investigations have to be carried out at the place concerned, it shall be mandatory to invite the petitioner to attend.

"*Art. 10.* The directorates of the State organs shall be responsible for ensuring that measures adopted on the basis of facts established during the consideration of requests, claims, complaints and proposals are put into practice.

"*Art. 11.* The directorates of the State organs shall arrange meetings or interviews with the employees of those organs to discuss particular problems arising from the consideration of claims, complaints and proposals, in order to draw conclusions which will increase efficiency.

"*Art. 12.* While continuing to observe the provisions of this Decree, State organs shall be required to consider claims, complaints and proposals submitted by the Press, and shall inform the editorial staffs concerned as soon as possible of the results of their investigations and the measures adopted.

"*Art. 13.* At six-monthly intervals the directorates of the State organs shall analyse the work done in dealing with citizens' claims, complaints and proposals, the principal problems raised by them, and the reasons for which the claims and complaints were made, and shall take the necessary action and at the same time pass on the information to the higher organs.

*"Chapter III***"CITIZENS' HEARINGS**

"*Art. 14.* The directorates of State organs shall be required to grant hearings, on specified dates and at specified times, to citizens who wish to present their requests, claims, complaints or proposals in person, either orally or in writing.

"The central State organs shall organize the hearings in such a way as to enable the senior staff of those organs to receive the largest possible number of citizens.

"Arrangements for hearings before presidents, vice-presidents and secretaries shall be made by the executive committees of the People's Councils, ensuring daily access for citizens who wish to present their requests, claims, complaints or proposals in person.

"The heads of institutions, enterprises and all State economic organizations shall take due account of the fact that the hearings should be given, as far as possible, in the citizens' leisure hours.

"The directorates of the State organs shall be required to grant hearings to citizens whose petitions have raised particular problems, in order to obtain information on all aspects of the problem and ultimately to achieve a reasonable solution for it.

"Art. 15. The norms relating to the reception, consideration and treatment of requests, claims, complaints and proposals shall be equally applicable in cases where they have been presented at a citizens' hearing."

"Chapter V

"ARRANGEMENTS FOR THE RECEPTION AND CONSIDERATION OF REQUESTS, CLAIMS, COMPLAINTS AND PROPOSALS AND FOR THE SUPERVISION OF ACTION TAKEN ON THEM

"Art. 16. State organs shall be required to ensure, by means of special machinery, that requests addressed to them are received and considered, that the action taken on them is subject to supervision, and that the petitioner is notified of that action.

"Art. 17. The central State organs, the executive committees of the Regional Peoples' Councils and of those of the cities of Bucharest and Constanta and of the various districts, urban districts and regional cities shall each maintain, depending on their volume of work, a unit responsible for receiving and considering claims, complaints and proposals, and for supervising the action taken on them. This unit shall be answerable directly to the directorate of the State organ under whose jurisdiction it operates.

"The units shall help to ensure, by the exercise of their powers, that claims, complaints and proposals are dealt with fairly and in due time.

"The units responsible for receiving and considering claims, complaints and proposals and for supervising the action taken on them shall be staffed by persons qualified to carry out satisfactorily the tasks assigned to them.

"In the case of State organs for which no unit has been established, claims, complaints and proposals shall be received by the directorate of each organ or by persons whom it shall appoint.

"Art. 18. Within the General Secretariat of the Council of Ministers a directorate shall be set up to deal with letters and hearings in connexion with the reception and consideration of citizens' requests, claims, complaints and proposals and the supervision of action taken on them."

VI. NEW REGULATIONS CONCERNING TECHNICAL AND VOCATIONAL TRAINING

(Article 26 of the Universal Declaration of Human Rights)

(1) *Act No. 2 concerning the establishment, organization and operation of specialized secondary schools*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 41 of 11 June 1966.

The new normative Act provides for the extension of secondary education to include, in addition to general secondary schools, specialized secondary schools to which pupils who have completed the general school course may be admitted on a competitive basis.

In the specialized secondary schools the pupils shall be given vocational training, so that those with diplomas may subsequently obtain jobs for which a specialized secondary education is required. Moreover, since they will have completed suitable general studies as well, they will also have the option of following higher education courses.

Extracts:

"Art. 1. Within the secondary education system, specialized secondary schools shall be established, designed to produce middle-level specialists to meet the needs of the economy and the arts.

"Art. 2. The courses in the specialized secondary schools shall be of four or five years' duration and shall provide the pupils with a solid vocational training in addition to a general education.

"For each speciality, the length of the course shall be determined by the special studies organizer. The specialized secondary schools shall offer day courses, but evening courses and optional courses may also be arranged. Admission to the specialized secondary schools shall be by competitive examination."

(2) *Decision No. 2565 of the Council of Ministers on the Organization of Vocational Evening Courses*, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 78 of 19 November 1966.

The new regulations offer production workers the possibility of gaining qualifications, by means of a sound scientific training, for the occupation in which they are engaged. Those who follow the vocational evening courses shall receive the same certificates of studies as those who have followed the vocational day courses.

The main provisions of the Decision are as follows:

"Art. 1. Vocational evening courses shall be organized, beginning in the academic year 1966/1967.

"Vocational evening courses shall be organized in the form of evening classes run by the vocational day schools and in the form of vocational evening schools.

"Art. 2. Workers and holders of diplomas from general schools or other comparable schools, who are employed as production workers in the occupation for which the evening school is to prepare them, shall be eligible for vocational evening courses.

"Art. 3. The requirements for admission to vocational evening courses shall be the same as for vocational day courses."

B. INTERNATIONAL CONVENTIONS

I. MULTILATERAL CONVENTIONS

During 1966 the Socialist Republic of Romania ratified or acceded to the following international conventions relating to human rights:

(1) By Decree No. 773 published in the *Official Bulletin of the Socialist Republic of Romania*, No. 77 of 7 December 1966, Romania acceded to the International Convention for the Safety of Life at Sea, signed at London on 17 June 1960 (article 3 of the Universal Declaration of Human Rights).

This Convention is a revised version of the International Convention for the Safety of Life at Sea of 1948.

The Socialist Republic of Romania found it necessary to accede to the 1960 Convention because, when building cargo ships for export, it was required by its customers to comply with the standards laid down in the 1960 Convention even though it had not yet acceded to that Convention.

At the same time article XIII of the 1960 Convention contains provisions which contravene present-day international law and resolution 1514 (XV) of 14 December 1966 of the General Assembly of the United Nations; Romania's position with regard to this problem has accordingly been reaffirmed by a declaration in the Decree on accession.

(2) By Decree No. 960 published in the *Official Bulletin of the Socialist Republic of Romania*, No. 77 of 7 December 1966, Romania ratified the Customs Convention concerning welfare material for seafarers, done at Brussels, on 1 December 1964 (articles 22 and 25 (1) of the Universal Declaration of Human Rights).

Romania's ratification of this Convention enables Romanian seafarers to introduce temporarily into the ports of other States parties to the

Convention books, periodicals and other materials intended for their personal use, without restrictions or prohibitions and without paying Customs duties.

Article 16 of the Convention contains provisions conflicting with the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly of the United Nations on 14 December 1960 in resolution 1514 (XV); Romania's position on this matter has accordingly been reaffirmed by a declaration in the Decree on ratification.

II. BILATERAL CONVENTIONS

(1) Agreement Regulating Scientific and Artistic Exchanges between the Socialist Republic of Romania and Turkey, ratified by Decree No. 861, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 71 of 17 November 1966 (articles 22 and 27 (1) of the Universal Declaration of Human Rights).

The parties agree to encourage contacts between the scientific and artistic centres in the two countries and exchanges of scientists and artists.

The organization of exhibitions of paintings, handicrafts and folklore in the respective countries shall be facilitated, together with recitals and concerts of classical, modern and popular music.

The translation and publication of literary works shall also be facilitated, and contacts between the two countries in sport shall be promoted.

(2) Protocol concerning technical and scientific co-operation in agriculture between Romania and the United Arab Republic, signed at Bucharest on 3 September 1966, approved by Decision No. 2456 of the Council of Ministers, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 171 of 17 November 1966 (articles 22 and 26 (1) of the Universal Declaration of Human Rights).

The Parties agree to promote short-term and long-term exchanges of specialists designed to enable them to share their experiences in the various agricultural sectors. They agree also to the reciprocal award of annual scholarships for the further training of specialists and technicians, and to mutual co-operation on all other agricultural problems of interest to both Parties.

(3) Agreement between Romania and Turkey on co-operation in tourism, ratified by Decree No. 957, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 76 of 6 December 1966 (articles 22, 24 and 27 (1) of the Universal Declaration of Human Rights).

The Governments of Romania and Turkey agree to take appropriate measures to increase the flow of tourists between the two countries, to inform one another of their experiences regarding tourist facilities, to simplify the formalities required at frontier-crossings and to seek solutions to all other problems connected with tourism.

(4) Agreement between Romania and France on the joint production and the exchange of films, approved by Decision No. 1230 of the Council of Ministers, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 79 of 13 December 1966 (articles 22 and 27 (1) of the Universal Declaration of Human Rights).

By this Agreement, signed as a sequel to the Franco-Romanian Cultural Agreement of 11 January 1965, the Parties decide to facilitate the joint production of certain films which, by virtue of their artistic and technical qualities, could enhance the prestige of the two countries, and to increase their exchanges of films.

(5) Agreement between Romania and Italy on economic, industrial and technical co-operation, ratified by Decree No. 109, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 7 of 4 March 1966 (articles 22 and 25 (1) of the Universal Declaration of Human Rights).

The Parties agree to maintain and encourage the development of Italo-Romanian economic, industrial and technical co-operation in industry, mining, building and tourism and in other economic sectors where they have a common interest.

The co-operation will also include technical assistance, for example, exchanges of experts and the provision of materials for experiments in scientific research.

(6) Agreement between Romania and Iran on economic and technical co-operation, ratified by Decree No. 110, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 7 of 4 March 1966 (articles 22 and 25 (1) of the Universal Declaration of Human Rights).

The two Governments agree on long-term economic co-operation for the attainment of industrial objectives and for the provision of machinery, equipment and other material necessary for the continual development of the Iranian economy.

Romania will also carry out studies and research, will undertake projects and will provide technical assistance for Iran.

(7) Agreement between Romania and Tunisia on scientific and technical collaboration, approved by Decision No. 1415 of the Council of Ministers, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 46 of 27 July 1966 (articles 22 and 25 (1) of the Universal Declaration of Human Rights).

The Contracting Parties agree to collaborate in the areas of science and technology, on the basis of mutual respect for the principles of sovereignty, equal rights, mutual advantage and non-intervention in domestic affairs and to make the most effective use of the latest scientific and technological advances with a view to the economic development of both countries.

(8) Agreement between Romania and Tunisia on cultural collaboration, approved by Decision No. 1476 of the Council of Ministers, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 46 of 27 July 1966 (articles 22 and 27 (1) of the Universal Declaration of Human Rights).

The Parties agree, on the basis of mutual respect for the principles of sovereignty, equal rights, mutual advantage and non-intervention in domestic affairs, to facilitate the establishment and strengthening of links between their respective scientific, educational, cultural and artistic organizations and institutions, and to promote exchanges between the two countries in the areas of science, culture, art, education, public health, the Press, radio and television, the cinema and sports.

(9) Convention between Romania and the Union of Soviet Socialist Republics concerning the abolition of entry and exit visas for official travellers and private travellers visiting relatives and friends, as well as of transit visas, approved by Decision No. 671 of the Council of Ministers, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 34 of 10 June 1966 (articles 22 and 24 of the Universal Declaration of Human Rights).

The Convention expresses the desire of the two Contracting Parties to strengthen and develop friendly relations between the two States and reciprocally to facilitate travel by their nationals on official and private business.

ACT RELATING TO STATE SOCIAL INSURANCE PENSIONS AND SUPPLEMENTARY PENSIONS

TITLE I

STATE SOCIAL INSURANCE PENSIONS

Chapter I

GENERAL PROVISIONS

Art. 1. The following shall be entitled to a social insurance pension:

(a) Wage earners;

(b) Persons who have become disabled as a result or in the performance of military duties or State or social tasks;

(c) Students who have become disabled in the course or as a result of the training they are undergoing;

(d) The surviving dependants of the persons listed above.

Art. 2. The following types of pensions shall be payable:

- (a) Retirement pension;
- (b) Disability pension;
- (c) Survivor's pension.

Art. 3. Pensioners and their dependants shall be entitled to medical care, drugs, other medical supplies, social welfare benefits, allowances in the event of death, as well as other benefits, in accordance with the laws and regulations in force.

Art. 4. The funds required for the payment of pensions, social allowances and other benefits to pensioners and their dependants shall be made up of the contributions of enterprises, institutions, other organizations and individuals employing wage earners and of the sums earmarked for that purpose in the national budget, no salary being withheld.

Art. 5. The following considerations shall be taken into account in determining the amount of the pension, according to the relevant category:

- (a) Length of service;
- (b) Continuity of service;
- (c) The contractual wage, as established by law in each case;
- (d) The degree and cause of disability;
- (e) The particular conditions prevailing in the place of employment.

Art. 6. (1) Places of employment shall be classified in three groups, according to the working conditions and the influence of factors injurious to health, physical or nervous strain, or the degree of danger:

Group I, comprising places of employment where the conditions are very harmful, very difficult or very dangerous;

Group II, comprising places of employment where the conditions are harmful, difficult or dangerous;

Group III, comprising other places of employment.

(2) Places of employment to be classified in Groups I and II shall be decided by the bodies and in accordance with the criteria established by the Council of Ministers.

(3) The following increases in length of service shall be awarded for each full year of employment in places in Groups I and II:

- (a) Six months for persons who have worked in places in Group I;
- (b) Three months for persons who have worked in places in Group II.

Chapter II

RETIREMENT PENSION

Art. 7. Full retirement pensions shall be granted to wage earners who have worked in places

of employment in Group III, for at least twenty-five years in the case of men, and twenty years in the case of women, as follows:

(a) At the request of the establishment concerned, after the age of sixty-two for men and after the age of fifty-seven for women; in the case of professors and university lecturers, directors, assistant scientific directors, scientific secretaries, heads of section and heads of scientific research laboratories, the age shall be sixty-five for men and sixty for women;

(b) At the request of the sponsor or executor, after the age of sixty for men and after the age of fifty-five for women.

Art. 8. In respect of wage earners who have worked in places of employment in Groups I and II, with twenty-five years of service in the case of men and twenty years in the case of women, the retirement age specified in article 7 shall be reduced:

(a) By six months for each full year of employment in places in Group I;

(b) By three months for each year of full employment in places in Group II.

(2) The retirement age may only be reduced by complete years and may never be less than the age of fifty.

Art. 9. Blind wage earners shall be entitled to a full retirement pension when they have reached the age of fifty in the case of men with at least fifteen years of service, and the age of forty-five in the case of women with at least ten years of service.

Chapter III

DISABILITY PENSIONS

Art. 16. (1) Persons who have become totally or partially incapacitated for work shall be entitled to a disability pension.

(2) The disability pension shall be granted at the request of the person concerned or his sponsor or executor.

(3) There shall be three degrees of disability constituting entitlement to a pension on the basis of incapacity for work:

(a) First-degree disability, where the person concerned has become totally incapacitated for work and requires care and supervision by another person;

(b) Second-degree disability, where the person concerned has become totally incapacitated for work but can tend to his needs without the help of another person;

(c) Third-degree disability, where the person concerned has become partially incapacitated for work.

Art. 17. The disability pension shall be of two types, according to the causes of the disability:

- (a) Disabilities caused by an industrial accident or occupational disease;
- (b) Disabilities caused by a non-occupational accident or chronic disease.

Art. 18. Pensions for disability caused by an occupational accident or disease shall be granted, irrespective of length of service:

- (a) To wage earners;
- (b) To persons performing military duties;
- (c) To students undergoing their practical training;
- (d) To persons engaged in State or social tasks.

Chapter IV

SURVIVOR'S PENSIONS

Art. 30. (1) The following dependants shall be entitled to a survivor's pension: the children, the wife, the husband, the parents, the brothers and the sisters, separately and under the conditions laid down for each.

(2) The dependants shall be entitled to a survivor's pension, provided that the deceased was a pensioner or that he fulfilled the eligibility requirements for a pension at the date of his death.

(3) If the deceased person was not a pensioner, but his length of service entitled him to a full retirement pension, the dependants shall be entitled to a survivor's pension, irrespective of the date of decease of the breadwinner.

(4) Survivor's pensions shall be granted at the request of the beneficiary or his sponsor or executor.

Art. 31. (1) The children shall be entitled to a survivor's pension:

(a) Up to the age of sixteen or, if they are attending school, until completion of their studies, but not beyond the age of twenty-five;

(b) If they have become incapacitated, irrespective of the degree of disability, before reaching the age prescribed in sub-paragraph (a) above, throughout the period of disability.

(2) In the event of the death of either parent, the children shall be entitled to a survivor's pension even if the surviving parent is working.

Art. 32. (1) The husband or wife shall be entitled to a survivor's pension provided that:

(a) The wife has reached the age of fifty-five and the husband the age of sixty, for life;

(b) The surviving spouse has one or more children at the date of the death of either the husband or the wife, until such time as the children reach the age of sixteen or, if they are attending school, until completion of their studies, but not beyond the age of twenty-five, or until such time as they marry or die before reaching that age;

(c) They have become incapacitated, irrespective of the degree of disability, for the whole of the period of disability.

(2) The wife shall likewise be entitled to a survivor's pension, for life, provided that:

(a) She has reached the age of fifty and has had five or more children up to the time of the death of the breadwinner;

(b) She has reached the age of fifty and been married to the deceased husband for at least twenty years; if she was married for a period of between fifteen and twenty years, she shall be entitled to a pension at the age of fifty, but it shall be calculated in proportion to the number of years of marriage.

(3) The husband or wife shall be entitled to a survivor's pension if, at the date of application for such pension, he or she is not working and is not engaged in a profession or occupation on his or her own account.

(4) Any husband or wife who does not fulfil the conditions laid down in paragraphs (1) and (2) above shall be entitled to a survivor's pension until such time as he or she starts work, but for a period not exceeding six months from the date of the death of the breadwinner.

Art. 33. (1) The parents shall be entitled to a survivor's pension, provided that:

(a) The father has reached the age of sixty and the mother the age of fifty-five, for life;

(b) They have become incapacitated, irrespective of the degree of disability: for the whole of the period of disability.

(2) The parents shall be entitled to a survivor's pension if, at the date of the application, they are not working and are not engaged in a profession or occupation of their own account.

Art. 34. (1) The brothers and sisters shall be entitled to a survivor's pension:

(a) Up to the age of sixteen or, if they are attending school, until completion of their studies, but not beyond the age of twenty-five;

(b) If they have become incapacitated, irrespective of the degree of disability, before reaching the age mentioned in sub-paragraph (a) above, for the whole of the period of disability.

(2) The brothers and sisters shall be entitled to a survivor's pension if, at the date of the application for such pension, they have no surviving parents. If they have parents still living, the pension shall be granted only if the latter receive no pension, are not working and are not engaged in a profession or occupation on their own account.

Art. 35. (1) Any surviving husband, wife or parent of the deceased person who does not fulfil the conditions laid down in article 32 or article 33 shall receive a survivor's pension for the whole of the period in which he or she is not working and is not engaged in a profession or occupation on his or her own account, if he or she is responsible for

the care of one or more of the deceased person's children, brothers or sisters, under the age of sixteen. The pension shall be payable until the child, brother or sister, reaches that age or until such time as they marry or die before reaching that age.

(2) The provisions of preceding paragraph (1) shall apply to the surviving spouse only in cases when the latter is responsible for the care of one or more children by another marriage or of the brothers or sisters of the deceased spouse.

Art. 68. (1) The contract of employment of wage earners who have been retired at the request of the establishment concerned shall be terminated on the date of registration for a pension. Failure to terminate the contract of employment shall automatically void the decision to authorize retirement.

(2) The contract of employment of persons granted a pension at their own request may also be terminated on the date of registration for the pension.

(3) The contract of employment of wage earners who have been retired upon reaching the age limit and the contracts of persons who are in receipt of pensions granted by the decision of the Council of Ministers or other appropriate bodies, may be terminated at any time.

Art. 69. Other sectors with their own insurance and pension systems shall be required to draw up their regulations on the basis of the principles of the present Act, taking into account the special characteristics of each sector.

Art. 70. Persons disabled and injured in war, their surviving dependants, as well as the surviving dependants of persons who died or disappeared during the war shall receive a pension in accordance with the present Act. The amounts shall be fixed by decision of the Council of Ministers.

TITLE II

SUPPLEMENTARY PENSIONS

Chapter XXV

Art. 71. In addition to the social insurance pension, a supplementary pension shall be introduced as from 1 January 1961, and shall be based on the principle of the mutual benefit of wage earners.

Art. 72. (1) The funds required for payment of the supplementary pension shall be constituted by contributions by all wage earners. The contribution shall amount to 2 per cent of the monthly contractual wage established by law and shall be payable, through the establishments concerned, into a special account of the General Association of Trade Unions held at the National Bank of the Socialist Republic of Romania.

(2) The contributions shall not be withheld during the period in which the wage earner is temporarily incapacitated, on leave for the purposes of study or on unpaid leave of absence, provided such periods of leave do not exceed thirty days in any calendar year. However, such periods shall be deemed to be contributory periods. Contributions shall not be withheld during unpaid leave of absence exceeding thirty days, but that period shall not be regarded as a period of contributory service.

(3) Annual interest of 1.5 per cent shall be paid by the National Bank of the Socialist Republic of Romania on the sums deposited and shall form part of the supplementary pension fund.

Art. 73. (1) The following shall be entitled to a supplementary pension: pensioners and beneficiaries of social welfare benefits under State social insurance schemes, who have contributed to the supplementary pension fund while they were wage earners.

(2) Pensioners who are surviving dependants shall likewise be entitled to a supplementary pension in cases where the deceased breadwinner has contributed to the pension fund.

SAN MARINO¹

DECREE No. 1 OF 17 FEBRUARY 1966 ON COMPULSORY IMMUNIZATION AGAINST POLIOMYELITIS²

Art. 1. With effect from 1 April 1966, throughout the territory of the Republic of San Marino and for children resident therein, immunization against poliomyelitis shall be compulsory before the age of one year.

Immunization shall be carried out free of charge.

...

¹ Texts furnished by the Government of the Republic of San Marino.

² *Bollettino Ufficiale*, No. 1, 28 April 1966.

ACT No. 33 OF 25 NOVEMBER 1966 ON THE INTRODUCTION OF FAMILY ALLOWANCES FOR AGRICULTURAL EMPLOYEES³

Art. 1. The family allowances referred to in Act No. 16 of 5 March 1963 shall be extended also to full-time agricultural employees working in agricultural enterprises.

Entitlement to family allowances shall be subject to the observance of the rules, conditions and terms set out in the aforementioned act, except as laid down in the articles below.

Art. 2. For the purposes of this Act, a full-time employee means a manual labourer continuously employed exclusively in agricultural enterprises, with an annual work contract issued to him individually and not to his family, who has been engaged to carry out general, qualified or specialized work.

Art. 3. The designation of full-time agricultural employee shall be granted by the Agricultural Office on presentation of a request on unstamped paper, accompanied by a work contract signed by the parties and by a declaration by the employer, who is required to undertake to employ the full-time labourer exclusively on work connected with the agricultural activities of the enterprise or farm and not on other collateral activities of a commercial or industrial nature or connected with

the processing of agricultural products which do not originate in the enterprise or farm.

The Agricultural Office, after due verification of the actual opportunities for the employment of labour in the enterprise or farm in which the full-time employee is to work, especially with regard to the continuity of work during the year, shall issue the appropriate certificate for presentation to the Social Security and Welfare Office, which will pay the allowances.

Art. 4. If the full-time employee carries out non-agricultural work for any period of time, he shall be liable to loss of the family allowances.

Payment of the allowances may be resumed upon presentation of a new request under article 3.

Art. 5. Cessation of the work contract shall result in the loss of family allowances with effect from the month following the month in which the relationship is dissolved. The full-time employee is required to inform the Social Security and Welfare Office of the cessation of the contract within the first five days of the month immediately following.

In order to ensure continued payment of family allowances, the full-time employee must also, within the first five days of every month, inform

³ *Ibid.*, No. 4, 31 December 1966.

the Agricultural Office of any new work contract entered into with other agricultural enterprises, by presenting the documents mentioned in the first part of article 3. The Agricultural Office, having ascertained that the requirements of the Act have been satisfied, shall within ten days transmit to the Social Security and Welfare Office the certificate referred to in article 3 in order that the payment of the allowances may be continued.

Art. 6. The Employment Exchange shall issue an appropriate work booklet on presentation of a request in the proper form accompanied by a declaration by the Agricultural Office certifying the designation of "full-time agricultural employee".

Art. 7. This Act shall enter into force on 1 December 1966.

SENEGAL

ACT No. 66-64 of 30 JUNE 1966 ESTABLISHING THE CODE OF COMMUNAL ADMINISTRATION¹

TITLE I

GENERAL PROVISIONS

Article 1

The commune is a group of individuals living in the same locality, united by a community of interests resulting from their neighbourly relationship, desirous of managing their own affairs, and capable of finding the means necessary to carry out their own particular activities within the national community and in the national interest.

The commune is a moral person in public law. Its representative organs shall exercise, in the territorial district under their jurisdiction, the functions set out in this Code.

...

TITLE III

MUNICIPAL COUNCILS

Chapter I

COMPOSITION OF MUNICIPAL COUNCILS

SECTION I. GENERAL PROVISIONS

Article 17

...

Municipal councillors shall be elected by direct universal suffrage.

Article 18

The election shall be held in each commune a single ballot being cast on a majority party list, it being prohibited to split the vote (*panachage*), resort to preferential voting and enter an incomplete list.

In the event that the elections should be cancelled or that the municipal council should lose

one third of its members as a result of vacancies, by-elections shall be held within six months of the last vacancy or the cancellation.

In the year preceding renewal of the entire membership, by-elections shall not be mandatory unless the municipal council has lost half its members.

Article 19

Municipal councillors shall be elected for a term of six years. This term shall run from the date of the renewal of the entire membership of each council, regardless of the date of such renewal.

However, the mandate of a municipal council may be shortened or extended by decree, in order to make its renewal of membership coincide with the date of the general renewal of municipal councils.

Article 20

Senegalese nationals of either sex, who have attained the age of twenty-one, are properly registered on the electoral list of the commune and are not disqualified in any of the ways specified by law, shall be eligible to vote and stand for election.

SECTION II. ELIGIBILITY, INELIGIBILITY, INCOMPATIBILITY

Article 21

Subject to the provisions of articles 22, 23, 24 and 59, all electors of the commune and citizens twenty-one years old or over, who are registered on the commune's direct taxation rolls or can show proof that they should be so registered as at 1 January of the year of the election, shall be eligible for election to the municipal council.

However, the number of councillors who are not residents of the commune at the time of the election may not exceed one fourth of the members of the council. If it should exceed that figure, article 28 of this Code shall apply, with due regard to the order prescribed in article 29.

¹ *Journal officiel de la République du Sénégal*, No. 3792, 30 June 1966.

Article 22

The following may not be municipal councillors:

1. Persons deprived of electoral rights;
2. Persons under guardianship;
3. Persons receiving assistance under communal budgets, the State budget and from welfare offices;
4. Persons who have not fulfilled their obligations under the laws and regulations on army recruitment;
5. Persons who have been convicted under article 55 of this Act.
6. Persons convicted under articles 101, 102, 103 and 104 of the Penal Code;
7. Persons fulfilling any of the conditions of ineligibility or incompatibility specified in the electoral code;
8. Except where otherwise provided in international conventions, naturalized aliens for a period of ten years from the date of the naturalization decree unless the Government has removed this disqualification as a reward for exceptional services rendered to Senegal, in accordance with article 12 of Act No. 61-10 of 7 March 1961.
9. Councillors declared to have resigned under articles 58, 60 and 62 of this Act, in municipal elections held following the date of their resignation, or, under the terms of articles 58 and 60, mandatory for a period of one year from the date of the resignation.

Article 23

The following shall not be eligible to stand for election during the term of their service:

1. Military personnel of all ranks on active service and those liable to civilian service;
2. Members of the Republic Guard and the police force.

The following shall not be eligible to stand for election while they are exercising their functions and for a period of six months after the cessation of their functions:

1. State Inspectors-General, assistant inspectors and civil administrators;
2. Directors and chiefs of administrative departments and directors of public institutions;
3. Judges of the Supreme Court, the Appeal Courts and courts of first instance, cantonal judges, *cadis* and their deputies;
4. Officials of the Department of Labour and Social Security vested with the powers of regional inspectors;
5. Governors, Prefects and their assistants and district chiefs;
6. The Treasurer-General, paymasters, tax collectors, municipal tax collectors and special tax officers.

The ineligibility of persons holding the offices specified in the preceding paragraph shall extend, in the same conditions, to persons who have been exercising or who exercised the same functions for a period of not less than six months without being or having been established in the said offices.

Article 24

The following shall not be eligible to stand for election in the jurisdictional area in which they exercise their functions:

1. Entrepreneurs or concessionaries of the commune, when they are bound by an agreement placing them in a permanent relationship of dependence or interest with respect to the commune;
2. Engineers and works foremen in charge of municipal services and road inspectors;
3. Heads of regional and departmental public services and regional and departmental representatives of public institutions;
4. Accountants dealing with communal funds and directors of tax assessment and recovery departments;
5. Officials of any nature employed in municipal tax collection;
6. Salaried officials of the commune, which shall not include those who are public officials or exercise an independent profession and accordingly receive no remuneration from the commune except for the services which they render in the exercise of that profession.

Article 25

The office of municipal councillor is incompatible with the functions enumerated in articles 23 and 24 of this Code.

Municipal councillors appointed after their election to the office referred to in the first paragraph of this article shall be given thirty days from the date of appointment to decide whether to accept the post or retain their office. If they fail to submit a declaration to their official superiors and to the supervisory authority within this period, they shall be deemed to have decided to retain the said post.

Article 26

Pending promulgation of an Electoral Code, the rules governing municipal elections shall be determined by the general electoral laws and by provisions of the Acts of 5 April 1884 and 18 November 1955, which are not contrary to this Code, together with the texts amending or supplementing them.

Article 27

No one may be a member of more than one municipal council.

A municipal councillor elected in several communes shall have ten days from the date when the result of the vote is announced to declare where he wishes to serve. His declaration shall be addressed to the Minister in charge of the supervision of local government.

If the elected councillor does not give notice of his decision within that period, he shall legitimately become a member of the council of the commune with the fewest electors.

Ascendants and descendants, spouses, brothers and relations by marriage in the same degree may not be members of the same municipal council at the same time.

However, in the case of relations by marriage, the relationship shall cease when the person who brought it about and the issue of his union with the other spouse are deceased or, in the case of

divorce, when there are no longer any living issue of the marriage.

The first person listed in the table drawn up under article 29 of this Code shall be considered as elected.

Article 28

A municipal councillor who, for any reason, comes within the categories of exclusion or incompatibility established by law may at any time be declared to have resigned by the supervisory authority, subject to an appeal brought before the Appeals Court within ten days of the notification and before the Supreme Court in accordance with the established procedure.

...

SIERRA LEONE

THE CINEMATOGRAPH EXHIBITIONS ACT, 1966

Act No. 15 of 1966, assented to on 15 July 1966 and entered into force on 21 July 1966¹

...

2. (1) No person shall conduct, present, or give, or allow to be conducted, presented, or given any exhibition for the purposes of which inflammable films are used, except in premises licensed for the purpose by the prescribed authority under this Act, and in accordance with the provisions of such licence.

(2) No licence shall be granted in respect of any premises unless the prescribed authority is satisfied that such premises are safe and otherwise suitable for the purposes of the proposed exhibition.

(3) The prescribed authority may without assigning any reasons for so doing:

- (a) Refuse to grant any such licence, or
- (b) Grant such licence subject to such conditions and restrictions as the said authority may deem fit to impose.

3. An appeal shall lie to the Minister from any decision of the prescribed authority made under section 2 and the Minister's decision shall not be subject to question in any Court.

...

6. (1) No person shall present or exhibit, or allow to be presented or exhibited, any film pictures or other similar optical effects unless the same shall first have been approved and passed by the Board of Control appointed under subsection (2).

(2) The Minister may by Order, appoint and direct a Board of Control for the purpose of viewing, examining and censoring films intended for use in connection with an exhibition and the Board so appointed shall by virtue of this Act be invested with all legal powers necessary for the proper performance of its duties and functions.

(3) Whenever the Board shall pass and approve any film, it shall signify its decision by a certificate in the prescribed form.

(4) The Board may:

- (a) Pass and approve part of a film whilst disapproving another part thereof;
- (b) Pass and approve any film subject to special conditions and restrictions as it may deem fit;
- (c) At any time revoke its decision; or
- (d) Give any directions in the matter as respects any film, as it deems fit,

and may so act as it shall think proper for the purpose of giving effect to its decision.

(5) A film or part of a film which has been passed and approved by the Board of Control may, subject always to the provisions of section 2 be exhibited in any part of Sierra Leone.

(6) When the Board has refused to pass and approve any film or part of a film, it may retain such film or excise and retain such part of a film until it is exported from Sierra Leone or otherwise disposed of in accordance with the directions of the Board.

7. No person shall display or cause to be displayed any picture, photograph, poster or figure advertising any film unless the same has been approved by the Board and marked by it in the manner prescribed.

8. Any District Officer or Police Officer may at any time enter any premises in which he has reason to believe that an exhibition is being or about to be given, with a view to seeing whether the provisions of this Act or any Order or Rule made thereunder and the conditions of any licence granted under this Act have been complied with.

...

10. The restrictions set forth in this Act shall not apply to an exhibition given in private premises to which the public are not admitted on payment or otherwise.

...

¹ Supplement to the Sierra Leone Gazette, vol. XCVII, No. 58, 21 July 1966.

THE PUBLIC ORDER (AMENDMENT) ACT, 1966

Act No. 17 of 1966, assented to on 15 July 1966 and entered into force on 21 July 1966²

2. Section 45 of the Public Order Act is hereby repealed and replaced by the following new section:

"45. It shall be lawful for the Prime Minister, whenever any tumult or riot has taken place or may reasonably be apprehended, or public order is otherwise endangered, by proclamation, to put in force for a period not exceeding three months in such areas as are named in the Proclamation all or any of the following provisions:

"(a) A Police Officer may disperse any assemblage whatever which in his opinion is likely to cause, provoke, facilitate or render more serious, any disturbance or breach of the peace in any street, highway, path or public place and may arrest without a warrant any person in such assemblage refusing or delaying to disperse or reassembling after dispersal, and charge such person before a Magistrate. Any

² *Ibid.*

person so charged shall if the Magistrate is of the same opinion as aforesaid, be convicted and liable on such conviction to imprisonment for a period not exceeding six months or to a fine not exceeding one hundred leones, or both;

"(b) Any person found in a street, highway, path or public place in possession of any stick, staff, bludgeon, iron bar or weapon of any sort or description which, in the opinion of a Police Officer he is carrying or is likely to use for the purpose of assisting a disturbance may be arrested, without a warrant and charged before a Magistrate and if the Magistrate is of the same opinion as aforesaid, shall be convicted by him and punished in like manner as is laid down in paragraph (a);

"(c) Any person making use of any words or gestures which in the opinion of a Police Officer are likely to lead to a breach of the peace, may be arrested without a warrant and charged before a Magistrate and if the Magistrate is of the same opinion as aforesaid shall be convicted by him and punished in like manner as is laid down in paragraph (a)."

THE ABOLITION OF FORCED LABOUR CONVENTION, 1957
(APPLICATION TO MERCHANT SEAMEN) ACT, 1966

Act No. 18 of 1966, assented to on 15 July 1966
and entered into force on 21 July 1966³

1. Notwithstanding the provisions of section 45 of the Prisons Act, 1960, no person charged with or convicted of an offence under the provisions of section 221, or paragraphs (b), (c) or (e) of subsection (1) of section 225 of the Merchant Shipping Act, 1894, shall, under any circumstances, be required to perform any form of forced or compulsory labour (which expression shall for the purposes of this Act be deemed to include any form of labour or service whatsoever required to be performed in a prison) but shall, whilst in prison, receive the same treatment as that accorded to unconvicted criminal prisoners.

³ *Ibid.*

THE FOREIGN MARRIAGE (RECOGNITION) ACT, 1966

Act No. 29 of 1966, assented to on 12 September 1966
and deemed to have entered into force on 27 April 1961⁴

2. All marriages between parties one of whom at least is a citizen of Sierra Leone solemnized in accordance with the provisions of the United Kingdom Foreign Marriage Act, 1892, in any foreign country or place by or before a marriage officer as defined in section 11 of that Act shall be as valid as if the same had been performed in Sierra Leone in accordance with the provisions of the Civil Marriage Act.

⁴ *Supplement to the Sierra Leone Gazette*, vol. XCVII, No. 72, 22 September 1966.

THE NON-CITIZEN'S (INTERESTS IN LAND) ACT, 1966

Act No. 30 of 1966, assented to on 12 September 1966

and entered into force on 22 September 1966⁵

1. This Act shall apply to the Western Area only.

2. In this Act:

"Board" means a Board consisting of the Ministers responsible for Trade and Industry, Lands, Finance, and Development and the Attorney-General, of which the Minister of Lands shall be the Chairman.

"Non-Citizen" means:

(a) Any individual who is not a citizen of Sierra Leone, and

(b) Any company, association or body of persons corporate or incorporate:

- (i) More than one half of the members of which are persons who are not citizens of Sierra Leone; or
- (ii) Which by any means is controlled whether directly or indirectly by such persons; or
- (iii) In the case of a company having a share capital, in which more than one half of the share capital is held beneficially by or on behalf of or in trust for such persons;

"Reserved leasehold" means leaseholds of which the unexpired term exceeds twenty-one years.

3. No non-citizen shall purchase or receive in exchange or as a gift any freehold land in the Western Area.

4. (1) No non-citizen shall purchase or receive in exchange or as a gift any reserved leaseholds in the Western Area without first obtaining a licence from the Board.

(2) The Board may grant licences to purchase or receive in exchange or as a gift reserved leaseholds to non-citizens on such terms and conditions as it shall think fit and every such licence shall contain a description of the land to which it applies.

(3) At least three weeks before the grant of any such licence the Board shall publish a notice of its intention to grant the licence in the *Gazette* specifying the land and the name of the intending purchaser.

(4) The provisions of subsection (3) shall not apply to sales by public auction.

⁵ *Ibid.*

SINGAPORE

NOTE¹

The Constitutional Commission referred to in paragraph 10 of the article submitted in respect of the *Yearbook on Human Rights for 1965*² has now completed its work. Its main recommendations are:

- (a) That a non-elected advisory body called the "Council of State" be established;
- (b) That the office of *Ombudsman* (or Parliamentary Commissioner for Administration) be created; and
- (c) That the provisions of the Constitution be entrenched in varying degrees according to their importance.

Extracts from the Report of the Constitutional Commission appear below.

¹ Note and text of the Report of the Constitutional Commission furnished by the Government of Singapore.

² See *Yearbook on Human Rights for 1965*, p. 267.

REPORT OF THE CONSTITUTIONAL COMMISSION, 1966³

EXTRACTS

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

INTRODUCTION

20. In this present era a nation is the sum total of all its citizens. In a nation, under a democratic form of government, each and everyone of its citizens is entitled to certain fundamental rights and freedoms, the enjoyment of which is protected by law and the enforcement of which can be obtained from the Courts whose Judges are independent of the Executive. In return for the protection afforded to him of the enjoyment of these rights and freedoms each citizen owes a corresponding duty not to exercise any of these rights and freedoms if by so doing he unjustifiably prejudices the public interest or the rights and freedoms of other citizens.

...

25. We think it is useful if we draw attention here to the fact that by the Republic of Singapore Independence Act, 1965, it is provided that the

languages of the three major communities, i.e. Malay, Mandarin and Tamil, and the English language, which has universal use, shall be the official languages in Singapore and that the Malay language, which is the language of the indigenous people of Singapore, shall be the national language with the proviso that no person shall be prohibited or prevented from using or from teaching or learning any other language and the further proviso that Government has the right to preserve and sustain the use and study of the language of any other community in Singapore.

PRESENT POSITION

26. We have, therefore, in the first place concerned ourselves with inquiring into the fundamental rights and freedoms a citizen of this Republic and an individual whether a citizen or not living here now enjoys, the manner in which his enjoyment of these rights and freedoms is protected and what recourse he has to the Courts for the enforcement of these rights. We find that the authoritative version of what is described as the present Constitution of Singapore which is contained in the *Government Gazette Reprints Supplement* (Acts) No. 14 of 1966 dated 25 March, 1966, contains no provisions relating to

³ Printed by Lim Bian Han, Government Printer, Singapore.

fundamental rights and freedoms. This is an accident of history because the written Constitution was enacted to provide for the situation when Singapore became a member State in the Federation known as Malaysia in September, 1963. When Malaysia came into being the fundamental liberties provisions in the Constitution of Malaysia applied to Singapore.

27. When Singapore was separated from Malaysia on 9 August, 1965, by an Act passed by the Parliament of Singapore in December, 1965, and intitled the Republic of Singapore Independence Act, 1965, which retrospective effect to 9 August, 1965, the fundamental liberties provisions in the Constitution of Malaysia were with one exception continued in force in Singapore, "subject to such modifications, adaptations and qualifications and exceptions as may be necessary to bring them into conformity with the independent status of Singapore". The present position then is that these provisions relating to fundamental liberties are part of the constitutional law of Singapore but are not contained in the Constitution of Singapore.

28. Some of these provisions which are now part of the constitutional law of Singapore apply to all persons and some apply to citizens only. Summarising them in very general terms, those that apply to every individual protect his right to life, liberty, security of his person, freedom of conscience and give him equality before and equal protection of the law, whilst those that apply to a citizen only, protect his right not to be banished, to freedom of movement and to freedom from discrimination on the ground only of race, religion, descent or place of birth in any law. We have given full and anxious consideration to these provisions bearing constantly in mind what we have said in the introductory chapter and the representations made to us and we now make the following recommendations.

RECOMMENDATIONS

29. We recommend the retention of article 5 of the Constitution of Malaysia and that it should be written into the Constitution of Singapore. This article protects the right to life and personal liberty of any individual.

30. We recommend the retention of article 6 of the Constitution of Malaysia and that it should be written into the Constitution of Singapore. This article prohibits slavery and all forms of forced labour.

31. We recommend the retention of article 7 of the Constitution of Malaysia and that it should be written into the Constitution of Singapore. This article gives protection to every individual against retrospective criminal laws and repeated trials.

32. We deal now with article 8 of thy present Constitution of Malaysia. Having regard to our Terms of Reference, our recommendations on the form and substance that this article should take and contain will constitute the very core of our

views on the whole problem of minority rights in Singapore. In the first place we deem it essential that the principle of equality before the law and equal protection of the law for all persons should be clearly and categorically laid down. Secondly, it should be no less clearly and categorically laid down that there shall be no discrimination in any law or in the effect of any law, except as expressly authorised by the Constitution, against any citizen on the ground only of race, religion, place of birth or descent. Lastly, it should also be clearly and categorically laid down that there shall be no discrimination in the administration of any law, except as expressly authorised by the Constitution, against any person on the ground only of race, religion, place of birth or descent.

33. We consider, having regard to the multi-racial, multi-cultural, multi-lingual and multi-religious composition of the population of Singapore and of its citizens, that the recommendations we have outlined in the preceding paragraph will not only form an impregnable shield against racial communalism and religious bigotry as well as an effective weapon to wipe away any fears the minorities may harbour concerning discriminatory treatment but will also lay a firm and lasting foundation on which to build a democratic, equal and just multi-racial society in Singapore. We accordingly recommend that the present article 8 should be deleted and in its place we recommend the following two articles:

"8A. All persons are equal before the law and entitled to the equal protection of the law.

"8B. (1) Except as expressly authorised by this Constitution and subject to the provisions of this article:

"(a) No law shall make any provision that is discriminatory either of itself or in its effect; and

"(b) No persons shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

"(2) In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, colour or creed whereby persons of one such description are subject to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.

"(3) Paragraph (1) (a) of this article shall not apply to any law so far as that law makes provision:

"(a) For the appropriation of the general revenues of Singapore;

"(b) With respect to persons who are not citizens of Singapore;

"(c) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.

"(4). Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1)(a) of this article to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, or any office in the service of a body corporate established by any law for public purposes.

"(5) Paragraph (1)(b) of this article shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in either of the two preceding paragraphs.

"(6) For the purposes of paragraph (1)(b) of this article, the certificate of the Attorney-General that the exercise of any discretion relating to the institution, conduct or discontinuance of criminal proceedings in any court that is vested in him or in any other person by or under this Constitution or any other law has not been discriminatory shall be conclusive and shall not be called in question in any court."

34. This is we think the most appropriate place in our report to refer to article 89 (2) of the present Constitution of Singapore which provides:

"(2) The Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language."

We have given very serious consideration, in the light of what we have said in the immediately preceding paragraphs, to this particular provision in the present Constitution of Singapore. We find a paragraph in almost identical terms is contained in the preamble to the Singapore (Constitution) Order in Council 1958 under which Singapore attained full internal self government in September 1959, and when Singapore became a part of the Federation known as Malaysia, the Constitution of the State of Singapore as provided by the Sabah, Sarawak and Singapore (State Constitutions) Order in Council 1963 had an identical provision. No representations have been made to us against its continued presence in the Constitution nor do we consider that it would be within our Terms of Reference to recommend altering the *status quo* in this respect.

35. We think we ought to mention that a Malay political organisation has urged upon us to consider recommending a definition for the word "Malays" in article 89 (2). This organisation has suggested that the definition should be similar to that found in the Constitution of Malaysia namely—"Malay means a person who professes the Muslim religion, habitually speaks the Malay language and conforms to Malay custom", but conceded that it should be limited to citizens only. Having regard to the description of Malays as "the

indigenous people of Singapore" in the said article, two objections could fairly be made to the suggested definition. First, certain citizens of Singapore, who are not of the Malay race, or not born in Singapore, would be accorded "the special position" by virtue of their profession of Islam, their observance of Malay custom and their habitual speaking of the Malay language. Secondly, all those Malays, citizens of Singapore, who choose to renounce Islam (admittedly very few) would be excluded from the benefit of "the special position." In any event we do not consider it would be within our terms of reference to recommend altering the content of article 89 (2).

36. Not all the provisions of article 9 of the present Constitution of Malaysia which prohibits banishment and guarantees freedom of movement are applicable to a unitary Republic and accordingly we recommend that article 9 be amended to provide as follows:

"9. (1) No citizen shall be banished or excluded from Singapore;

"(2) Subject to any law relating to the security of Singapore, public order, public health, or the punishment of offenders, every citizen has the right freely to move throughout Singapore and to reside in any part thereof."

37. We recommend the retention of article 10 of the Constitution of Malaysia and that it should be written into the Constitution of Singapore. This article gives every citizen the right to freedom of speech, assembly and association.

38. Article 11 of the Constitution of Malaysia deals with freedom of religion and gives every person the right to profess and practise his religion and subject to one exception to propagate it. The one exception permits any State in the Federation to control or restrict by law the propagation of any religious doctrine or belief among persons professing the Muslim religion. In only one of the memoranda sent to us was a request made that this particular exception should be left untouched but no reasons were given for it. We have earnestly considered this request but we are unable to recommend the retention of this particular exception because we are not aware of any law in Singapore which controls or restricts the propagation of any religious doctrine or beliefs among persons professing the Muslim religion and because we think it would be inappropriate and indeed inconsistent that there should be any provision in the Constitution of a democratic secular state such as Singapore expressly singling out a particular religion for special treatment of this nature. We accordingly recommend that article 11 be altered to read as follows:

"11. (1) Every person has the right to profess and practise his religion and to propagate it.

"(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

"(3) Every religious group has the right:

"(a) To manage its own religious affairs;

“(b) To establish and maintain institutions for religious or charitable purposes; and

“(c) To acquire and own property and hold and administer it in accordance with law.

“(4) This article does not authorise any act contrary to any general law relating to public order, public health or morality.”

39. Article 12 of the Constitution of Malaysia deals with the subject of education. It prohibits discrimination on the grounds only of religion, race, descent or place of birth in the administration of any educational institution maintained by a public authority and the provision out of the funds of a public authority of financial aid for the maintenance or education of students in any educational institution. It also prohibits discrimination on the ground of religion only in any law or in the administration of any law relating to the establishment and maintenance by religious groups of institutions for the education of children and also gives the right to every religious group to establish and maintain such institutions and to provide therein instruction in its own religion. However, it also enables the enactment of a valid law which provides for special financial aid for the maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion and this particular provision we recommend should be deleted for reasons similar to those we have already expressed in the immediately preceding paragraph. We accordingly recommend that article 12 should be altered to provide as follows:

“12. (1) Without prejudice to the generality of articles 8 A and 8 B there shall be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth:

“(a) In the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or

“(b) In providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside Singapore).

“(2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law.

“(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

“(4) For the purposes of clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.”

40. In looking at other written Constitutions we find a fundamental human right which is acknowledged and protected in all of them but which is not written into the Constitution of Malaysia. This is the right of every individual not to be subjected to torture or inhuman treatment. We think it is beneficial if this right is written into the Constitution of Singapore as a fundamental right and accordingly we recommend a new article as follows:

“13. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

“(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorises the infliction of any punishment or the administration of any treatment that was lawful immediately before the coming into force of this article.”

41. The next fundamental right that needs to be considered by us is the right to property. This is accorded by article 13 of the Constitution of Malaysia but, as we have said in paragraph 14 of this Report, it has not been retained as part of our constitutional law after separation from Malaysia. In the light of the fact that the Legislature has decided that this particular article of the Constitution of Malaysia should not be so retained, we have given the most serious and detailed consideration, having regard always to our Terms of Reference, to the subject of a person's right to property. We find that all the written Constitutions we have looked at specifically provide, as a fundamental human right, the right of every person not be deprived of his property save in accordance with law and the right to compensation whenever his property is compulsorily acquired. We find also that one of the human rights proclaimed under the Universal Declaration of Human Rights by the General Assembly of the United Nations on 10 December, 1948, is the right of an individual not to be arbitrarily deprived of his property.

42. We are convinced that it is necessary, sound and wise and in the best interests of the people of Singapore, with the multi-racial composition of its population, that its Constitution should recognise and proclaim this fundamental right. We do not propose, however, to recommend the re-introduction of article 13 of the Constitution of Malaysia in its present form. We recognise the fact that as the population increases over the years more and more land will be required for public purposes if the needs of the general public are to be adequately served. We recognise also that, Singapore being only a small island of 225 square miles, as Singapore becomes more and more developed and more and better public amenities are provided out of public funds, land will, largely by reason of such public expenditure, increasingly become a more and more valuable commodity in the future. We therefore consider it is imperative that a just and fair balance must be struck between

the public interest on the one hand and private ownership on the other, and we think that this result will best be achieved if we recommend as we now do that there should be an article in the Constitution providing as follows:

"14. (1) No person shall be deprived of property save in accordance with law.

"(2) No law shall provide for the compulsory acquisition or use of property except for a public purpose or a purpose useful or beneficial to the public and except upon just terms."

43. As a sovereign independent nation Singapore is barely one year old. Its citizens, during the years before independence, have been able to choose their own government at general elections held by secret vote on only two occasions, once in 1959 and next in 1963. The next general election, the first since independence, is due in 1968. The people of Singapore have thus had little experience of general elections nor can it be safely assumed that they have grown up to cherish as an inalienable right, the right to be governed by a government of their own choice, expressed in periodic and general elections by universal and equal suffrage and held by secret vote. With this limited experience of elections, we do not consider it safe to assume that a significant proportion of the people of Singapore will be able to realise, until it is too late to prevent it, that any inroads have been made into the democratic system of general elections by a future government intent on undermining first and ultimately destroying the practice of democracy in Singapore. We therefore think it both necessary and wise to recommend that this right should be written into the Constitution as a

fundamental right and should be entrenched in the Constitution in the same manner as the other fundamental rights we have recommended. We accordingly recommend that there should be a new article in the Constitution granting to the citizens of Singapore the right to elect a government of their choice as expressed in general elections held at reasonable periodic intervals by secret vote. In this connection we think it is right that we should draw attention to the provisions of section 39 (3) of the Singapore Parliament Elections Ordinance (chapter 53). This subsection requires that "each ballot paper shall have a number printed on the back and shall have attached a counterfoil with the same number printed on the face". It appears to us that this provision is inconsistent with the right to secrecy of the vote.

44. The Constitution of Malaysia contains no provision specifically dealing with the right to apply to court for the enforcement of those provisions relating to fundamental rights and liberties. We consider it is essential that there should be a specific provision in the Constitution of Singapore guaranteeing this right to every person who alleges that any of these provisions (being the provisions we recommend in this chapter) has been, is being or is likely to be contravened in relation to him and we accordingly recommend that an article similar to article 19 of the Constitution of Guyana should be included in the Constitution of Singapore. This article in essence gives jurisdiction to the High Court to hear and determine such applications and to make such orders as the High Court may consider appropriate for the purpose of enforcing these provisions.

...

THE BANISHMENT ORDINANCE, 1959

As extended to Singapore and modified by the Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963 (L.N. 231 of 1963) and the Modification of Laws (Internal Security and Public Order) (Singapore) (Amendment) Order, 1964 (L.N. 407 of 1964) and further modified by the Modification of Laws (Banishment) Order, 1966 (G.N. No. S.14 of 1966)⁴

...

3. (1) Where it appears to the Minister, on receiving written information submitted to him by the Commissioner of Police, that there are reasonable grounds for believing that the banishment of any person whom the Minister is satisfied is not a citizen of Singapore or an exempted person is conducive to the good of Singapore, the Minister may issue a warrant for the arrest and detention of such person.

...

4. (1) The police or prison officer executing a warrant of arrest and detention shall notify the substance thereof to the person arrested or detained and, if so required, shall show him the

warrant or a copy thereof under the hand of the authority by whom it was issued.

(2) Where in execution of a warrant of arrest and detention any person is arrested or is required to be further detained in prison after the expiration of any sentence of imprisonment passed upon him, the officer executing such warrant shall without unnecessary delay, and in any case within twenty-four hours (excluding the time of any necessary journey) from the arrest or from the expiration of such sentence produce the person arrested or so detained before a Magistrate who shall, upon production of the warrant duly signed and upon proof of the identity of the person arrested or detained with the person named in the warrant, by order endorsed on the warrant, commit such person to prison, there to be detained in accordance with the tenor of such warrant;

⁴ *Government Gazette*, Reprints Supplement (Acts), No. 2, 14 January 1966.

Provided that if such person proves that he is a citizen of Singapore or an exempted person the Magistrate shall order such person forthwith to be released.

5. (1) Where the Minister is satisfied after such inquiry or on such written information as he may deem necessary or sufficient that the banishment from Singapore of any person not being a citizen of Singapore or an exempted person would be conducive to the good of Singapore, the Minister may make an order that such person be banished from Singapore either for the term of his natural life or for such other term as may be specified in such order.

(3) As soon as possible after the making of a banishment order against any person, a copy of such order shall be served on such person by the officer-in-charge of the prison in which such person may be confined or by a senior police officer; and the officer serving such copy shall notify the person against whom it is made that he may at any time within fourteen days of such service apply to the High Court for an order that the banishment order be set aside on the ground that he is a citizen of Singapore or an exempted person.

6. (1) Subject to the provisions of this Ordinance, a banishment order may be carried into execution at any time after the expiration of fourteen days from the date of service of a copy thereof under subsection (3) of section 5, upon the issue by the Minister of a warrant of execution...

(2) Upon receiving the warrant of execution of a banishment order made against any person, the officer-in-charge of the prison in which such person is confined shall inform such person of the period for which he is banished and warn him that he is forbidden by law to return to Singapore or to enter or reside in Singapore, except as specially provided in the banishment order.

(3) As soon as possible after receiving the warrant of execution of a banishment order against any person, the officer-in-charge of the prison in which such person is confined or some prison officer appointed by such officer in that behalf shall hand the person ordered to be banished to a senior police officer appointed by the Commissioner of Police to receive him, and such person shall thereupon be conveyed in the custody of such or some other senior police officer on board a ship or such other means of transport as may be expedient for conveyance to the country of which he is a citizen or to such other place as may be stated in the warrant.

(4) Any banished person who is in the custody of a senior police officer under the provisions of subsection (3) may be received into and detained in any prison or other suitable place in Singapore until he can be placed on board a ship or other means of transport in accordance with the provisions of the said subsection.

7. (1) The Minister may at his discretion at the time of making a banishment order or at any time thereafter direct that such order be suspended and that the person ordered to be banished shall execute a bond with sureties to the satisfaction of the Minister for his good behaviour in such amount and for such period (not exceeding five years) and subject to such conditions as to residence or otherwise as may be specified in such direction.

(2) If the Minister is satisfied that a person subject to a banishment order directed to be suspended under subsection (1) has failed to observe any condition specified in the bond executed by him under the said subsection or that it is not conducive to the good of Singapore that such person should further remain therein, the Minister may at any time revoke the suspension of the banishment order and upon such revocation such person may be arrested and detained without a warrant, and the original banishment order shall thereupon be executed in accordance with the provisions of this Ordinance.

(3) Where a banishment order has been suspended under subsection (1) and such suspension has not been revoked before the expiration of the period for which security for good behaviour was given under the said subsection, then upon the expiration of such period the order shall lapse and cease to have effect, but nothing in this subsection shall prevent the making of a fresh banishment order against such person.

8. (1) The Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order make an order requiring any person whom he is satisfied is not a citizen of Singapore or an exempted person to leave Singapore before the expiration of a period of fourteen days from the date of service under subsection (4) of a copy of such order.

(3) The Minister may by an expulsion order impose such conditions as he may think fit as to the residence, occupation or conduct or police supervision or otherwise of the person against whom the order is made which shall be observed by such person so long as he remains in Singapore.

(4) A copy of the expulsion order shall be served on the person against whom it is made by a senior police officer, or by any other person authorised by the Minister to serve such order and shall be served personally on such person in the same manner as a summons is required to be served under section 42 of the Criminal Procedure Code; and the officer or person serving such copy shall notify the person against whom it is made that he may at any time within fourteen days of such service apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen of Singapore or an exempted person.

(5) A person against whom an expulsion order has been made shall on or before a date specified

by the Minister in the order execute a bond with sureties to the satisfaction of the Minister for due compliance with the terms of the expulsion order and for such amount and subject to such conditions as the Minister may think fit to specify.

(6) If a person against whom an expulsion order has been made, absconds or conceals himself so that the order cannot be served or if he fails before the specified date to execute the bond required under subsection (5) to the satisfaction of the Minister or if such person fails to observe any condition of such bond or fails to leave the country in accordance with such order, such person may be arrested without warrant by any police officer and shall without unnecessary delay and in any case within twenty-four hours (excluding the time of any necessary journey) from the arrest be brought before a Magistrate who upon production before him of the expulsion order and upon proof of the identity of the person arrested with the person named in the order shall commit such person to prison there to be detained pending a decision as to whether a banishment order should be made against such person;

Provided that if such person proves that he is a citizen of Singapore or an exempted person the Magistrate shall order such person forthwith to be released.

(7) Where any person has been arrested and detained under the provisions of subsection (6), the Minister may thereupon cancel the expulsion order and make a banishment order against such person in accordance with section 5.

(8) Nothing in this section shall prevent the Minister at any time from cancelling any expulsion order made by him against any person and taking action against such person in accordance with section 3, 4 or 5.

(9) Where an expulsion order has been made against any person detained in accordance with a warrant of arrest and detention, such person shall upon his executing the bond required under subsection (5) be released from detention under the said warrant.

9. (1) Whenever a person detained under the provisions of this Ordinance appears to the Minister, on the certificate of a registered medical practitioner, to be of unsound mind, the Minister may, by order in writing setting forth the grounds of belief that such person is of unsound mind, direct his removal to any mental hospital or other fit place of safe custody within Singapore, there to be kept and treated as the Minister directs until it appears to the Minister, on the certificate of a registered medical practitioner, that such person has again become of sound mind; and an order made under this subsection shall, notwithstanding the provisions of any written law to the contrary, be sufficient authority for the reception of such person to the mental hospital or other place mentioned in the order.

(2) In this section, "registered medical practitioner" means a medical practitioner who is

registered under any written law for the time being in force relating to the registration of medical practitioners.

10. Any person in respect of whom a banishment or expulsion order has been made may within fourteen days of the service of a copy of such banishment order under subsection (3) of section 5 or of the service of a copy of such expulsion order under subsection (4) of section 8, as the case may be, apply to the High Court for an order that such banishment or expulsion order be set aside on the ground that he is a citizen of Singapore or an exempted person; and if it be proved on such application that such person is a citizen of Singapore or an exempted person to the High Court shall set aside the banishment or expulsion order, as the case may be, and direct that the applicant be set at liberty.

11. A banishment or expulsion order may at any time be revoked by the Minister.

12. The Minister may by order direct that any particular person, or persons of any specified class, shall be exempt, either unconditionally or subject to such conditions as the Minister may impose, from the provisions of sections 5 and 8.

13. (1) Any person who has committed or is reasonably suspected of having committed an offence under this Ordinance may be arrested without warrant by any police officer.

(2) Where a person has been arrested or detained under this Ordinance, any police officer, or any other person authorised by the Minister in that behalf, may take all such steps as may be reasonably necessary for photographing, measuring, finger-printing and otherwise identifying such person.

14. (1) Every person, not being a citizen of Singapore or an exempted person, lawfully banished, deported or expelled from Singapore or from Malaysia or from any territory comprised in Malaysia or from the Straits Settlements under any law in force at the date of such banishment, deportation or expulsion in Singapore or Malaysia or any territory comprised in Malaysia or the Straits Settlements is hereby prohibited from entering or residing in Singapore so long as the term for which he was banished, deported or expelled has not expired or the banishment, deportation or expulsion order has not been cancelled or revoked and whether or not such order has been executed;

Provided that the Minister may in his discretion exempt any person banished, deported or expelled from Singapore or from Malaysia or from any territory comprised in Malaysia or from the Straits Settlements from the prohibition contained in this subsection.

(2) Any person entering or residing in any part of Singapore in contravention of the prohibition contained in subsection (1) shall be guilty

of an offence under this Ordinance and shall be liable:

(a) If the term for which such person was banished, deported or expelled be less than five years, to imprisonment for a term equal to the term of such banishment, deportation or expulsion;

(b) If the term for which such person was banished, deported or expelled be for life or for five years or more, to imprisonment for a term of five years;

(c) If such person has previously been convicted under the provisions of this Ordinance or of any law in force relating to banishment, deportation or expulsion in Malaysia or any territory comprised in Malaysia of unlawfully entering or residing in Singapore or in Malaysia or in any territory comprised in Malaysia, as the case may be, after having been lawfully banished, deported or expelled from Singapore or from Malaysia or from any territory comprised in Malaysia, to imprisonment for a term of fifteen years.

(3) Notwithstanding the fact that a prosecution is pending against any person under this section, the Minister may make a banishment order against such person in accordance with the provisions of this Ordinance and thereupon the court shall order such person to be discharged not amounting to an acquittal from the charge under this section in order to enable such banishment order to be executed.

(4) If at the expiration of any sentence passed on any person under this section, the term for which such person has been banished, deported or expelled has not expired, such person shall, unless the Minister shall otherwise order, be removed from Singapore, and the provisions of subsections (3) and (4) of section 6 shall *mutatis mutandis* apply to such person as if a banishment order had been made in his case under section 5.

15. Any person who knowingly conceals or harbours any other person:

(a) Against whom a warrant of arrest and detention has been issued but has not yet been executed;

(b) Against whom an expulsion order has been made but has not yet been served; or

(c) Who is liable to be arrested and detained under any of the provisions of this Ordinance, shall be guilty of an offence under this Ordinance and shall be liable on conviction to a fine of five hundred dollars and imprisonment for six months;

Provided that this section shall not apply to a wife harbouring or concealing her husband or a husband harbouring or concealing his wife.

16. (1) Any person aware of the presence in Singapore of any person described in para-

graph (a), (b) or (c) of section 15 shall forthwith give full and accurate information thereof to the nearest Magistrate or police officer.

(2) Any person failing without reasonable excuse (the proof whereof shall be on him) to give such information shall be guilty of an offence under this Ordinance and shall be liable on conviction to a fine of two hundred and fifty dollars and imprisonment for three months;

Provided that this subsection shall not apply to a wife failing to give information relating to her husband or a husband failing to give information relating to his wife.

17. If any proceedings under this Ordinance or with reference to anything done or proposed to be done under this Ordinance, any question arises whether any person is a citizen of Singapore or an exempted person, the onus of proving that he is a citizen of Singapore or an exempted person lies upon that person.

18. (1) Subject to the provisions of section 10, a banishment or expulsion order shall, until it has been set aside or revoked under the provisions of this Ordinance, or until it has expired, as the case may be, be conclusive evidence in all courts and for all purposes that the person thereby ordered to be banished or expelled is not a citizen of Singapore or an exempted person.

(2) An endorsement on a banishment or expulsion order that it has been executed by placing the person named therein on a ship or aircraft shall be conclusive evidence until the contrary be proved that the person ordered to be banished or expelled has been sent out of Singapore.

19. If it is proved in any prosecution under this Ordinance that any person has remained in Singapore for more than twenty-four hours, the court shall presume until the contrary is proved that such person has voluntarily resided therein.

20. Every document purporting to be a warrant, order, direction or other instrument made or issued by the Minister in pursuance of any provision contained in or having effect under this Ordinance and to be signed by him or on his behalf shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by him.

21. Except as provided by this Ordinance no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Ordinance.

...

THE SEDITION ORDINANCE, 1948

As extended to Singapore and modified by the Modification of Laws (Sedition) (Extension and Modification) Order, 1964 (L.N. 149 of 1964) and further modified by the Modification of Laws (Sedition) Order, 1966 (G.N. No. S.15 of 1966)⁵

...

4. (1) Any person who:

(a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

(b) Utters any seditious words;

(c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) Imports any seditious publication,

shall be guilty of an offence under this Ordinance and shall be liable on conviction for a first offence to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand dollars or to both such imprisonment and fine, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of such person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence under this Ordinance and shall be liable on conviction for a first offence to imprisonment for a term not exceeding eighteen months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and such publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

5. (1) No prosecution for an offence under section 4 shall be begun except within six months after the offence is committed;

Provided that for the purposes of this subsection a prosecution shall be deemed to be begun against any person when a warrant or summons has been issued in respect of any charge made against that person and based on the facts or incident in respect of which the prosecution afterwards proceeds.

(2) No person shall be prosecuted for an offence under section 4 without the written consent of the Public Prosecutor: In such written consent the Public Prosecutor may designate any court to be the court of trial.

6. (1) Notwithstanding anything to the contrary contained in the Evidence Ordinance, no person shall be convicted of an offence under

section 4 on the uncorroborated testimony of one witness.

(2) No person shall be convicted of any offence referred to in paragraph (c) or paragraph (d) of subsection (1) of section 4 if such person proves that the publication in respect of which he is charged was printed, published, sold, offered for sale, distributed, reproduced or imported (as the case may be) without his authority, consent and knowledge and without any want of due care or caution on his part or that he did not know and had no reason to believe that the publication had a seditious tendency.

7. Any person to whom any seditious publication is sent without his knowledge or privity shall forthwith as soon as the nature of its contents has become known to him deliver such publication to the officer in charge of a police division and any person who complies with the provisions of this section shall not be liable to be convicted for having in his possession such publication;

Provided that in any proceedings against such person the court shall presume until the contrary be shown that such person knew the contents of such publication at the time it first came into his possession.

8. (1) A Magistrate may issue a warrant empowering any police officer, not below the rank of Inspector, to enter upon any premises where any seditious publication is known or is reasonably suspected to be and to search therein for any seditious publication.

(2) Whenever it appears to any police officer, not below the rank of Assistant Superintendent, that there is reasonable cause to believe that in any premises there is concealed or deposited any seditious publication, and he has reasonable grounds for believing that, by reason of the delay which would be entailed by obtaining a search warrant, the object of the search is likely to be frustrated, he may enter and search such premises as if he were empowered to do so by a warrant issued under subsection (1).

9. (1) Whenever any person is convicted of publishing in any newspaper matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters, that is to say:

(a) Prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order the future publication of that newspaper;

⁵ *Ibid.*, No 3, 14 January 1966.

(b) Prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor or editor of that newspaper from publishing, editing or writing for any newspaper or from assisting, whether with money or money's worth, material, personal service or otherwise in the publication, editing or production of any newspaper; and

(c) That for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order or that it be seized by the police and detained by them for the period aforesaid.

(2) Any person who contravenes an order made under this section shall be guilty of an offence under this Ordinance and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand dollars or to both such imprisonment and fine.

(3) Nothing in this Ordinance shall affect the power of the court to punish any person contravening an order made under this section for contempt of court;

Provided that no person shall be punished twice for the same offence.

10. (1) Whenever on the application of the Public Prosecutor it is shown to the satisfaction of the Court that the issue or circulation of a seditious publication is or if commenced or continued would be likely to lead to unlawful violence or appears to have the object of promoting feelings of hostility between different classes or races of the community, the Court shall make an order (in this section called a "prohibition order") prohibiting the issuing and circulation of that publication (in this section called a "prohibited publication") and requiring every person having any copy of the prohibited publication in his possession, power or control forthwith to deliver every such copy into the custody of the police.

(2) An order under this section may be made *ex parte* on the application of the Public Prosecutor in chambers.

(3) It shall be sufficient if the order so describes the prohibited publication that it can be identified by a reasonable person who compares the prohibited publication with the description in the prohibition order.

(4) Every person on whom a copy of a prohibition order is served by any police officer shall forthwith deliver to that police officer every prohibited publication in his possession, power or

control, and, if he fails to do so, he shall be guilty of an offence under this Ordinance and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars or to both such imprisonment and fine.

(5) Every person to whose knowledge it shall come that a prohibited publication is in his possession, power or control shall forthwith deliver every such publication into the custody of the police, and, if he fails to do so, he shall be guilty of an offence under this Ordinance and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars or to both such imprisonment and fine.

(6) The Court may, if it thinks fit, either before or after or without service of the prohibition order on any person, issue a warrant authorising any police officer not below the rank of Inspector to enter and search any premises specified in the order, and to seize and carry away every prohibited publication there found, and to use such force as may be necessary for the purpose.

A copy of the prohibition order and of the search warrant shall be left in a conspicuous position at every building or place so entered.

(7) The owner of any prohibited publication delivered or seized under this section may, at any time within fourteen days after the delivery or seizure, petition the Court for the discharge of the prohibition order, and the Court, if on the hearing of the petition decides that the prohibition order ought not to have been made, shall discharge the order and shall order the prohibited publication delivered by or seized from the petitioner to be returned to him.

(8) Every prohibited publication delivered or seized under this section with respect to which a petition is not filed within the time aforesaid or which is not ordered to be returned to the owner shall be deemed to be forfeited to the Government.

(9) For the purposes of this section, "Court" means the High Court.

11. Any police officer not below the rank of Inspector may arrest without warrant any person found committing or reasonably suspected of committing or of having committed or of attempting to commit or of procuring or abetting any person to commit any offence under this Ordinance, or reasonably suspected of the unlawful possession of any thing liable to forfeiture thereunder.

THE MODIFICATION OF LAWS (CONSTITUTION OF SINGAPORE) ORDER, 1966

Subsidiary Legislation No S.50 of 7 March 1966⁶

...
2. Clause (1) of article 2 of the Constitution of Singapore (hereinafter in this Order referred to as "the Constitution") is hereby deleted and the following substituted therefor:

"(1) A person who is not a citizen of Singapore born in Malaya shall not be elected President."

...
4. Article 6 of the Constitution is hereby amended:

(a) By deleting clause (1) thereof; and

(b) By deleting the words "Yang di-Pertuan Agong" appearing in the last line of clause (2) thereof and substituting therefor the word "President".

5. Clause (2) of Article 8 of the Constitution is hereby amended by deleting the words "the Federal Constitution and of" appearing in the first line thereof.

...
8. Article 29 of the Constitution is hereby amended:

(a) By deleting the words "either House of Parliament or to" appearing in paragraph (d) and in paragraph (g) of clause (1) thereof;

(b) By deleting paragraph (e) of clause (1) thereof and substituting therefor the following:

"(e) Has been convicted of an offence by a court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand dollars and has not received a free pardon;

"Provided that where the conviction is by a court of law in Malaysia, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore;"

(c) By deleting clause (3) thereof and substituting therefor the following:

"(3) In paragraph (f) of clause (1) of this article, the expression "foreign country" does not include any part of the Commonwealth or the Republic of Ireland."

...
10. Article 53 of the Constitution is hereby amended:

(a) By inserting immediately after the words "registration or" appearing in paragraph (c) of

clause (2) thereof the expression " , before the 9th day of August, 1965, by";

(b) By deleting the words "Federal Constitution" appearing in the first line of paragraph (d) of clause (2) thereof and substituting therefor the expression "Constitution of Malaysia"; and

(c) By deleting clause (3) thereof.

11. Clause (2) of article 54 of the Constitution is hereby amended:

(a) By deleting the word "Malaysia" appearing in the first line of paragraph (a) thereof and substituting therefor the word "Singapore";

(b) By deleting the words "Yang di-Pertuan Agong" appearing in the third and fourth lines of paragraph (a) thereof and substituting therefor the word "President"; and

(c) By deleting the words "the Federation" appearing in the second line of paragraph (c) thereof and substituting therefor the word "Singapore".

12. Article 55 of the Constitution is hereby amended:

(a) By deleting the words "the Federation" appearing in the first and in the fifth lines of clause (1) thereof and substituting therefor in each case the word "Singapore"; and

(b) By deleting clause (2) thereof.

13. Article 56 of the Constitution is hereby repealed.

14. Article 57 of the Constitution is hereby amended:

(a) By deleting the expression " , not being a citizen of Malaysia," appearing in the second line of clause (1) thereof;

(b) By deleting the words "with the concurrence of the Government of the Federation" appearing in the fifth and sixth lines of clause (1) thereof; and

(c) By deleting the expression " , not being a citizen of Malaysia," appearing in the first and second lines of clause (2) thereof.

15. Article 58 of the Constitution is hereby amended:

(a) By deleting the words " , who is not a citizen of Malaysia" appearing in the second line of clause (1) thereof; and

(b) By deleting the expression " , who is not a citizen of Malaysia," appearing in the second and last lines of clause (2) thereof.

16. Article 59 of the Constitution is hereby amended:

(a) By deleting the words "enrolled or" appearing in the second and in the last lines thereof;

(b) By deleting the expression "56," appearing in the second line thereof; and

⁶ *Government Gazette*, Subsidiary Legislation Supplement, No. 23, 23 March 1966.

(c) By deleting the words "enrolment and" appearing in the marginal note thereto.

17. Clause (2) of article 60 of the Constitution is hereby deleted and the following substituted thereof:

"(2) Except with the approval of the Government, no person who has renounced or has been deprived of citizenship of Singapore under this Constitution or the Singapore Citizenship Ordinance, 1957, or the Constitution of Malaysia, as the case may be, shall be registered as a citizen of Singapore under the provisions of this Constitution."

18. Clause (5) of article 61 of the Constitution is hereby deleted.

19. Article 62 of the Constitution is hereby amended:

(a) By deleting the expression "under the provision of article 56 of this Constitution" appearing in the second line of clause (1) thereof and substituting therefor the expression "before the 9th day of August, 1965,"; and

(b) By deleting the expression "but except as regards anything so done or omitted he shall as provided in the Federal Constitution revert to his former status as a citizen of Malaysia" appearing in the third, fourth and last lines of clause (2) thereof.

20. Article 64 of the Constitution is hereby amended by deleting the words "the Federation" appearing in the third line thereof and substituting therefor the expression "Malaysia before the 9th day of August, 1965,".

21. Article 67 of the Constitution is hereby repealed.

...

THE ESSENTIAL (CONTROL OF PUBLICATIONS AND SAFEGUARDING OF INFORMATION) REGULATIONS, 1966

Subsidiary Legislation No. S.128 of 9 June 1966⁷

...

3. For the purpose of these Regulations, the Minister may designate a person or persons to exercise powers and perform duties under these Regulations and such person or persons shall be known as the "competent authority".

4. With effect from the date of the coming into operation of these Regulations no person shall:

(a) Obtain or have in his possession;

(b) Make records or copies of, or communicate by any means whatsoever to any other person (whether within or without Singapore); or

(c) Disseminate in any newspaper or in any manner whatsoever,

any protected information or any documents, records or other materials relating to any protected information, unless the consent of a competent authority has previously been obtained for such or any of the aforesaid purposes.

5. (1) Notwithstanding the provisions of any written law to the contrary, the competent authority may require any person, desiring to do any of the acts mentioned in regulation 4 of these Regulations, to submit to such competent authority a list of persons (in these Regulations referred to as "accredited representatives") to whom consent under regulation 4 of these Regulations may be given at the absolute discretion of the competent authority;

Provided that at any time thereafter the competent authority may for any sufficient cause withdraw such consent.

(2) It shall be lawful for the competent authority:

(a) To refuse to give consent under regulation 4 of these Regulations in cases where such list as referred to in paragraph (1) of this regulation has not been submitted; or

(b) To give consent only to accredited representatives in cases where such list has been submitted.

6. (1) Any person who contravenes the provisions of regulation 4 of these Regulations shall be guilty of an offence.

(2) Where any protected information is disseminated in a newspaper in contravention of regulation 4 of these Regulations, every proprietor, editor, manager, printer of such newspaper or any person responsible for reporting, publishing or printing that newspaper shall be guilty of an offence.

(3) Where an offence against these Regulations is committed by a body corporate, every director, manager or any other officer responsible for the commission of such offence shall likewise be guilty of that offence.

(4) Any person committing an offence under these Regulations shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine.

7. (1) A prosecution under these Regulations shall not be instituted except by or with the consent of the Public Prosecutor;

Provided that a person charged with such an offence may be arrested or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail notwith-

⁷ *Ibid.*, No. 44, 8 July 1966.

standing that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.

(2) When a person is brought before a court under these Regulations before the Public Prosecutor has consented to the prosecution, the charge shall be explained to him but he shall not be called upon the plead and the provisions of the law for the time being in force relating to criminal

procedure shall be deemed to have been modified accordingly.

8. A competent authority may compound any offence under these Regulations by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding ten thousand dollars.

9. In all proceedings under these Regulations a certificate by the Minister that an information is protected shall, until the contrary is proved, be deemed to be sufficient evidence of the fact.

THE MODIFICATION OF LAWS (CONSTITUTION OF SINGAPORE) (No. 2) ORDER, 1966

Subsidiary Legislation No. S.259 of 9 December 1966⁸

...

2. Article 55 of the Constitution of Singapore is hereby amended by inserting immediately after clause (1) thereof the following new clause:

"(2) A person who being a minor becomes a citizen of Singapore by descent shall cease to be a citizen of Singapore on attaining the age of twenty-two years unless within twelve months after he attains the age of twenty-one years he takes the oath of renunciation, allegiance and loyalty in the form set out in the second schedule to this Constitution and where the Government so requires divests himself of any foreign citizenship or nationality."

3. Article 60 of the Constitution of Singapore is hereby amended by inserting immediately after clause (2) thereof the following new clause:

"(3) Any person who becomes a citizen of Singapore by registration under article 58 of this Constitution shall cease to be a citizen of Singapore on attaining the age of twenty-two years unless within twelve months after he attains the age of twenty-one years he takes the oath of allegiance and loyalty in the form prescribed in the second schedule to this Constitution."

4. Article 61 of the Constitution of Singapore is hereby amended by inserting immediately after clause (3) thereof the following new clause:

"(3 A) The Government may, by order, deprive any such citizen of his citizenship if the Government is satisfied that that citizen has at any time after registration or naturalization been engaged in any activities which are prejudicial to the security of Singapore, or the maintenance of public order therein, or the maintenance therein of essential services, or in any criminal activities which are prejudicial to

the interests of public safety, peace or good order".

5. The Constitution of Singapore is hereby amended by inserting immediately after article 63 thereof the following new article:

"63A. (1) If the Government is satisfied that any citizen of Singapore by birth, descent, registration or naturalization has at any time after the 6th day of April, 1960, acquired by registration, naturalization or other voluntary and formal act (other than marriage) the citizenship of any country outside Singapore, the Government may declare such person to have ceased to be a citizen of Singapore.

"(2) Any citizen specified in clause (1) of this article who has at any time after the 6th day of April, 1960, voluntarily claimed and exercised any rights available to him under the law of any foreign country, being rights accorded exclusively to the citizens or nationals of the foreign country, shall cease to be a citizen of Singapore. If any question arises as to whether any such person has ceased to be a citizen of Singapore under this clause the same shall be determined by the Government whose declaration thereon shall be final and shall not be called in question in any court.

"(3) If the Government is satisfied that any citizen specified in clause (2) of this article has at any time after the 6th day of April, 1960, voluntarily claimed and exercised any rights available to him under the law of the United Kingdom or of the Republic of Ireland or of any other country, other than Singapore, for the time being included in subsection (3) of section 1 of the British Nationality Act, 1948, being rights not available to other Commonwealth citizens, the Government may declare such person to have ceased to be a citizen of Singapore."

...

⁸ *Ibid.*, No. 95, 9 December 1966.

SOUTH AFRICA

THE COMMUNITY DEVELOPMENT ACT, 1966

Act No. 2 of 1966, assented to on 9 February 1966¹

2. (1) There is hereby established a board to be known as the Community Development Board, which shall be a body corporate capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the exercise of its powers and the performance of its functions and duties under this Act.

15. (1) The objects for which the board is established shall be, subject to the directions of the Minister:

(a) To develop or assist in the development of such areas, not being areas referred to in section 20 (3) (c) of the Group Areas Act, as may from time to time be designated by the Minister, and to promote community development in any such area;

(b) To assist in and control the disposal of affected properties; and

(c) To assist persons to acquire or hire immovable property in so far as in the opinion of the board may be necessary or expedient for the achievement of the objects mentioned in paragraph (a) or (b).

29. (1) The Board shall as soon as possible ... compile a list of all affected properties situated in any area so proclaimed or defined, ...

(2) If on or after the basic date any affected property has been transferred to any person in pursuance of a transaction entered into before that date or in pursuance of a disposition otherwise than for value, the transferee shall for the purposes of this Act be deemed to have been the owner of such property at the said date.

35. (1) (a) Whenever any affected property is expropriated by the State or any other person (other than the board) and the compensation payable for such property is fixed at an amount which exceeds the basic value of that property, there shall be paid to the board an appreciation contribution equal to fifty per cent of the difference between the compensation so fixed and

the basic value of the said property, or if the compensation so fixed is less than the basic value of the said property, there shall ... be paid by the board to the owner of the said property a depreciation contribution equal to eighty per cent of the difference between the compensation so fixed and the basic value of the said property.

(b) If the compensation fixed is less than the basic value of the property in question and is, in the opinion of the board, also lower than the market value thereof, the market value of the property shall be determined by agreement between the owner and the board, or in the absence of such agreement, by arbitration ... and if the market value so determined exceeds the compensation fixed, such market value shall for the purpose of determining the depreciation contribution payable in terms of paragraph (a) (if any) be regarded as the compensation fixed.

36. No affected property in respect of which the board has not and is not deemed to have waived its pre-emptive right and in respect of which such right has not lapsed, shall, except with the consent of the board, be disposed of for value on or after the basic date to a person other than the board.

38. (1) (a) The board may with the written approval of the Minister, if it is satisfied that it is expedient to do so for the attainment of any of its objects, acquire any immovable property by expropriation: Provided that no approval for the acquisition by expropriation of mineral rights shall be granted by the Minister except in consultation with the Minister of Mines.

(b) If any immovable property acquired under paragraph (a) has already been surveyed, the board shall be entitled to the delivery to it by the owner of any plans, sections, diagrams, subdivisional diagrams or sketches made in respect thereof, against payment of an amount not exceeding the expenditure incurred by the owner in connection therewith.

39. (1) Upon receipt of the written approval of the Minister to expropriate any immovable prop-

¹ *Statutes of the Republic of South Africa, 1966.*

erty, the board shall serve or cause to be served on the owner a notice . . . setting forth clearly and fully a description of the property and inviting the

owner to state the amount claimed by him for that property.
...

THE HOUSING ACT, 1966

Act No. 4 of 1966, assented to on 9 February 1966²

Chapter I

FINANCIAL MATTERS

2. (1) The National Housing Fund established by section 2 of the Housing Act, 1957 (Act No. 10 of 1957), shall, notwithstanding the repeal of that Act by this Act, continue to exist.

...

Chapter II

THE NATIONAL HOUSING COMMISSION AND THE BANTU HOUSING BOARD

5. (1) The National Housing Commission established by section 6 of the Housing Act, 1957 (Act No. 10 of 1957), shall, notwithstanding the repeal of that Act by this Act, continue to exist and to be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the exercise of its powers or the performance of its functions and duties under this Act.

...

7. (1) The Bantu Housing Board established by section 8 of the Housing Act, 1957 (Act No. 10 of 1957), shall, notwithstanding the repeal of that Act by this Act, continue to exist and to be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the exercise of its powers or the performance of its functions and duties under this Act.

(2) Any powers, functions and duties conferred or imposed upon the Commission by this Act shall, in so far as they relate to the housing of Bantu, be exercised or performed by the Housing Board, and for that purpose any reference in this Act to the Commission shall be deemed to be a reference to the Housing Board.

...

Chapter VI

ACQUISITION OF LAND BY COMMISSION

31. Notwithstanding anything to the contrary in any law contained, the Commission may, with the written approval of the Minister, purchase, expropriate or otherwise acquire any land which it requires for the purpose of constructing a dwelling

or of carrying out a scheme: Provided that land, which in terms of any law relating to mining, is or is deemed to be proclaimed land or which forms part of any such land, or upon which prospecting, digging or mining operations are being carried on, or in respect of which a prospecting contract or prospecting licence is registered in the office of the Registrar of Mining Titles, or on which minerals are, on reasonable grounds, believed to exist in workable quantities, shall not be expropriated except in consultation with the Minister of Mines: Provided further that the Minister shall not approve of the expropriation of any land unless he is satisfied that the Commission is unable to purchase such land on reasonable terms and that no other suitable land is available to the Commission and that the Commission is unable to purchase other suitable land on reasonable terms.

...

34. (1) For the purpose of ascertaining whether any land is suitable for the construction of a dwelling or the carrying out of a scheme thereon, any person generally or specially authorized thereto in writing by the Secretary may, subject to the provisions of subsection (2):

(a) Enter upon the land with the necessary workmen, equipment and means of transport;

(b) Survey and take levels of the land;

(c) Dig or bore on or into the land;

(d) Do all other acts necessary to ascertain whether the land is suitable for any such purpose; and

(e) Demarcate the boundaries of the land required.

(2) No person shall by virtue of the provisions of subsection (1), without the consent of the owner or occupier enter any dwelling-house which is occupied, or enter upon any enclosed yard or garden attached to any such house, unless he has given the owner or occupier of such house at least twenty-four hours' notice of his intention to do so.

(3) If, in exercising any of the powers conferred by this section, any damage is done to any land or to any improvements thereon and the Commission does not thereafter acquire such land, compensation shall be paid for any such damage to the person entitled thereto.

(4) Any person who hinders or obstructs any authorized person in the exercise of his powers or the performance of his functions or duties in terms of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rands, or to imprisonment for a period

² *Ibid.*

not exceeding six months, or to both such fine and such imprisonment.

...
37. (1) If the owner of the land and the Commission do not, within a period of sixty days from the date of expropriation of such land, or within such further period as the Commission may allow, come to an agreement as to the amount of compensation to be paid for the land, such amount shall... be determined by two arbitrators, one of whom shall be appointed by the Commission and the other by the owner or (if he is absent from the Republic or his whereabouts cannot be readily ascertained or he fails to nominate any person or to advise the Commission of the name and address of the person nominated by him within fourteen days after having been required in writing by the Commission to make a nomination) by the Minister.

(2) The arbitrators shall before taking any steps in connection with the arbitration appoint a suitable person as a referee in case the arbitrators do not agree, and the decision of such referee shall be final, and if the arbitrators fail to appoint or are unable to agree upon the appointment of a person as a referee, the Minister shall appoint a suitable person as a referee, whose decision shall be final.

(3) The costs, calculated in accordance with the table of costs in magistrates' courts, in connection with any determination of compensation in terms of this section, shall, in the absence of agreement between the parties, be paid as directed by the arbitrators or, if the arbitrators are unable to agree, as directed by the referee, whose decision shall be final.

THE RECIPROCAL ENFORCEMENT OF CIVIL JUDGMENTS ACT, 1966

Act No. 10 of 1966, assented to on 12 February 1966³

2. (1) This Act shall apply in respect of civil judgments given in the Republic and in any country or territory outside the Republic which the State President has for the purposes of this Act designated by proclamation in the *Gazette*.

(2) The State President may at any time by a subsequent proclamation in the *Gazette* withdraw any proclamation under subsection (1), and thereupon any country or territory referred to in such last-mentioned proclamation shall cease to be a proclaimed country for the purposes of this Act.

3. (1) Whenever a certified copy of a judgment given against any person by any court in a proclaimed country is, within a period of six years after the date of such judgment, transmitted to the Minister by the Secretary of State or the officer administering the government of such country, the Minister or any person acting under his authority shall transmit such copy of the judgment to a court in the Republic...

4. (1) Whenever a judgment has been registered by a court in the Republic in terms of section 3, such judgment shall have the same effect as a civil judgment of that court.

(2) Notwithstanding anything to the contrary in this section contained, no execution shall issue on any judgment so registered before the expiration of the period prescribed for the making of

an application for the setting aside of a registration effected under this Act or, if any such application has been made within such period, before the final determination of the application so made.

...
7. (1) A judgment shall be deemed to be final notwithstanding that an appeal against such judgment is pending in a court of the proclaimed country concerned or that the time prescribed by the law of such country for appealing against such judgment has not expired.

...
8. Notwithstanding anything to the contrary in any law or the common law contained, no judgment given by any court of law of competent jurisdiction outside the Republic shall be enforceable by any court, including a magistrate's court, in the Republic otherwise than in accordance with the provisions of this Act.

9. Nothing in this Act contained shall be construed as preventing any court of law in the Republic from recognizing, for the purposes of any claim, defence or counter-claim, any judgment... given by any court of law of competent jurisdiction outside the Republic in any civil matter, as conclusive of any matter of law or of fact decided in such judgment if such judgment could, before the commencement of this Act, have been so recognized by such court.

³ *Ibid.*

THE MATRIMONIAL AFFAIRS AMENDMENT ACT, 1966

Act No. 13 of 1966, assented to on 12 February 1966⁴

1. Section 2 of the Matrimonial Affairs Act, 1953 (hereinafter referred to as the principal Act), is hereby amended:

(a) By the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) To withdraw any deposit standing in the name of his wife in the Post Office Savings Bank of the Republic or in a building society or in any account in a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965), or to take possession of any moneys withdrawn by her therefrom; or”; and

(b) By the substitution for subsection (5) of the following subsection:

“(5) (a) A married woman, whether under the marital power or not, may be a depositor in any account in a banking institution as defined in section 1 of the Banks Act, 1965, and may without the consent or assistance of her husband execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against and generally deal with her deposit in such account and enjoy all the privileges and be liable to all the obligations attaching to depositors in any such account in such banking institution: Provided that a married woman who is under the marital power, may not, without the consent of her husband overdraw on a current account in which she is a depositor in such a banking institution to an amount exceeding the total amount of the deposits standing to her credit in any account in such banking institution.

“(b) Save with her written consent, the husband of a married woman who has become a depositor with a banking institution in terms of paragraph (a), shall not be entitled to demand from such banking institution particulars concerning deposits she has with that banking institution.”

⁴ *Ibid.*

2. Section 5 of the principal Act is hereby amended:

(a) By the substitution for subsection (3) of the following subsection:

“(3) Subject to any order of court:

“(a) A parent to whom the sole guardianship or custody of a minor has been granted under subsection (1), or a father or a mother upon whom a children's court has under section 60 (1) of the Children's Act, 1960 (Act No. 33 of 1960),⁵ conferred the exclusive right to exercise any parental powers in regard to a minor, may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and

“(b) The father of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or upon whom a children's court has not conferred the exclusive right to exercise any parental powers in regard to the minor, shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor in any other manner than to act jointly with the mother.”; and

(b) By the substitution for subsection (6) of the following subsection:

“(6) If an order under section 60 of the Children's Act, 1960, is rescinded, or if an order under subsection (1) of this section granting the sole guardianship or custody of a minor to a parent, lapses or is rescinded or is varied in such a manner that the parent is no longer the sole guardian or vested with the sole custody of the minor, any disposition made under subsection (3) (a) shall lapse.”

...

⁵ For a summary of the Children's Act, 1960, see *Yearbook on Human Rights for 1960*, p. 334.

THE BANTU LAWS AMENDMENT ACT, 1966

Act No. 63 of 1966, assented to on 27 October 1966⁶

...
2. The Bantu Administration Act, 1927, is hereby amended by the insertion of the following section after section 32:

“32 A. (1) No civil action against the State, any Minister of State, any officer or employee

of the State, any chief or his deputy, any headman or any Bantu tribe or community in respect of any cause of action arising out of or in connection with the operation of this Act or any proclamation, rule or regulation issued under this Act, shall be capable of being instituted if a period of twelve months has elapsed from the date on which the cause of action arose.

⁶ *Statutes of the Republic of South Africa, 1966.*

"2(2) For the purposes of this section a civil action shall be deemed to be instituted on the date on which the summons or other document commencing that action is filed with the registrar or clerk of the court in question."

3. (1) Section 24 of the Bantu Trust and Land Act, 1936, is hereby amended by the addition of the following subsection:

"(6) (a) Subsections (1), (2) and (3) shall *mutatis mutandis* apply with reference to any territory which by an Act of Parliament has been or is declared a self-governing territory within the Republic, and also with reference to any person who is not a citizen of that territory.

"(b) Any right acquired under subsection (1) or (3) in respect of land which has been or is declared a self-governing territory or which forms part of such territory and which had been exercised and was of force when the said land

was declared a self-governing territory or became part of such a territory or which has been exercised and is of force when the said land is declared a self-governing territory or becomes part of such a territory, as the case may be, shall be deemed to have been acquired under this subsection."

4. Section 40 *bis* of the Bantu (Urban Areas) Consolidation Act, 1945, is hereby amended by the addition of the following subsection:

"(7) (a) The Administrator may by proclamation in the *Official Gazette* declare that the provisions of any Ordinance relating to pensions or other benefits for employees of local authorities in the province concerned, shall *mutatis mutandis* apply with reference to management boards.

THE INDUSTRIAL CONCILIATION FURTHER AMENDMENT ACT, 1966

Act No. 61 of 1966, assented to on 27 October 1966⁷

1. Section 65 of the Industrial Conciliation Act, 1956,⁸ is hereby amended:

(a) By the insertion after subsection (1) of the following subsections:

"(1 A) No employee or other person shall in pursuance of any combination, agreement or understanding, whether expressed or not, with any body or number of persons who are or have been employed by the same employer or by different employers, commit or take part in committing, and no employee or other person shall incite, instigate, command, aid, advise, encourage or procure any employee or other person so to commit or so to take part in committing, any act or omission contemplated

in paragraph (a) or (b) of the definition of 'strike' in section 1 (1) if such act or omission is committed or is to be committed for any purpose other than a purpose referred to in paragraph (ii) of the said definition.

"(1 B) No person who is or has been an employer shall commit, and no employer or other person shall incite, instigate, command, aid, advise, encourage or procure any employer or other person to commit any act contemplated in paragraph (a) of the definition of 'lock-out' in section 1 (1) if such act is committed or is to be committed for any purpose other than a purpose referred to in the said definition."; and

(b) By the substitution for subsection (3) of the following subsection:

"(3) Any person who contravenes any of the provisions of subsection (1), (1 A), (1 B) or (2) shall be guilty of an offence."

⁷ *Ibid.*

⁸ For a summary of the Industrial Conciliation Act, 1956, see *Yearbook on Human Rights for 1956*, pp. 238-239.

THE GENERAL LAW AMENDMENT ACT, 1966

Act No. 62 of 1966, assented to on 27 October 1966⁹

3. Section 12 of the Suppression of Communism Act, 1950,¹⁰ is hereby amended by the insertion after subsection (1) *bis* of the following subsection:

"(1) *ter* If in any prosecution for an offence under section 11 (b) *ter* in which it is alleged that the accused has, at any time and place outside the Republic specified in the charge, undergone, or attempted, consented or taken any steps to undergo any training so specified, it is proved that the accused had left the Republic in contravention of any provision of the Departure from the Union Regulation Act, 1955 (Act No. 34 of 1955), prior to such time, he shall be

⁹ *Statutes of the Republic of South Africa, 1966.*

¹⁰ For extracts from the Suppression of Communism Act, 1950, see *Yearbook on Human Rights for 1950*, pp. 300-306.

presumed until the contrary is proved beyond a reasonable doubt, to have undergone or attempted, consented or taken such steps to undergo such training at the said time and place."

...

5. (1) The following section is hereby substituted for section 18 of the Suppression of Communism Act, 1950:

"18. This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory."

(2) Subsection (1) shall be deemed to have come into operation on the date of the commencement of the Suppression of Communism Act, 1950 (Act No. 44 of 1950).

(3) Notwithstanding anything to the contrary in any law or the common law contained, the penal provisions of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), as amended from time to time, shall apply also in respect of all acts (including acts of omission) committed in the territory referred to in section 18 of that Act before the commencement of this Act, to the same extent as they would have applied if those acts had been committed in the Republic.

6. The following section is hereby inserted in the Suppression of Communism Act, 1950, after section 18:

"18 A. (1) For the purposes of section 18, any reference in this Act to a pro. 56 of 1955),¹¹ shall be construed as a reference to the corresponding provision of the Criminal Procedure Ordinance, 1963 (Ordinance No. 34 of 1963), of the territory of South-West Africa.

"(2) For the purposes of section 11 (b) *ter* training which could be of use in furthering the achievement of any of the objects of communism, shall include training which could be of use in the commission of the offence of sabotage referred to in section 21 (1) of the General Law Amendment Act, 1962 (Act No. 76 of 1962)."¹²

7. Section 206 of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), is hereby amended by

the addition to subsection (1) of the following paragraph, the existing subsection becoming paragraph (a):

"(b) If any policeman has reasonable grounds for believing that the attendance of any person is or will be necessary to give evidence or to produce any books, papers or documents in any criminal proceedings in an inferior court and hands to such person a written notice in the prescribed form calling upon him to attend such criminal proceedings at the time and place specified in the notice, to give evidence or to produce any books, papers or documents, so specified, such person shall, for the purposes of this Act, be deemed to have been duly subpoenaed so to attend such criminal proceedings."

8. The following section is hereby substituted for section 254 of the Criminal Procedure Act, 1955:

"254. (1) Whenever the prosecutor at any trial or preparatory examination informs the court that any person produced by him as a witness on behalf of the prosecution has, in his opinion, been an accomplice, either as principal or accessory, in the commission of the offence alleged in the charge, or the subject of the preparatory examination, or that such person will in the opinion of the prosecutor be required to answer questions the reply to which would tend to incriminate him in respect of an offence mentioned by the prosecutor, such person shall, notwithstanding anything to the contrary in this Act contained, be compelled to be sworn or to make affirmation as a witness and to answer any question the reply to which would tend to incriminate him in respect of any such offence as aforesaid.

"(2) If a person referred to in subsection (1) fully answers to the satisfaction of the court all such lawful questions as may be put to him, he shall, subject to the provisions of subsection (3), be discharged from all liability to prosecution for the offence concerned and the court shall cause such discharge to be entered on the record of the proceedings.

"(3) Such discharge shall be of no force and effect and the entry thereof on the record of the proceedings shall be deleted if, when called as a witness at the trial of any person upon a charge of having committed the offence concerned or an offence disclosed by the preparatory examination, or at a reopening of the preparatory examination the person concerned refuses to be sworn or to make affirmation as a witness or refuses or fails to answer fully to the satisfaction of the court all such lawful questions as may be put to him."

9. The following section is hereby substituted for section 255 of the Criminal Procedure Act, 1955:

"255. No evidence given by a person referred to in section 254 (1) on behalf of the pros-

¹¹ For extracts from the Criminal Procedure Act, 1955, see *Yearbook on Human Rights for 1955*, pp. 235-243.

¹² For extracts from the General Law Amendment Act, 1962, see *Yearbook on Human Rights for 1962*, pp. 274-277.

ecution in any criminal proceedings in respect of any offence shall, if the said person is thereafter prosecuted for an offence referred to in that section, be admissible in evidence against him at his trial: Provided that if such person is subsequently prosecuted for perjury arising from the giving of such evidence, nothing contained in this section shall prevent the admission against him in evidence at his trial for the said perjury of the evidence so given."

10. Section 12 (10) of the Prisons Act, 1959 (hereinafter referred to as the Prisons Act)¹³ is hereby amended by the substitution for the words "fifty pounds" of the words "one hundred rands".

11. Section 30 of the Prisons Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may enter into an agreement with the government of any territory in Africa on terms and conditions set out in the agreement, for the reception in the Republic and detention in any prison therein of any person sentenced in a competent court of such territory according to the law in force therein to imprisonment with or without compulsory labour."

12. Section 56 of the Prisons Act is hereby amended by the addition of the following subsection:

"(5) The record of the trial of any case in which a sentence has been imposed in terms of section 54 and which has not been dealt with under subsections (1) and (2) of this section, shall, if he so requests, be transmitted to the Commissioner who may, upon consideration thereof, confirm, set aside, alter or reduce the sentence or correct the proceedings as justice may require."

13. Section 82 of the Prisons Act is hereby amended by the substitution for the provisos of the following provisos:

"Provided that:

"(aa) All letters written and received as well as all literature must be read and censored by a member of the Prisons Service designated by the Commissioner, excluding documents handed over by a prisoner to his legal adviser if such member is satisfied that such documents are intended solely for the defence of the prisoner;

"(bb) No article of food or drink which, in the opinion of a member of the Prisons Service designated by the Commissioner, is not clean, wholesome, sound and free from disease, infection or contamination, shall be accepted and no food or drink shall be accepted for delivery to any prisoner unless it is in such a container or so wrapped that it is reasonably protected from contamination during handling within a prison; and

"(cc) A member of the Prisons Service designated by the Commissioner may, in his discretion and with due regard to the nutritional needs of the prisoner for whom food or drink is delivered, limit the quantity of such food or drink that may be supplied in any one day to such prisoner."

14. Section 95 of the Prisons Act is hereby amended with effect from the first day of September, 1959, by the addition of the following proviso:

"(d) Anything done under any provision of any such law shall be deemed to have been done under the corresponding provision of this Act."

...

16. Section 20 of the Children's Act, 1960,¹⁴ is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) If any medical officer mentioned in subsection (1) is of the opinion that it is necessary to perform an operation upon a person under the age of twenty-one years, or to submit him to any treatment which may not be applied without the consent of the parent or guardian of such person, and the parent or guardian refuses his consent to the operation or treatment, or cannot be found or is by reason of mental disorder unable to give such consent or is deceased, the said officer shall report the matter to the Minister who may, if satisfied after due enquiry that the operation or treatment is necessary, consent thereto in lieu of the parents or guardian of the said person."

...

19. Section 21 of the General Law Amendment Act, 1962, is hereby amended by the addition of the following subsections:

"(6) Notwithstanding anything to the contrary in any law or the common law contained, any offence under this section shall, for the purposes of determining the jurisdiction of a court to try the offence, be deemed to have been committed at the place where it actually was committed and also at any place where the accused happens to be.

"(7) (a) This section (except subsection (4) (a)) and any amendment thereof which may be made from time to time, shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section 3 of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and in relation to all persons in that portion of the said territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to Proclamation No. 28 of 1923 of the said territory.

"(b) For the purposes of paragraph (a), any reference in this section to any provision of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), shall be construed as a reference to the

¹³ For a summary of the Prisons Act, 1959, see *Yearbook on Human Rights for 1959*, p. 296.

¹⁴ For a summary of the Children's Act, 1960 see *Yearbook on Human Rights for 1960*, p. 334.

corresponding provision of the Criminal Procedure Ordinance, 1963 (Ordinance No. 34 of 1963), of the said territory.

"(8) In this section: 'Republic' includes the territory of South-West Africa; 'State' or 'Government' includes the Administration of the territory of South-West Africa."

...

22. (1) Any commissioned officer as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), of or above the rank of Lieutenant-Colonel may, if he has reason to believe that any person who happens to be at any place, is a terrorist or has committed an offence under section 11 (b) *ter* of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), or section 21 of the General Law Amendment Act, 1962 (Act No. 76 of 1962), at any place or intends to commit any such offence at any place, arrest or cause such person to be arrested without warrant and detain or cause such person to be detained for interrogation at such place and subject to such conditions as the Commissioner may from time to time determine, for a period not exceeding fourteen days and for such further periods as a judge of a provincial or local division of the Supreme Court of South Africa may, on an application in writing signed by the Commissioner, from time to time determine.

(2) Any person in respect of whom an application has been made under subsection (1) may, pending the result of such application, be detained as if the application had been granted.

(3) An application under subsection (1) shall state:

(a) That from information taken upon oath, there are reasonable grounds of suspicion against the detainee;

(b) The reasons why further detention is considered necessary;

(c) The conditions subject to which the detainee is being detained.

(4) A judge of a provincial or local division to whom an application is made under subsection (1):

(a) May consider the application, whether the detainee is being detained within the area of jurisdiction of that division or elsewhere;

(b) May, if he considers it to be necessary, afford the detainee an opportunity of submitting to him reasons in writing why he should not be detained and shall, if the detainee submits such reasons, afford the Commissioner an opportunity of replying thereto in writing;

(c) May require from the Commissioner such further information in writing as he may deem necessary;

(d) Shall in considering the application have regard only to the information furnished by the Commissioner, the reasons advanced by the detainee as to why he should not be detained and the reply of the Commissioner to such reasons;

(e) May, in granting the application, amend the conditions of detention as he may deem fit;

(f) May order the immediate release of the detainee, and the decision of the judge on the application and the conditions of detention shall be final.

(5) Subject to the provisions of subsection (4), the determination by the Commissioner of the conditions subject to which a detainee is to be detained, shall not be subject to review or appeal, and no court of law shall be competent to order the release of a detainee.

(6) The Commissioner may at any time order that a detainee be released from custody.

(7) No document relating to an application under subsection (1) shall be open for inspection by the detainee or any member of the public.

(8) For the purposes of this section: "Commissioner" means the Commissioner of the South African Police; "detainee" means a person detained under subsection (1); "place" includes any place where the Acts referred to in subsection (1) apply by virtue of express provisions contained in those Acts; "terrorist" includes any person who favours terroristic activities.

...

THE ELECTORAL LAWS AMENDMENT ACT, 1966

Act No. 29 of 1966, assented to on 27 September 1966¹⁵

...

3. Section 71 *nov* of the principal Act¹⁶ is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A presiding officer for votes of special voters may:

"(a) At the request of a special voter who in his opinion is unable to attend before a

presiding officer for votes of special voters, call upon that voter at any time during the period from seven o'clock in the forenoon of the twenty-first day before polling day up to and including nine o'clock in the afternoon of the second day immediately preceding polling day, at any address in order to enable that voter to vote as a special voter;

"(b) At any time during the period mentioned in paragraph (a) visit any place in order to enable a special voter applying at that place to vote as a special voter, to vote as such a voter, provided prior notice of such presiding

¹⁵ *Statutes of the Republic of South Africa, 1966.*

¹⁶ By principal Act is meant Act No. 46 of 1946.

officer's intention to visit that place for the said purpose and of the address at which and the date on which and the time when he will be present thereat, has been given to the authorized representative of every political party or candidate in the division in which such place is situated."

4. Section 71 *dec* of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) In the case of a special voter who has recorded his vote before a presiding officer for votes of special voters on or after the seventh day before polling day, such officer shall as soon as possible after that voter has recorded his vote, but not later than nine o'clock in the forenoon of the day immediately

following the day on which that voter recorded his vote, by telegraph or by letter delivered personally advise the returning officer for the division in respect of which a ballot paper has been issued to that voter of the relevant facts relating to that voter.

"(b) Such returning officer shall, upon receipt of such telegraphic advice or letter, forthwith proceed *mutatis mutandis* in accordance with the provisions of section 55.

"(c) The telegraphic advices and letters referred to in paragraph (a) shall, until the commencement of the counting of votes as provided in section 82, and during a period of one month after the declaration of the result of the poll, be open to public inspection free of charge at the office of the returning officer."

...

THE GROUP AREAS ACT, 1966

Act No. 36 of 1966, assented to on 5 October 1966¹⁷

...

2. (1) There is hereby established a board to be known as the Group Areas Board, which shall consist of not more than twelve members appointed by the Minister.

...

7. (1) The board may:

(a) For the purposes of any enquiry conducted by it, summon any person who in its opinion may be able to give material information concerning the subject of the enquiry or who it suspects or believes has in his possession or custody or under his control any book, document or thing which has any bearing upon the subject of the enquiry, to appear before it at a time and place specified in the summons, to be interrogated or to produce that book, document or thing to the board, and the board may retain for examination any book, document or thing so produced;

...

(c) At all reasonable times enter upon and inspect any land or premises for the purposes of any investigation conducted by it, or authorize any person nominated by the chairman of the board so to enter upon and inspect such land or premises;

(d) For the purposes of any enquiry conducted by it, request any person in writing to furnish the board in the form specified by the board with any information required by it.

...

12. (1) For the purposes of this Act there shall be the following groups, namely:

(a) A white group, in which shall be included any person who in appearance obviously is or who is generally accepted as a white person, other than

a person who, although in appearance obviously a white person, is generally accepted as a coloured person, or who is in terms of subparagraph (ii) or (iii) of paragraph (b) or (c) or of either of the said subparagraphs read with paragraph (d) of this subsection and subsection (2) (a), a member of any other group;

(b) A Bantu group, in which shall be included:

(i) Any person who in fact is or who is generally accepted as a member of an aboriginal race or tribe of Africa, other than a person who in terms of paragraph (c) (ii) is a member of the coloured group; and

(ii) Any woman to whichever race, tribe or class she may belong, between whom and a person who in terms of subparagraph (i) is a member of the Bantu group, there exists a marriage, or who cohabits with such a person; and

(iii) Any white man between whom and a woman who in terms of subparagraph (i) is a member of the Bantu group, there exists a marriage, or who cohabits with such a woman;

(c) A coloured group, in which shall be included:

(i) Any person who is not a member of the white group or of the Bantu group; and

(ii) Any woman, to whichever race, tribe or class she may belong, between whom and a person who in terms of subparagraph (i) is a member of the coloured group, there exists a marriage, or who cohabits with such a person; and

(iii) Any white man between whom and a woman who in terms of subparagraph (i) is a member of the coloured group, there exists a marriage, or who cohabits with such a woman; and

¹⁷ *Statutes of the Republic of South Africa, 1966.*

(d) Any group of persons which is under subsection (2) declared to be a group.

(2) The State President may by proclamation in the *Gazette*:

(a) Define any ethnic, linguistic, cultural or other group of persons who are members either of the Bantu group or of the coloured group; and

(b) Declare the group so defined to be a group for the purposes of this Act or of such provisions thereof as may be specified in the proclamation, and either generally or in respect of one or more group areas, or in respect of the controlled area or any portion thereof so specified, or both in respect of one or more group areas and in respect of the controlled area or any such portion thereof.

(3) A proclamation under subsection (2) (a) may provide that only persons who have on application been registered in accordance with the regulations, or who have been registered under any other law, as members of the group referred to in the proclamation, shall be members thereof.

(4) A member of the Bantu group or of the coloured group who is or becomes a member of any group defined under paragraph (a) of subsection (2) shall, to the extent required to give effect to any proclamation under paragraph (b) of the said subsection, be deemed not to be a member of the Bantu group or of the coloured group, as the case may be.

43. (1) When a member of the South African Police investigates an offence or alleged or suspected offence under the provisions of this Act or any other law prohibiting or restricting the ownership, acquisition or occupation or use of land or premises by any person or class of persons, he may without warrant:

(a) At any time during the day or night without previous notice enter upon any premises whatsoever and make such examination and enquiry as may be necessary;

(b) At any time and at any place require from any person who has in his possession or custody or under his control any book, document or thing, the production to him of that book, document or thing then and there or at a time and place fixed by him;

(c) Examine and make extracts from and copies of any such book, document or thing, and require from any person an explanation of any entries therein, and seize any such book, document or thing, as in his opinion may afford evidence of a contravention or evasion of any provision relating to the acquisition, ownership, use or occupation of immovable property;

(d) Question either alone or in the presence of any other person, as he thinks fit, with respect to any matter relevant to any such purpose, any person whom he finds on any premises entered under this section;

(e) Require any person who he has reasonable grounds for believing is in possession of information relevant to any such purpose, to appear before him at a time and place fixed by him and

then and there question that person concerning any matter relevant to any such purpose.

(2) A member of the South African Police exercising any power under subsection (1) (d) or (e) shall keep a record of any statement made to him, and the person who made the statement shall be entitled to a copy of the statement as so recorded.

(3) Any person who is questioned under subsection (1) (d) or (e) shall be entitled to all the privileges to which a person giving evidence before a court of law is entitled.

(4) Every person occupying or residing upon any premises entered in terms of subsection (1), or employed by any such person, shall at all times furnish such facilities as are required to exercise the powers under the said subsection.

(5) Notwithstanding anything to the contrary contained in any law, an officer in charge of a deeds registry is hereby authorized to retain any deed lodged with him and to suspend the examination thereof pending a report (to be submitted within a period determined by such officer) by a member of the South African Police to whom any matter relating to such deed may have been referred by such officer for investigation.

44. (1) No member of the South African Police shall disclose any information in relation to the financial or business affairs of any person, firm or business, acquired in the exercise of his powers or in the performance of his duties under section 43, to any person except:

(a) To the Minister or a member of the board or any committee thereof or an officer in the public service for the purposes of the performance of any duty in connection with any matter investigated under the said section; or

(b) For the purposes of the performance of his duties; or

(c) For the purposes of the institution of any legal proceedings or when required to do so before a court or under any law.

(2) No member of the board or of any committee thereof and no such officer shall disclose any information received by him under subsection (1), to any person, except for a purpose referred to in paragraph (b) or (c) of the said subsection.

45. (1) A person who in appearance obviously is a white person, shall for the purposes of this Act be presumed to be a member of the white group until the contrary is proved.

(2) A person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa, shall for the purposes of this Act be presumed to be a member of the Bantu group until the contrary is proved.

(3) A person who is not in appearance obviously a white person and who is not in fact or is not generally accepted as a member of an aboriginal race or tribe of Africa, shall for the purposes of this Act be presumed to be a member of the coloured group until the contrary is proved.

(4) Whenever in any proceedings arising out of the operation of any provision of this Act or any law repealed by this Act, or the Group Areas Act, 1950 (Act No. 41 of 1950),¹⁸ or any law repealed by that Act, whether civil or criminal, it is alleged by or on behalf of the Minister or any officer in charge of a deeds registry or in any indictment or charge:

(a) That any person was at any time an Asiatic in terms of any law repealed by the Group Areas Act, 1950; or

(b) That a company was at any time a company wherein a controlling interest was held by or on behalf or in the interests of an Asiatic in terms of

any law repealed by the Group Areas Act, 1950; or

(c) That a person is or at any relevant time was a member of any group; or

(d) That a company is or at any time was a company wherein a controlling interest is or was held by or on behalf or in the interests of a member of any group; or

(e) That any person or company has at any time held immovable property on behalf or in the interests of an Asiatic or an Asiatic company or any other person in contravention of this Act, the Group Areas Act, 1957 (Act No. 77 of 1957), the Group Areas Act, 1950, or any law repealed by the last-mentioned Act,

the allegation shall be presumed to be correct unless the contrary is proved.

...

¹⁸ For extracts from the Group Areas Act, 1950, see *Yearbook on Human Rights for 1950*, pp. 293-300.

SPAIN

NOTE¹

I. CONSTITUTIONAL PROVISIONS AFFECTING HUMAN RIGHTS

On 14 December 1966 the Spanish people approved the new Organic Law of the State by a large majority, in an *ad-hoc* referendum. Because of its significance a general account of the Law will be given; comments on the Act will not be repeated in individual sections of this note.

Only those aspects of the Law which are directly related to human rights have been selected.

A

Declarations relating to the direct protection of human rights.

Art. 3: "The fundamental aims of the State shall be: . . . the protection of the rights of the individual, the family and society; and the promotion of a just social order in which all private interests are subordinated to the common good."

Art. 29: "The Judiciary shall enjoy complete independence. Justice shall be administered in the name of the Head of State in accordance with the laws by judges who shall be independent, irremovable and responsible under the law. All Spaniards shall have free access to the courts. Judicial proceedings shall be free for those who lack the means to pay for them."

Art. 31: "The judicial function of judging and ensuring the enforcement of judgements in civil, criminal, administrative, labour and other court proceedings established by law shall be vested exclusively in the courts and tribunals specified in the Organic Act on the Administration of Justice, each according to its competence."

Art. 34: "Judges may be separated from their posts, suspended, transferred or retired only for the reasons and with the safeguards prescribed by law."

The first supplementary regulation amends article 6 of the Charter of the Spanish people to read as follows: "The profession and practice of the Catholic Religion, which is the religion of the Spanish State, shall enjoy official protection. The State shall undertake to protect religious freedom, which shall be guaranteed by effective legal protection which shall, at the same time, protect public morals and order."

The second supplementary regulation amended various provisions of the Labour Code. The two following amended declarations are particularly important from the standpoint of the protection of human rights:

Declaration III

"4. The State shall lay down the minimum basic principles for the regulation of employment and the relations between employees and employers shall be established on the basis of these principles. The fundamental basis of these relations shall be the performance of work and remuneration therefor and, further, the regulation of the elements of the company, based on justice, mutual loyalty and the subordination of economic values to human and social values."

Declaration XIII

"3. Trade unions shall have the status of public bodies with a representative basis and shall enjoy legal personality and full capacity to act within their respective competence. There shall be established within the trade unions and in the form prescribed by law associations of employers, technicians and workers respectively, organized for the defence of their particular interests and as a means of free and representative participation in trade-union activities and, through the trade unions, in the common tasks of political, economic and social life.

"4. The trade unions shall be the forum of professional and economic interests for accomplishing the aims of the national community and shall represent those interests.

"The trade unions shall collaborate in the study of problems of production and may recommend solutions and take part in the regulation, supervision and application of conditions of employment."

¹ Note furnished by the Government of Spain.

B

In addition, the Organic Law is designed to strengthen democratic principles which provide major protection for human rights. These principles include constitutionality, representation and legality.

The principle of constitutionality is set forth in article 59 and the following articles, which provide for an action to contest constitutionality, called in classical Spanish *recurso de contrafuero* (action alleging unconstitutionality), which may be initiated against any legislative act or general provision of the Government infringing the principles of the national movement or the other fundamental laws of the realm.

The principle of representation is strengthened in two ways. On the one hand, the Cortes are made effectively more representative: firstly, because two family representatives, elected directly by heads of families and married women, are added to the membership of the Cortes for each province; and secondly, because the composition of trade-union representation is broadened on an elective basis; lastly, the number of members who may be freely designated by the Head of State is reduced from fifty to twenty-five. At the same time, however, the role of this representative organ, the Cortes, is recognized and strengthened as much as possible. Thus, article 41 provides: "The Administration may not issue decrees contrary to the laws, nor regulate matters coming exclusively within the competence of the Cortes without the express authorization of a statute. Such administrative decrees as infringe the provisions of the preceding paragraph shall be void." A similar provision had in fact been promulgated earlier, but it lacked the constitutional status it now has.

Art. 52: "The Government may not issue decrees which are required by articles 10 and 12 of the Cortes Act to be in the form of statutes."

Art. 9: "The Head of State must be authorized by a statute or, where applicable, by the agreement or authorization of the Cortes, in order to do the following: to ratify treaties or international agreements that affect the full sovereignty or the territorial integrity of Spain; to declare war and to agree to peace; to carry out the acts referred to in article 12 of the Succession Act and such acts as may be specified in other provisions of the fundamental laws of the realm."

Art. 53: "The President of the Government and the Ministers shall inform the Cortes concerning the action taken by the Government and its respective departments and, should the occasion arise, must answer requests, questions and interpolations made in due form." By the principle of legality is meant the requirement that the Administration must abide by the law of the land and, in general, by the legal rules. Reference was made earlier to article 41, which is the basic rule on this matter. Article 42 provides: "I. The resol-

utions issued and agreements made by the Administration shall be drawn up in accordance with the rules of administrative procedure; II. Actions and appeals may be brought before a competent court, in accordance with the law, against final administrative acts and decisions; III. The Administration and its authorities, officials and agents shall be responsible on the grounds and according to the procedure prescribed by law."

An account will be given in the next *Yearbook on Human Rights* of the necessary regulations for implementing the Organic Law which are introduced in 1967.

II. THE RIGHT TO HOLD PUBLIC OFFICE

The Act of 22 July 1961 concerning the political, vocational and employment rights of women provided that women should have access to posts in public departments on the same terms as men, but mentioned some exceptions, for example, the armed forces and the posts of judge of the high or lower court and of State Counsel. The latter exceptions were deleted by the Act of 28 December 1966, because it was felt that they were not in keeping with the present thinking of the Spanish people.

III. THE RIGHT OF ASSOCIATION

This right was governed generally by the Act of 24 December 1964, still in force, which laid down new rules and provided that the then existing associations would have to adapt their statutes to the new provisions within a certain period. In this connexion, mention should be made of Decree No. 388 of 3 February 1966, which provides that such associations as have not adapted their statutes accordingly are to be struck from the register of associations.

On the other hand, mention should also be made of the Order of 23 July 1966 which amended the existing regulations on professional students' associations. Such associations for students of institutions of higher education were established in 1965 as a reaction-planned and created by the Government itself—against the existing trade unionism, which while flexible and effective, had perhaps shown itself too bound up with the official organization. The associations were founded as organs formed exclusively by and for students; and after the above-mentioned Order was issued on the basis of the proposals of the National Council of Professional Students' Associations, which met at Granada, they were constituted as democratically based associations in which all organs and posts of responsibility emanate from the system of direct and free election.

IV. THE RIGHTS OF LABOUR

In Spain, the way in which workers in a given branch of production obtain benefits over and

above the compulsory minimum is by collective bargaining. It may now be said that the working conditions of the whole Spanish labour force are regulated by such bargaining. In 1966, some important collective agreements introducing economic and social improvements were concluded or amended, namely:

The inter-provincial trade-union collective agreement for travel agencies (18 May 1966);

The trade-union collective agreement for the workers of the CAMPSA (Compañía Arrendataria del Monopolio de Petroleos S.A.) fleet (27 January 1966);

The inter-provincial trade-union collective agreement for the workers of the Compañía Telefónica Nacional de España;

The inter-provincial trade-union collective agreement between the enterprises distilling resins, excluding natural resin producers, and their workers (16 May 1966);

The inter-provincial trade-union collective agreement for the workers of Tabacalera, S.A.;

The inter-provincial trade-union collective agreement between enterprises and workers in the printing and cigarette box and paper industries (27 September);

The inter-provincial trade-union collective agreement between workers and enterprises in veneer manufacturing and similar industries (16 September);

The inter-provincial trade-union collective agreement between workers and enterprises in the cotton textile industry (19 September);

The inter-provincial trade-union collective agreement between workers and enterprises in the knitwear and hosiery industry (10 September);

The inter-provincial trade-union collective agreement between workers and enterprises in the silk textile industry;

The inter-provincial trade-union collective agreement between workers and enterprises engaged in the wholesale trade in pharmaceutical specialities and products (7 July);

The inter-provincial trade-union collective agreement between workers and enterprises in private radio broadcasting (20 June);

The inter-provincial trade-union collective agreement between workers and enterprises in the chemical industry, in the sector of vegetable glues and dressings and cold glues (16 July);

The inter-provincial trade-union collective agreement between workers and enterprises in the salt industry (24 June);

The inter-provincial trade-union collective agreement between enterprises and workers in the plastic processing industry (30 June);

The inter-provincial trade-union collective agreement between workers and enterprises in the milk industry (Rs. 14 July).

It is interesting to note that many of the collective agreements now in force contain clauses for the automatic revision of wages in line with the rising cost of living. On 24 January of the year under review, the Government issued an order providing that such increases would be calculated according to the general cost-of-living index pub-

lished by the National Institute of Statistics for the nation as a whole.

Since collective agreements by their very nature require the concurrence of two different groups—employers and workers—when this concurrence is not forthcoming, the State, if it considers that in justice there should be improvement of working conditions, and especially economic conditions, in a given sector, may intervene by issuing a mandatory instruction introducing those improvements. That is what took place, for example, in the past year with respect to the personnel of the national chemical-pharmaceutical industry, who were given large wage increases by the mandatory instruction of 4 June, and also with respect to workers in cinematographic laboratories and in metal container and drum engraving and manufacturing.

In the construction and public works industry, the Order of 3 June 1966 amends certain articles of the existing national regulations with a view to improving the status of the workers in the following respects: reclassification of personnel employed in workshops having a permanent character as permanent staff; rules governing the termination of those classified as *fijos de obra* (employees who have completed six months of service and are not permanent or temporary staff); bonuses for the 18th of July and Christmas Day; paid vacations and protection of the right to work of trade-union representatives.

Rules and agreements based on the greatest possible protection of the worker would be useless without a guarantee, in the last instance by recourse to law, that those rules and agreements will be faithfully complied with. In Spain there is a branch of the ordinary courts which is concerned with these questions, i.e., it deals with labour claims applying very rapid and flexible procedures. The only difficulty experienced at present by this branch of the administration of justice is the inadequacy of its organization in the face of the mounting avalanche of labour disputes. Therefore, in 1966 the staff serving in the various bodies of this branch was increased, and five new labour courts were created in the provinces where the existing courts were carrying a very heavy workload.

In Spain, as in some other countries, there is a legally established minimum daily wage for workers. It was raised by 23 per cent by Decree No 2419 of 10 September. Normally, of course, this amount is substantially lower than the wages actually received, but the fixing of the minimum amount is important because it is instrumental for the determining of the additional bonuses calculated on wage percentages and likewise affects the contribution bases of social security and social security benefits.

In 1966 mandatory instructions were issued for personnel in: the chemical-pharmaceutical industry (resolution of 4 June); cinematographic laboratories in the provinces of Madrid and Barcelona (resolution of 24 March, ratified by the resolution of 4 May); the metal container and drum engraving and manufacturing industry (resolution of 10 December).

V. SOCIAL SECURITY

In 1966, an initial consolidated text under the Act of 28 December 1963 to Define the Basic Principles of Social Security was approved by the Decree of 21 April 1966. That text does not involve any change, because the new approach and fundamental principles of the social security scheme were introduced with the promulgation of the above-mentioned Act to Define the Basic Principles. This text, however, is the first necessary step in the implementation of the basic principles. General regulations for the execution of this Act were also issued in 1966; these regulations lay down the rates of cash benefit under social security.

It should be pointed out that never has there been such a broad measure of social security benefits in Spain: the fundamental situations conferring entitlement to benefits—benefits being interpreted in the widest possible sense—have been made as all-embracing as possible and the definition of persons entitled to benefits has also been extended for each benefit. The benefits, notably cash benefits, both periodic and lump-sum, and in particular health and medical benefits and those for the rehabilitation of the disabled, have been increased to the greatest extent possible.

As for medicines, the handbook and list of pharmaceutical prescriptions have been abolished (Decree 3157 of 23 December), which means that any person entitled to social security benefits may obtain any medicine or patent remedy in any pharmacy if he has the proper prescription. Medicines are dispensed free of charge when in excess of a rather symbolic fee intended to discourage abuse. But even in the most expensive cases this does not exceed more than 15 per cent of the regular price and may not in any case be more than fifty pesetas.

Important aspects of the social security scheme having been amended, as we have seen, the text governing the procedure to be followed in labour suits also had to be amended since it regulates not only workers' claims against employers but also every kind of social security claim, and consequently the necessary changes regarding claims of this kind had to be made in order to bring this text into line with the new social security scheme. That was done by the Decree of 21 April 1966 which approved the new draft of the revised text governing the procedure to be followed in labour suits.

Lastly, with a view to introducing the new totally nationalized social security scheme inaugurated by the 1963 Act to Define the Basic Principles of Social Security, various instruments issued during the current year, such as Decree 1210 of 12 May 1966 on industrial accidents, have relieved the insurance companies of responsibility for such matters.

VI. TRADE-UNION ELECTIONS

Concern for the independence of workers holding elected office in trade unions in the

discharge of their responsibilities led to the Decree of 2 June 1966 which establishes a scheme of guarantees designed to ensure that the undertaking cannot exert any pressure on the worker. Thus, it is provided that sanctions may be applied to such a worker only after a file has been opened on the case and an inquiry held, and a final decision has been taken by the labour court. The worker-representative may appeal to the labour court against a transfer other than a transfer by way of sanction.

In any case where, for reasons such as a cessation or suspension of activities, reduction in hours of work or in the number of working days, the completion of work or similar reasons, the undertaking has to lay off or dismiss redundant staff, such measures shall affect last of all, in their respective trades and categories, the workers who are representatives.

Lastly, these workers are entitled to be absent as a consequence of attendance at places, meetings, etc., related to their representative functions. Up to five days of such absence per month shall be paid.

VII. EMIGRATION

It is interesting to note that Spain, by an instrument dated 18 March 1966, ratified its accession to the Intergovernmental Committee for European Migration, an organization established for the protection of such emigrants.

In order to protect emigrants to Paraguay and guarantee their well-being so far as possible, and to direct the flow of emigration, the Spanish Government signed a Convention with the Government of Paraguay concerning emigration between Spain and Paraguay. The instrument of ratification of that Convention is dated 24 September 1965, but it was published in 1966.

VIII. LABOUR WELFARE

The fifth Investment Plan (for 1966) of the National Labour Welfare Fund was initiated by the Order of 16 April 1966.

This Plan has a budget of 2,771,810,000 pesetas, broken down as follows:

	<i>Million</i>
Unemployment benefits (co-operation in the financing of this form of social security)	1,073
For emigration (assistance, at home and abroad, to emigrants, adaptation to social environment and vocational training of emigrants, and repatriation of workers)	435
Social betterment of workers (assistance for labour training, helping workers to buy property, and encouragement of co-operatives)	821

	<i>Million</i>
Family allowances (co-operation in financing the allowances provided for under the new social security scheme)	250
Major blindness (to supplement income from social security for disabilities resulting from loss of vision)	4
Work safety and accident prevention . . .	17
Welfare and protection of coal miners . .	146
Miscellaneous items (for assistance connected with labour welfare accorded by the Minister-President)	23,310

IX. FREEDOM OF EXPRESSION

An important event occurred in 1966 as regards freedom of expression—the promulgation of the Press and Publications Act of 18 March.

This Act proclaims the freedom of expression by the printed word with no other provisos than respect for truth and morality, the Fundamental Laws, the requirements of national defence, of State security and of the maintenance of public order at home and peace with foreign countries, the respect due to institutions and persons in the criticism of political and administrative action, the independence of the courts and the safeguarding of privacy and personal and family honour. Violations of those provisos are tried before the ordinary courts of justice.

Censorship is repudiated: it is provided that the Administration may not apply prior censorship nor demand compulsory consultation, except in states of "exception" and war expressly provided for in the laws. The Administration may, however, be consulted if desired and, in that case, if the Administration does not issue a warning, the person disseminating the publication is relieved of all responsibility.

It is also provided that the Administration shall protect the freedom of the Press by instituting proceedings against offenders, including prosecution in the courts, and especially against those who attempt through monopolies in other media to distort public opinion or hinder free information, dissemination or circulation.

At the same time it is provided that the Administration and all public entities have the obligation to supply information concerning their acts to all periodicals and news agencies in the manner prescribed by law or regulation.

The Act confirms the freedom of all Spaniards and Spanish legal persons freely to form, or participate in, undertakings for the publication of periodicals, without any formal requirement other than that relating to Spanish capital and to prior registration in the Register of Periodical Enterprises, subject of course to compliance with the rules concerning the practice of journalism.

It is interesting to note that, with a view to keeping the public informed and independently of the public character of the Register of Periodical Enterprises, all periodicals are obliged to publish prominently each year the names of the members of their boards of management, the shareholders who hold more than 10 per cent of their registered capital and an information note on their financial situation.

The principle of freedom to form associations extends also to news agencies and publishing firms.

The rights of reply and rectification are guaranteed as a means of securing respect for the rights of the person and for the truth. As to the right of reply, any individual or legal person who considers himself or itself unjustly injured by any written or pictorial matter which mentions him or alludes to him or to it and appears in a periodical, may exercise the right of reply within the time and in the manner prescribed by regulations, and the editor of the publication is obliged to insert the written reply within a brief period of time.

The Act refers to the ordinary legislation governing the responsibilities which derive from the abuse of the rights regulated therein.

The most severe administrative penalties may only be imposed by the Council of Ministers and recourse may be had against them in the courts of justice.

X. PHYSICAL SAFETY

With regard to the physical safety of persons in general and of those, in particular, who directly participate in such work, the manufacture *in situ* of explosives from the mixture of ammonium nitrate and mineral oil in its two variants "Nabo and Nago" has been prohibited for large-scale blasting in mines, quarries and works in general (Decree 292 of 10 February 1966).

Concerning the same topic of physical safety, the Order of 15 September 1966 should be mentioned. It extends the prohibition in the present Hunting Act against hunting with firearms at a distance of less than one kilometre from population centres, calculated from the last house, to cover groups of tents and trailer camps.

It should also be remembered—and this has an indirect relation to the above—that the Order of 7 July 1966 has substantially raised the indemnities to be paid by Compulsory and Official Travellers' Insurance.

The Order of 22 July 1965 (included here because it was published in 1966) prescribes supplementary detailed rules for the application to all Spanish ships and merchant vessels, including fishing, pleasure and harbour service vessels, of the 1960 International Convention for the Safety of Life at Sea.

SUDAN

ACT No. 16 OF 1966 TO REGULATE TRADE DISPUTES¹

SUMMARY

Section 3 of this Act provides that it shall not apply to commissioned and non-commissioned officers and other ranks in the Sudan armed forces; police officers and other ranks in the Police Force and the Prisons Administration; and members of the judiciary.

By virtue of its section 11, the Act shall apply to any trade dispute between one or more employers and all their workers or some of them, whether they are members of a trade union or not.

Section 12, *inter alia*, states that in case of a trade dispute the parties to the dispute shall enter into direct negotiation within a period not exceeding three weeks for the settlement of that dispute.

In the case of the failure of the disputing parties to reach an agreement, section 13 stipulates that each of them may apply to the Commissioner of Labour with the purpose of settling the dispute and reaching a friendly agreement.

If the Commissioner of Labour does not succeed in settling the dispute within the period specified in section 13, he shall, under section 16, refer the matter to an arbitration tribunal with the prior consent of the two parties concerned.

As indicated in section 23, the award of an arbitration tribunal shall have the force of a decree and shall not be subject to appeal, after its announcement together with its reasons.

¹ *Republic of Sudan Gazette*, No. 1022, 15 May 1966. The text of the Act in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series*, 1966-Sud. 1.

SWEDEN

NOTE¹

I

An increase in the national basic pensions became effective on 1 July 1966. The annual pension—apart from municipal rent allowances—is as from July 1966, Sw. Kr. 4,585 for a pensioner alone or a total of Sw. Kr. 7,150 for two pensioned spouses together.

II

The disablement benefits and the care allowances for disabled persons have been increased. The right to disablement benefit now includes studies which are placed in the same category as gainful activity so that a badly handicapped person, who devotes himself to studies or other training, shall be able to receive these benefits on the same scale as a person who derives an income from gainful activity.

III

The regulations under the supplementary pensions scheme, which are stricter for foreigners than for Swedish subjects, have been substantially abolished.

IV

On 1 January 1967, important amendments in the health insurance scheme were carried into effect including, *inter alia*, the abolition of the waiting period and an increase of the sickness allowance. In general, sickness allowance is payable as from the day after the illness is

reported. The sickness allowance varies between Sw. Kr. 6 and 52 a day according to the size of the income of the insured person.

Maternity allowances for single births have been raised from Sw. Kr. 900 to Sw. Kr. 1,080.

V

The Mental Health Act of 19 September 1929, has been abrogated. As from 1 January 1967, the voluntary treatment of the mentally disordered is regulated by the provisions of the Public Health Act of 6 June 1962, in the same way as bodily medical care. A person who voluntarily seeks hospital treatment for a mental illness shall under no circumstances be detained in hospital against his will.

A new Act came into force on 1 January 1967 concerning closed psychiatric treatment in hospital for persons who, against their will, are regarded to be in need of treatment. Hospital treatment under this Act refers only to a person who is suffering from a mental illness and for whom closed psychiatric treatment is unavoidably necessary owing to the nature and degree of seriousness of the disorder and the fact that certain so-called special indications exist. Such special indications are that the person is dangerous to the safety or health of other people or to his own life, that he is incapable of taking care of himself or that his manner of living is grossly disturbing to other people.

VI

On 15 June 1966, in Strasbourg, Sweden made a declaration under article 46 of the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms.

¹ Note furnished by the Government of Sweden.

SWITZERLAND

FEDERAL AND CANTONAL LEGISLATIVE TEXTS CONCERNING HUMAN RIGHTS¹

I. FEDERAL LAW

1. Constitution

The Federal Order of 19 December 1966 concerning the result of the popular vote of 16 October 1966 on the Federal Order for the insertion in the Constitution of an article 45 *bis* on Swiss nationals living abroad (*Recueil officiel*, 1966, p. 1730).

2. Legislation

A. Political rights

The Federal Act of 1 July 1966 supplementing the Act on relations between the Councils (Extension of parliamentary control) (*Recueil officiel*, 1966, p. 1375; 1962, p. 811). Entry into force: 1 January 1967.

B. Protection of workers; protection of life and health; insurance

1. The Federal Act of 13 March 1964 on work in industry, handicrafts and commerce (Labour Act), which entered into force on 1 February 1966 (*Recueil officiel*, 1966, pp. 57 and 1787).

2. Ordinance I of 14 January 1966 concerning the implementation of the Labour Act (General Ordinance) (*Recueil officiel*, 1966, pp. 85 and 1788). Ordinance II of 14 January 1966 concerning the implementation of the Labour Act (*Recueil officiel*, 1966, pp. 119 and 1789).

3. Ordinance VI of 11 March 1966 on sickness insurance concerning authorization for paramedical personnel to practise under the sickness insurance scheme (*Recueil officiel*, 1966, p. 519).

4. Ordinance VII of 29 March 1966 on sickness insurance concerning authorization for laboratories to operate under the sickness insurance scheme (*Recueil officiel*, 1966, p. 590).

5. The Federal Council order of 22 April 1966 laying down a standard work contract concerning

insurance benefits to be given to personnel professionally exposed to ionizing radiation (*Recueil officiel*, 1966, p. 672).

6. The Ordinance of 18 January 1966 on work and rest periods for professional car drivers (Ordinance concerning chauffeurs) (*Recueil officiel*, 1966, pp. 39 and 516).

7. The Federal Council order of 30 July 1966 laying down a standard work contract for privately employed gardeners (*Recueil officiel*, 1966, p. 1284).

II. INTERNATIONAL AGREEMENTS

A. Protection of life and health; social insurance

1. International Convention of 12 May 1954 for the Prevention of Pollution of the Sea by Oil (*Recueil officiel*, 1966, p. 1242). Entry into force for Switzerland: 12 April 1966.

2. International Convention of 29 April 1958 on Fishing and Conservation of the Living Resources of the High Seas (*Recueil officiel*, 1966, p. 1023). Entry into force for Switzerland: 17 June 1966.

3. Supplementary Convention of 20 February 1965 concerning social insurance between the Swiss Confederation and the Republic of Austria (*Recueil officiel*, 1966, p. 645). Entry into force for Switzerland: 1 May 1966.

B. Legal protection

1. International Convention of 29 April 1961 for the Unification of Certain Rules relating to the Carriage of Passengers by Sea (*Recueil officiel*, 1966, p. 1038). Entry into force for Switzerland: 21 April 1966.

2. Convention of 29 April 1958 on the High Seas (*Recueil officiel*, 1966, p. 1013). Entry into force for Switzerland: 17 June 1966.

3. Convention of 29 April 1958 on the Territorial Sea and the Contiguous Zone (*Recueil officiel*, 1966, p. 1003). Entry into force for Switzerland: 17 June 1966.

¹ Collected by the Justice Division of the Federal Department of Justice and Police.

4. Convention of 29 April 1958 on the Continental Shelf (*Recueil officiel*, 1966, p. 1031). Entry into force for Switzerland: 17 June 1966.

5. Optional Protocol of Signature of 29 April 1958 concerning the Compulsory Settlement of Disputes (*Recueil officiel*, 1966, p. 1036). Entry into force for Switzerland: 17 June 1966.

III. CANTONAL LEGISLATION

(Examples)

A. Nationality

Zug

Ordinance of 3 June 1966 giving effect to the Act concerning the acquisition and loss of cantonal and communal citizenship.

B. Social welfare

Vaud

Order of 30 December 1966 implementing the Act of 22 November 1965 concerning general co-ordination measures regarding housing and incentives for the construction of low-cost housing.

C. Protection of life and health

1. *Vaud*

(a) Regulations of the Council of State of 18 January 1966 on the profession of psychotherapist

(excluding doctors) for children and adolescents.

(b) Order of 28 January 1966 provisionally regulating the introduction of the federal labour legislation in the Canton of Vaud.

(c) Order of 18 February 1966 amending the regulations of 5 February 1961 giving effect to the Act on buildings and territorial development, of 10 March 1944 (Title II: Building facilities and sanitation).

(d) Order of 30 September 1966 on meat inspection.

2. *Zug*

Regulations of 29 March 1966 on the school medical service.

D. Vocational training

Vaud

Act of 13 December 1966 on the profession of architect.

IV. INTER-CANTONAL AGREEMENTS

Judicial affairs

Concordat on the execution of penalties and measures concerning adults in the French-speaking Cantons, approved by the Federal Council on 2 September 1966.

THAILAND

NOTE¹

I. LEGISLATION

1. *Act on Control of the Art of Healing (No. 7), B.E. 2509 (1966)*

The purpose of this Act is to impose strict control over certain so-called medical practice which has not been covered by the previous law. It brings under the control of this Act the medical operation, inoculation, injection or insertion of any articles or chemicals into a human body for the purpose of beautification, contraception, sterilization or promotion of physical fitness. Only licensed first-class practitioners are permitted to give the said treatments according to section 11 *bis*, violation of which is liable to a term of imprisonment not exceeding three years or fine not exceeding 6,000 baht, or both (section 21). It also sets a new standard of medical education for any one who is to be registered and licensed as a first-class medical practitioner, i.e. he must obtain a degree or diploma from any of the recognized medical institutes in Thailand and a certificate from a hospital or a medical institute showing that he has practised in such a hospital or institute for a period of not less than one year after having been awarded the degree; or he must have been awarded a degree or diploma from any medical institute abroad and, in case of an alien, have been licensed as a medical practitioner in the country where he has graduated, and must also have passed with satisfactory results a test conducted by the Board of Medical Control (section 15). It also raises the standard of nursing education in various schools of nursing and midwifery.

2. *Act on Transferring the Administration of the Primary Schools to Provincial Authorities, B.E. 2509 (1966)*

Since B.E. 2502 (1959) it has been the Government's policy to promote the autonomy in the administration of education by local authorities so as to be in conformity with the principle of democracy. Thus, the administration of the following schools is by this Act transferred from the Ministry of Education to provincial authorities:

(1) Primary schools which were established by local communities (Prachaban);

(2) The Government schools which were attached to the Department of Elementary Education under the Ministry of Education and situated near or within the areas of primary schools established by local communities or areas of provincial authorities or local administrations (Tambol) (section 3 (2)).

3. *Act on Control of Service-providing Establishment, B.E. 2509 (1966)*

The purpose of this Act is to control certain kinds of entertaining establishment which, if allowed as free enterprise, may be harmful to public order and the good morals of the citizen. Some performances held in such establishments are unbecoming and setting a bad example to the younger generation. Such places are for instance dancing halls, cabarets, bars, night-clubs (whether or not entertainment, taxi-dancers or masseuses are provided), Turkish bath and massage parlours, and restaurants which sell liquor with entertainment.

Under this Act no person can open such establishment unless a licence has been obtained from the competent authority (section 4) and it must be managed by a responsible person (section 6). Furthermore, the location for such an establishment must not be near any religious place or place of worship, school, teaching institute, hospital, youth centre or hostel (section 7).

The licensee who manages the said business is required to provide two sets of record-cards which must bear details of name, address, date of birth, number, finger-prints and recent photograph of each employee, taxi-dancer, entertainer and masseuse working in that establishment; one set is to be kept at the establishment and the other to be kept as references at the local police station (section 14). The opening and closing time of the establishment, the interior lighting system as well as the keeping of the place clean, tidy and accessible for inspection by the competent authority are governed by Ministerial Regulations (section 17). If the licensee fails to comply with any of the provisions and requirements set forth in the Act, his licence may not be renewed, and in some cases it may be suspended or revoked

¹ Note furnished by the Government of Thailand.

(section 21). Any person who establishes the said place without a licence or carries on the business while the licence is suspended is liable to imprisonment or fine, as the case may be (section 26).

4. *Act on Control of Rents for Houses and Land, (No. 2) B.E. 2509 (1966)*

This Act was passed in order to extend the limit of control of rents for houses and land for a further period of two years. This Act is to alleviate the difficulty caused by the deficiency in the number of dwellings and land, and to safeguard tenants against unscrupulous rent increases and unlawful repossession by landlords.

This Act provides that, within the period of two years after the date of its coming into force, landlords of rent-controlled property may apply in writing for an increase in rents to the Rent Control Committee which has the power to grant or reject such applications. If an application for an increase of rents is granted, such increase must not exceed the rate of rents for houses and lands of similar nature which are not under control. However, once the Rent Control Committee has rejected or granted the application, that landlord no longer has the right to submit another application.

5. *Reservation of Breeds of Animals Act, B.E. 2509 (1966)*

The purpose of this Act is to repeal the Improvement and Reservation of Breeds of Farm Animals and Beasts of Burden Act, B.E. 2479 (1936), which did not provide adequate regulations required by modern methods of farming. Some owners of the animals castrate their healthy animals of large size to obtain higher selling prices or longer working life from such animals. This is contrary to the Government's policy, which intends to further good breeds of animals and shorten those of small size and bad appearance. Thus, the present Act was passed authorizing the Minister of Agriculture, in certain cases or in particular localities, to issue orders and lay down regulations where he deems reasonable for the achievement of the Government's policy. The Minister may limit the area for reserving and breeding of animals and regulate the type, sex, age and appearance of the animals to be preserved for breeding or otherwise (section 5).

The owner of the animals selected for the purpose of reservation may not transfer his ownership to any one else and must not cause such animals to be out of his possession for a continuous period of more than thirty days unless a licence has been granted by the Registrar (section 8). Similarly, no one may castrate, kill or export the animals selected as reserved ones (section 9), or bring in or take out any such animals from the area of reservation (sections 10 and 11) without a licence from the Registrar.

6. *Tobacco Act, B.E. 2509 (1966)*

This Act repeals the Tobacco Act, B.E. 2486 and its subsequent amendments. It empowers the Director-General of the Excise Department to

specify the type of tobacco-seeds to be planted in any particular area (section 6). It provides that whoever cures tobacco leaves, or establishes a tobacco-curing station or increases the number of tobacco cutting machines must first obtain a licence from the Director-General of the Excise Department. The manufacture of cigarettes is a monopoly of the State and any (tobacco) manufacturers must obtain the necessary licences from the Director-General (sections 10, 12 and 13). Under section 23 the Director-General is empowered to regulate the prices of cigarettes, and no one may sell the same beyond the prices so regulated. A person who has been granted a licence under this Act must display it in a conspicuous place and if it is lost or defaced the licensee must apply for a substitute within thirty days after the date it has been lost or defaced.

The Act authorizes the entry into any tobacco-plantations and inspection of any documents on accounts by competent officials; it is the duty of the licensee to permit such entry and inspection and to render reasonable facilities to the officials.

7. *Boy Scout Act (No. 2), B.E. 2509 (1966)*

This Act amends section 43 of the Boy Scout Act, B.E. 2507 by providing that no person can make or bring into Thailand, for the purpose of sale, any figures, marks or insignia which are parts of the boy scout uniform specified in the Ministerial Regulations, unless permission has been obtained from the National Committee of Boy Scout.

8. *Mining Act (No. 10), B.E. 2509 (1966)*

This Act empowers the Minister of National Development to issue regulations relating to the determination of the area of survey for the prospecting of iron ore and mineral oil (petroleum) deposits, the time limit of the surveying licence, and the application for mining concession.

9. *Bank for Agriculture and Agricultural Co-operatives Act, B.E. 2509 (1966)*

The purpose of this Act is to give financial assistance to farmers, groups of farmers and farmers' co-operatives. According to this Act the Bank for Agriculture and Agricultural Co-operatives is set up as a juristic person with its head office in Bangkok and branches or agencies within the Kingdom (sections 5 and 6). The authorized capital of the Bank is 1,000 million baht, divided into 10 million shares having a par value of 100 baht each. Its shares will be available for subscription by the Ministry of Finance, farmers, groups of farmers, farmers' co-operatives, financial institutes and other persons, as stipulated in the regulations of the Bank (section 7). The object of the Bank is to provide finances to farmers, groups of farmers and farmers' co-operatives by way of loans or guarantee of loans raised from other financial institutes as stipulated in the regulations of the Bank (section 9). The affairs of the Bank are under the supervision of the Minister of Finance (section 12). The Act also sets

up a board of directors consisting of a chairman, vice-chairman and not more than ten other members appointed by the Council of Ministers (sections 13 and 14). This board of directors has the power of general supervision of the Bank's activities (section 18). A full time manager who is of Thai nationality and has sufficient knowledge and experience in banking, economics, agriculture, co-operatives or law is to be appointed (section 20). He is responsible to the board of directors for the management of the Bank's affairs in accordance with the established policy and regulations of the Bank (section 22). In acquiring funds for its operations, the Bank is empowered to raise loans or issue debentures as is deemed appropriate by the board of directors, and to sell or discount bills to financial institutes under the regulations of the Bank. However, the total amount of debts must not exceed twenty times the total of its paid-up capital, reserves and surplus (section 33). The Bank's operations are not subject to taxation under the Revenue Code (section 41).

10. *Oil Fuel Act, B.E. 2509 (1966)*

The purpose of this Act is to control the oil refinery and the sale of fuel oil in order to stabilize the quality and reserve a certain quantity of fuel oil for public use. For such purpose a proprietor must conduct the oil business under licence (section 5) and monthly details of surplus fuel oil, whether imported or refined within the Kingdom, must be sent to designated officials by the tenth day of the following month (section 6). A proprietor of an oil business must keep in reserve a certain quantity of specified fuel oil and that quantity must not be less than the amount determined by the Minister. The amount which must be published in the *Government Gazette* may vary from 5 to 20 per cent of the total amount of fuel oil bought for re-sale or refined, calculated from the yearly output (section 7). The Minister is empowered to revoke a licence granted to a proprietor of an oil business if he fails to keep in reserve the quantity of fuel oil determined by the Minister for more than 30 days without reasonable excuse (section 12). The punishment for an oil proprietor carrying on his business without a licence is three months imprisonment or fine not exceeding 20,000 baht or both.

For the purpose of carrying out this Act, competent officials may enter oil refineries, storage sites, selling stations between sunrise and sunset for an inspection. Furthermore, officials may take samples or require a proprietor to produce samples for analysis (section 11).

11. *Taxation on Soft Drinks Act, B.E. 2509 (1966)*

Under this Act soft drink manufacturers must pay excise duties at a specified rate and the payment is by way of putting duty stamps on the containers or using authorized or official sealing tops (section 6). Importers of soft drinks are liable to the same duties as home manufacturers and such duties must be paid in advance unless it is otherwise specified by the Director-General (sec-

tion 22). In certain cases duties may be refunded, namely where the containers have been damaged or leaked so that sale is no longer possible or the quality has deteriorated from its original character or where the soft drinks are exported in accordance with Ministerial Regulations (section 23). No person may bring into the Kingdom or manufacture registered sealing tops without permission from the Director-General (section 11). A person who wishes to manufacture registered sealing tops is required, after having obtained a permit under the Factory Law, to submit an application together with plans of the factory, location of machinery and storage areas to the Director-General (section 12). Before production, the manufacturer must apply in writing to the Director-General for inspection, after which a licence is to be issued if, in the opinion of the Director-General, the factory does in fact comply with the plans and details in the application which has been previously approved; if not, alterations must be carried out prior to an issuance of the licence. The production of registered sealing tops must be under the supervision of an official from the Excise Department (section 13). A licensed manufacturer must not alter or use the factory or any part thereof contrary to the plans and details contained in the approved application except by written permission from the Director-General with the approval of the Ministry of Industry (section 14). The taking of soft drinks from a factory before duties having been paid is an offence punishable by imprisonment for a period not exceeding six months or fine not exceeding ten times the amount of duties which should have been paid (but the total fine must not be less than 2,000 baht), or both (section 35). Whoever has in his possession any duty stamps, with the knowledge that they have already been used, for the purpose of selling or disposing thereof is also punishable (section 24).

12. *Royal Decree Applying the Transportation Act, B.E. 2497, to Transportation by Private Motor-Cars, B.E. 2509 (1966)*

Before the issuance of this Royal Decree, the number of private motor-cars used for private transportation was increasing rapidly and some owners hired them out for remuneration. Such act is not only contrary to the law but also encourages tax evasion, and may increase traffic accidents. According to this Royal Decree, the Transportation Act, B.E. 2497 is made applicable to private transportation by private motor-cars used anywhere in the country. Thus, private motor-cars (including any trailers used for loading goods, if the total combined weight is more than 2,000 kilogrammes) used for private transportation are required to be registered and licensed, and to be under strict control of officials of the Land Transport Department.

13. *Royal Decree Establishing the Department of Mass Communication and Public Relations in Chulalongkorn University, B.E. 2509*

This Royal Decree was enacted for the purpose of establishing the department of mass communi-

cation and public relations in Chulalongkorn University. It intends to promote higher professional studies in the fields of mass communication and public relations.

II. JUDICIAL DECISIONS

There is a judgement of the Supreme Court (Dika) which has some bearing on the development of human rights.

Judgement of the Supreme Court No. 214-215/2509

Person's Right under the Criminal Procedure Code of Thailand

A police constable was charged with abusing his authority and causing bodily harm. The charge

arose from the fact that the accused had asked the complainant to accompany him to the police station, under the pretence that a police-major wanted to interrogate him. Believing that the accused had the lawful order from the police-major, the complainant went with him but found that the police officer in question was absent. The complainant refused to wait and was injured by the police constable when the latter tried to arrest and keep him in custody by force.

The case finally came before the Supreme Court (Dika) and it was held that the accused was guilty of violating section 78 of the Criminal Procedure Code of Thailand which provides that the administrative and police officials may not arrest a person without a warrant of arrest except in certain cases which do not include this one.

TOGO

NOTE¹

In the judiciary branch of the Government, no decisions concerning human rights were handed down by the Togolese courts.

No legislation or regulations concerning human rights were promulgated in Togo in 1966.

The only provisions in force at that time were those of the Constitution of 5 May 1963, which had not yet been abrogated.²

¹ Note sent by the Government of the Togolese Republic.

² For extracts from the Constitution of 5 May 1963, see the *Yearbook on Human Rights for 1963*, pp. 307-308.

TRINIDAD AND TOBAGO

NOTE¹

There have been no new Constitutions, constitutional amendments, legislation or general governmental decrees or administrative orders made in Trinidad and Tobago during 1966, but mention may be made of two decisions of the Appeal Court of Trinidad and Tobago relating to human rights. They are:

1. No. 440/65 *Lionel Beckles, Appellant v. Baldwin Dellamore, Cpl., Respondent* bearing on the right of the Executive to declare a state of emergency. The Chief Justice and the two Justices of the Court of Appeal dismissed the appeal. In his judgement the Chief Justice, *inter alia*, stated:

"The appellant was charged with having in his possession on 15 March 1965, at Ste. Madeleine in the Ward of Naparima in the County of Victoria, a protected area, documents of such a nature that the dissemination of copies thereof was likely to cause disaffection among persons in the said protected area. The offence charged was alleged to be in contravention of regulation 7 (1) of the Emergency Regulations, 1965 (hereafter called 'the Regulations') which were published as having been made by the Governor-General under section 4 of the Emergency Powers Ordinance, chapter 11, No. 10 (hereafter called 'the Ordinance'). He was convicted by a magistrate and, aggrieved thereby, appealed.

"That at the time and place alleged the appellant did have in his possession the documents the subject of the charge is frankly admitted. That the Ward of Naparima was 'a protected area' as defined by the Regulations was never challenged. That the dissemination of copies thereof was likely to cause disaffection among persons in the said protected area is no longer disputed. Accordingly, that there was in fact a contravention of regulation 7 (1) was not in issue on the appeal. The contest went to the validity of the regulation itself.

"...

"The Ordinance was enacted on 18 January 1947, and has never been expressly repealed.

But, as originally enacted and as still couched up to the commencement of the Constitution,² its section 2 provided that in any of the events therein specified the Governor might by proclamation in the *Gazette* declare that a state of emergency exists whereupon 'the provisions contained in (the) Ordinance' should 'immediately come into force', or that a state of emergency so declared to have existed is at an end whereupon 'the provisions of (the) Ordinance and all regulations made thereunder' should 'cease to apply'. It was therefore contended that, since no declared state of emergency existed at the commencement of the Constitution, the Ordinance or alternatively section 4 thereof under which the Governor-General purported to act when he made and published the Regulations was not at that time a law in force in Trinidad and Tobago. The significance of that contention is rooted in chapter 1 of the Constitution which deals with the recognition and protection of human rights and fundamental freedoms.

"... I have reached the conclusion that the appeal should be dismissed and the conviction and sentence affirmed. Before leaving the matter however, there was another point canvassed on which I ought to make some pronouncement. At the end of the trial before the magistrate and after considerable argument on the question whether regulation 7 (1) contravened the provisions of sections 1 and 2 of the Constitution, his solicitor requested the court to refer it to the High Court for determination. In support of that request, he called the magistrate's attention to the clear and explicit provisions of section 6 (3) of the Constitution which reads as follows:

"If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the ... foregoing sections ... the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious'.

¹ Note and texts of decisions of the Appeal Court furnished by the Government of Trinidad and Tobago.

² For extracts from the Constitution of Trinidad and Tobago of 1962, see *Yearbook on Human Rights for 1962*, pp. 294-299.

"Yet, notwithstanding the solicitor for the appellant's request, the magistrate did not so refer it. He has nowhere intimated whether in his opinion the raising of the question was merely frivolous. Perhaps he thought it merely vexatious! He has not said so however. He has simply left us guessing. I see from the record that the counsel who appeared for the respondent at the trial made it 'abundantly clear' that he was not of the view that any such question arose, but the counsel who appeared for him on the appeal has made it no less clear that he thought otherwise. But, on his part, the magistrate was singularly silent. He reserved his decision and when he delivered it three weeks later he made no reference whatever to any of the constitutional issues which had been discussed as the record shows. I think this a grave omission. When points regarding the Constitution are raised, they deserve at least some peering notice. However, the appellant has been able on this appeal to argue them fully and, in the result, he has had them determined by this court to which they would almost inevitably have come from the High Court if the reference had been made as the Constitution commands. Nevertheless, I cannot too strongly stress that it was the appellant's constitutional right to have the Supreme Court adjudicate on the matter. And my injunction is that no one should brush aside any such right in future.

"The appellant now grounds upon the denial of his right an application that he should be relieved of paying the costs of this appeal. To this I cannot accede. Had the proper course been taken, the costs he would have had to pay would have exceeded by far those that he has now incurred. Moreover, this appeal was not for the vindication of his right to have the question referred. It was that he should be freed from liability for the offence which he had undoubtedly committed. I have rejected his contentions and in my judgement his conviction must be confirmed. He must therefore suffer the usual order and pay the costs of the appeal to be taxed."

2, No. 3/1966 *In re the Constitution of Trinidad and Tobago* and on appeal: *Learie Collymore and John Abraham, Appellants v. The Attorney-General, Respondent* bearing on the validity of the legislation establishing an Industrial Court. In this case the Government of Trinidad and Tobago enacted in 1965 the Industrial Stabilisation Act No. 8 of 1965 which was "an Act to provide for the compulsory recognition by employers of trade unions and organisations representative of a majority of workers, for the establishment of an expeditious system for the settlement of trade disputes, for the regulation of prices and commodities, for the constitution of a court to regulate matters relating to the foregoing and incidental thereto". An Industrial Court has since been established in Trinidad and Tobago the broad purpose of which may be said to be to establish the rule of law in industrial relations. The Chief Justice and the two Justices of the Court of

Appeal dismissed the appeal. In his judgement the Chief Justice, *inter alia*, stated:

"Section 36 of the Constitution provides that 'subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Trinidad and Tobago'. In my judgement, the section means what it says. And what it says, and says very clearly, is that the power and authority of Parliament to make laws are subject to its provisions. Parliament may therefore be sovereign within the limits thereby set, but if and whenever it should seek to make any law such as the Constitution forbids it will be acting *ultra vires*. The Constitution also makes express provision in and by its section 6 for the enforcement of the prohibitions prescribed by its chapter I. The chapter, hereafter referred to as such, comprises the first eight sections of the Constitution and deals with 'The Recognition and Protection of Human Rights and Fundamental Freedoms'. And it is under the facility of section 6 that the appellants have claimed and are in my opinion entitled to the right to proceed.

"The appellants moved for an order declaring that the Industrial Stabilisation Act, 1965, to which I shall hereafter refer as 'the Act', is *ultra vires* the Constitution and is therefore null and void and of no effect. In the main, they founded their claim for relief on the ground that the Act falls within the mischief against which section 2 of the chapter provides . . .

"In referring to the appellants' contention I have spoken of the so-called right to strike. Corbin J. who dealt with the motion in the High Court denied the right. He pointed to what he described as the 'sharp distinction between the mere freedom to strike and the right to strike', and he quoted in his support passages from *Prof. Freund's Labour Relations and the Law*, at page 15, and *Hood Phillips' Constitutional and Administrative Law* (3rd ed.), at page 484. I agree with the distinction, but in the context of constitutionally-guaranteed rights and liberties I prefer to regard the freedom and to speak of it as an immunity . . .

"... Section 2 of the Constitution is concerned to protect the human rights and fundamental freedoms recognised and declared by section 1. It does so by a general followed by particular prohibitions. Some of the particular prohibitions are undoubtedly apt to protect artificial legal entities also, as for example the prohibition against any Act of Parliament depriving a person of the right to a fair hearing in accordance with the fundamental principles of justice (paragraph (e)) or depriving a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law (paragraph (f)). But, in my opinion, the prohibitions are intended to protect natural persons primarily. I say so because: (a) the rights they protect are expressly designated as human rights; (b) four of the six of them enumerated in section 1 are further de-

financed as rights of the *individual* and the other two are obviously so, being: (i) the right to join political parties and to express political views, and (ii) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward; (c) the fundamental freedoms no less than the rights are recognised and declared to have existed and are to continue to exist '*without discrimination by reason of race, origin, colour, religion or sex*', thereby I think clearly implying that they are freedoms of the individual; (d) four of the five of them enumerated in the section relate beyond question to the individual only; and (e) in the context of the required non-discrimination, I would interpret the fifth, 'freedom of the press', as a compendious reference to those responsible for press publications...

"... In my view, both sections 41 and 52 recognise that a trade union or other organisation acts, as it must, through its Executive. Consequently, if a trade union or other organisation is charged with an offence under section

41 (1) of the Act, it is not a deprivation of its constitutional right to a fair hearing in accordance with the principles of fundamental justice or of its cognate constitutional right to be presumed innocent until proved guilty according to law that section 41 (3) should deem the act constituting the offence, if directed by a member of its Executive, to be its own. Correlatively, it is likewise not any such deprivation if any offence against the Act is committed by a trade union or other organisation that section 52 (2) should deem every member of its Executive to be *prima facie* guilty also. Nevertheless, I would add that since section 41 (3) affects only a trade union or other organisation, neither of the appellants can rely on it to complain of any contravention, actual or threatened, in relation to him such as is necessary to qualify him to move in respect of it under section 6 (1) of the Constitution.

"In the result, then, I am satisfied that Corbin J. was right to refuse the appellants the relief they sought and I would dismiss their appeal with costs."

TUNISIA

LABOUR CODE

Promulgated by Act No. 66-27 of 30 April 1966 and entered into force on 1 May 1966¹

SUMMARY

The Code consists of 446 sections and is divided into General Provisions and seven Books which deal, respectively, with the establishment of employment relationships; the performance of work; labour inspection; labour disputes; penalties and special provisions.

By virtue of section 1, the Code shall apply to undertakings engaged in industry, commerce and agriculture, and to the branches of such undertakings, irrespective of their nature, whether public or private, denominational or non-denominational, and even if run on an occupational basis or for charitable purposes. This section also provides that the Code applies to the liberal professions, to handicraft establishments, co-operatives, non-trading corporations and trade unions and to all associations and groups of any kind whatsoever.

The Code, in Part I of Book II, contains provisions concerning conditions of work which

relate, *inter alia*, with minimum age; maternity protection; night work of women and children; hours of work; weekly rest; public holidays on which employees are paid; and annual leave with pay.

The special provisions, dealt with in Book II of the Code, concern the occupational associations; the employment of foreign labour; the immigration of workers; the reporting of establishments; the occupational medicine; the dangerous, unhealthy or offensive establishments; the medical supervision of work sites; the working clothes; the Labour Committee; the general conditions of employment of agricultural workers; the employment of women and children in agriculture; the settlement of collective labour disputes; the supervision of collective dismissals in industrial, commercial, co-operative and handicraft establishments; the conditions of employment of professional journalists; the conditions of employment of commercial travellers and representatives; the identity cards for commercial travellers and representatives; the identity cards for bakery workers; the Labour Medal; and the public holidays on which employees are paid though not obliged to work.

¹ *Journal officiel de la République tunisienne*, No. 20, 6 May 1966. The text of the Code in French and a translation thereof into English have been published by the International Labour Office in *Legislative Series*, 1966-Tun. 1.

ACT NO. 66-48 OF 3 JUNE 1966, CONCERNING FAILURE TO PREVENT THE COMMISSION OF A CRIME²

Art. 1. Any person able to act immediately who abstains, without risk to himself or third parties from preventing a crime or offence entailing bodily injury to another shall be liable to imprisonment for five years and a fine of 10,000 dinars.

Art. 2. The penalties referred to in article 1 shall be applicable to anyone who voluntarily abstains from helping another who is in danger whom he could have helped without risk to himself or third parties, either by intervening personally or by calling for help, if that person died, suffered bodily injury or a worsening of his condition because such help was denied him.

The same penalties shall be applicable to anyone who is bound by the rules of his occupation to help others and refrains from doing so in the circumstances referred to in the preceding paragraph.

The provisions of article 53 of the Penal Code are not applicable to the offence referred to in paragraph 2 above.

² *Journal officiel de la République tunisienne*, No. 24, 3 June 1966.

ACT No. 66-49 OF 3 JUNE 1966 AMENDING THE CODE
OF PERSONAL STATUS³

Art. 1. Article 57 of the Code of Personal Status is hereby abrogated and replaced by the following provisions:

Art. 57 (new). "The parents shall have custody during the marriage."

Art. 2. Article 64 of the Code of Personal Status is hereby abrogated and replaced by the following provisions:

Art. 64 (new). "The individual to whom custody has been granted may renounce it. In that case the judge shall designate a new guardian."

Art. 3. Article 67 of the Code of Personal Status is hereby abrogated and replaced by the following provisions:

Art. 67 (new). "In the event of the dissolution of marriage by death, custody shall be awarded to the surviving parent.

"If the marriage is dissolved while the spouses are living, custody shall be granted either to one of them or to a third party. The judge shall be guided by the interest of the child in taking a decision."

³ *Ibid.* For extracts from the Code of Personal Status, see *Yearbook on Human Rights for 1956*, pp. 219-220.

ACT No. 66-62 OF 5 JULY 1966,
CONCERNING THE LICENSING OF PLAYS⁴

Art. 1. The performance of new plays in the territory of the Republic shall be subject to the acquisition of a licence issued by the Minister of Cultural Affairs in accordance with the terms to be established by decree.

Art. 2. A National Theatre Advisory Board shall be established in the Ministry of Cultural Affairs to advise on the licensing provided in article 1 of this Act.

...

Art. 3. Every play must be presented to the public in the form approved when the licence was issued.

Any change in the text of a play or in the cast shall require the acquisition of a new licence.

Art. 4. Theatre managers shall be required to ask to see the licence issued by the Minister of Cultural Affairs before any play is performed. They shall also be required to ensure the implementation of its provisions, particularly with regard to the casting.

⁴ *Journal officiel de la République tunisienne*, No. 30, 12 July 1966.

ACT No. 66-66 OF 26 JULY 1966, AMENDING THE CODE OF CIVIL
AND COMMERCIAL PROCEDURE⁵

...

Art. 1. Title VIII of the Code of Civil and Commercial Procedure is hereby abrogated and replaced by the following provisions:

TITLE VIII

MEASURES OF EXECUTION

Chapter I

GENERAL PROVISIONS

Art. 285. Appeals for a stay of execution shall not have that effect unless they are filed within the legal time-limit.

...

Art. 288. Execution may be requested by: the beneficiary of the judicial decision, his legal representative, mandatory attorney, assigns, and creditors, in the conditions prescribed by law.

Art. 289. In the event of the death of the unsuccessful party, execution shall be pursued against his heirs after they have been notified of the decision and after expiry of the time-limit specified in article 287, even if the unsuccessful party had already been notified and the time-limit had been granted to him.

Execution initiated against the unsuccessful party shall be continued, as appropriate, against his heirs, without further notification of the decision or extension of the time-limit.

...

Art. 307. Distraint may not exceed the amount required to pay off the distraining creditor.

⁵ *Ibid.*, No. 33, 2 August 1966.

Art. 308. The following shall not be subject to distraint:

1. The bedding, clothing and cooking utensils required by the distrainee and his family;

2. The tools or books which the distrainee shall deem necessary for his work, up to a value not exceeding 100 dinars;

3. The schoolbooks and supplies required by the dependent children of the distrainee;

4. A two-week supply of food for the distrainee and his family;

5. Decorations, letters and personal papers, religious articles and articles required for the performance of religious devotions.

The report on the distraint or attempted distraint must specify those undistrainable objects, if any, left in the possession of the debtor.

...

Art. 311. Distrained property may be sold only at public auction.

...

Chapter II

EXECUTION OF JUDICIAL DECISIONS
RENDERED ABROAD

Art. 316. Judicial decisions rendered in a foreign country may be executed in Tunisia, provided that they have been declared enforceable by a Tunisian court.

...

Art. 321. Foreign judgements deemed enforceable in Tunisia shall be executed in accordance with Tunisian law.

...

UGANDA

THE PENAL (AMENDMENT) ACT, 1966

Act No. 1 of 1966, assented to on 17 February 1966 and entered into force on 18 February 1966¹

1. The Penal Code is hereby amended,

(a) In Chapter VII by substituting the following title therefor, "Chapter VII.—Treason and Offences Against the State";

(g) By substituting for sections 41 and 42 thereof the following,

"41. (1) A seditious intention shall be an intention,

"(a) To bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution;

"(b) To excite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter in state as by law established;

"(c) To bring into hatred or contempt or to excite disaffection against the administration of justice;

"(d) To raise discontent or disaffection among any body or group of persons;

"(e) To promote feelings of ill-will and hostility, religious animosity or communal ill-feeling among any body or group of persons;

"(f) To raise discontent or disaffection or to promote feelings of ill-will and hostility among any body or group of persons by the use of any symbol connected with or attaching upon, in whatever manner, the name, status, or dignity of the Ruler of a Federal State or the Constitutional Head of a District;

"(g) To use any symbol connected with or attaching upon, in whatever manner, the name, status or dignity, of the Ruler of a Federal State or the Constitutional Head of a District in order to bring into hatred or ridicule or contempt or to incite disaffection against the Ruler of a Federal State or the Constitutional Head of a District;

"(h) To subvert or promote the subversion of the Government, the government of a Federal State or the Administration of a District.

"(2) For the purposes of this section an act, speech or publication shall not be deemed to be seditious by reason only that it intends,

"(a) To show that the Government has been misled or mistaken in any of its measures;

"(b) To point out errors or defects in the Government or the Constitution including the constitution of a Federal State as by law established, or in legislation or in the administration of justice with a view to the remedying of such errors or defects;

"(c) To persuade any person to attempt to procure by lawful means the alteration of any matter as by law established; or

"(d) To point out, with a view to their removal, any matters which are producing or have a tendency to produce feeling of ill-will and enmity among any body or group of persons.

"(3) For the purposes of paragraphs (f) and (g) of subsection (1) of this section "symbol" includes slogans, titles and any name or other expression which is intended to represent or calculated to represent, or might represent a name.

"(4) For the purposes of this section in determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he was conducting himself.

"42. (1) Any person who,

"(a) Does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with a seditious intention,

"(b) Utters any words with a seditious intention,

"(c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication,

"(d) Imports any seditious publication, unless he has no reason to believe, the proof whereof shall lie on him, that it is seditious,

¹ Printed and published by the Government Printer, Entebbe, Uganda.

"commits an offence, and shall be liable on first conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand shillings, or to both such imprisonment and fine, and for a subsequent conviction to imprisonment for a term not exceeding seven years.

"(2) Any person who, without lawful excuse, has in his possession any seditious publication, commits an offence and shall be liable on first conviction to imprisonment for a term not exceeding three years or to a fine not exceeding six thousand shillings, or to both such imprisonment and fine, and on a subsequent conviction, to imprisonment for five years.

"(3) Any publication in respect of a conviction under the preceding subsections shall be forfeited to the Government.

"(4) It shall be a defence to a charge under the provisions of subsection (2) of this section that, if the person charged did not know that the publication was seditious when it came into his possession, he did, as soon as the nature of the publication became known to him, deliver the publication to the nearest administrative officer or to the officer in charge of the nearest police station."

...

(i) By inserting the following new section 76B,

"76B. (1) Any person who incites any other person to do an act of violence against any

person by reason of his race, place of origin, political opinions, colour, creed or sex or office, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding fourteen years or to a fine not exceeding fourteen thousand shillings or to both such imprisonment and fine.

"(2) For the purposes of the preceding subsection "office" means the office of a Minister of the Government or of the government of a Federal State, a Member of Parliament or councillor, a public office, employment in the service of the government of a Federal State, the Administration of a district or the council or board of a municipality or town, any religious office and employment as a director, officer or other official in or by any body corporate established by or under the auspices of or controlled by the Government.";

...

(m) By inserting immediately after section 242 thereof the following new section,

"242 A. (1) Any person who induces another person to give up himself as a slave, is guilty of a felony, and shall be liable on conviction to imprisonment for ten years.

"(2) Any person who attempts or conspires with another person to induce a person to give up himself as a slave or is an accessory thereto is guilty of a felony and shall be liable on conviction to imprisonment for five years.";

...

THE EMERGENCY POWERS (INDUSTRIAL DISPUTES) REGULATIONS

No. 62 OF 23 MAY 1966²

1. PROHIBITION OF LOCKOUTS AND STRIKES

(1) An employer shall not declare or take part in a lockout and a workman shall not take part in a strike in connection with any trade dispute unless the trade dispute has been formally reported in writing to the Commissioner, and the Commissioner has not, within 14 days of the receipt of the report, declared in his absolute discretion, that the trade dispute shall be determined in accordance with the provisions of these Regulations.

(2) Whenever the Commissioner declares that a trade dispute shall be determined in accordance with the provisions of these Regulations, he shall so inform all interested parties in writing and shall take such steps as may seem expedient to him for the purpose of encouraging and assisting the parties to the trade dispute to reach a settlement by mutual agreement; and if such settlement be

not reached within one month of the date on which the trade dispute was reported to him, he shall so report in writing to the Minister.

(3) The Minister may, within ten days of the receipt of the report of the Commissioner under the provisions of the immediately preceding sub-regulation, if he considers it expedient, fix a further time for such settlement to be reached and may take such steps as may seem expedient to him to encourage and assist the parties to the trade dispute to reach such settlement; and if such settlement be not reached within the time so fixed or if no such further time has been fixed, may direct that the trade dispute be referred to arbitration by a sole arbitrator to be appointed by the Minister.

(4) The Commissioner shall, in his absolute discretion, decide whether any trade or industry is one to which the provisions of these Regulations apply.

(5) Any decision of the Commissioner under the immediately preceding sub-regulation shall, subject to the provisions of the succeeding sub-regulation, be conclusive.

(6) Where a lockout or strike has occurred and the Commissioner is satisfied that the parties to

² *Uganda Gazette*, No. 21, 27 May 1966. The text of the Regulations in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series*, 1966—Ug. 1.

the lockout or strike have so acted in the reasonable belief that a trade or industry is not one to which the provisions of these Regulations apply, and the Commissioner decides that the provisions of these Regulations do apply to the trade or industry, he shall cause a certificate under his hand to be served upon the parties to the lockout or strike, stating that the trade or industry is one to which the provisions of these Regulations apply; and the parties to such lockout or strike shall thereupon comply with the provisions of these Regulations as and from the date of service of the certificate.

2. ARBITRATION

(1) Where a trade dispute is referred by the Minister to arbitration under the provisions of regulation 1 of these Regulations, the provisions of this regulation shall apply in regard to any proceedings of an arbitrator and to any award issued by him.

(2) Where any trade dispute referred to an arbitrator involves questions as to wages or as to hours of work, or otherwise as to the terms and conditions of or affecting employment which are regulated by any enactment, the arbitrator shall not make any award which is inconsistent with the provisions of that enactment.

(3) For the purpose of dealing with any matter referred to him, an arbitrator of his own volition or on the application of either of the parties to the dispute, shall have full power by order, to require:

(a) Any person to furnish, in writing or otherwise, such particulars in relation to such matter as the arbitrator may require;

(b) The attendance before him where necessary of any person to give evidence on oath or otherwise; and

(c) The production of documents by any person, so as to elicit all such information as in the circumstances may be necessary,

without being bound by the rules of evidence in civil or criminal proceedings.

(4) Where any witness objects to answer any question or to produce any document under the provisions of the immediately preceding sub-regulation, on the grounds that it will tend to incriminate him or on any other lawful ground, he shall not be required to answer the question or to produce such document nor shall he be liable to any penalties for refusing to do so.

(5) In any proceedings before an arbitrator either party may be represented by a legal practitioner.

(6) It shall be in the discretion of an arbitrator to admit or exclude the public or the press from any of his sittings.

(7) Whenever the press is allowed to be present at the sitting of an arbitrator, and in no other case, a fair and accurate report or summary of the proceedings, including the evidence adduced at the sitting, may be published.

(8) Notwithstanding the provisions of sub-regulation (7) of this regulation:

(a) Until the award of an arbitrator has been published in pursuance of sub-regulation (9) of this regulation, no comments shall be published on the proceedings or evidence which relate to it;

(b) Any person who contravenes paragraph (a) of this sub-regulation commits an offence and shall be liable on conviction to a fine not exceeding £100.

(9) Any award of an arbitrator shall be submitted to the Minister who shall, as soon as possible thereafter, cause the same to be published in such manner as he thinks fit.

3. AWARD TO BE BINDING

Any agreement, decision or award made under the provisions of these Regulations:

(a) Shall be binding on the employers and workmen to whom the agreement, decision or award relates; and

(b) Shall not be called in question by any court;

and, as from the date of such agreement, decision or award or as from such date as may be specified therein, not being earlier than the date on which the dispute to which the agreement, decision or award relates first arose, it shall be an implied term of the contract between the employers and the workmen to whom the agreement, decision or award relates that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such agreement, decision or award until varied by a subsequent agreement, decision or award.

...

THE JUSTICES OF THE PEACE (AMENDMENT) ACT, 1966

Act No. 15 of 1966, assented to and entered into force on 27 July 1966³

1. The Justices of the Peace Ordinance is hereby amended by substituting for section 4 thereof the following:

"4. (1) A justice of the peace shall have the same powers and duties as a magistrate to administer oaths and affirmations, to release on bail, to remand in custody, take affidavits, attest signatures and certify to copies of documents, and shall exercise the same in like manner and take the same fees therefor on behalf of the Government.

"(2) Any person remanded in custody by a justice of the peace shall be brought before a magistrate as soon as practicable.

"(3) Subject to subsection (2) of this section, a justice of the peace shall only remand a person for a single period not exceeding ten days."

³ Printed and published by the Government Printer, Entebbe, Uganda.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE¹

The successful development of the national economy of the Ukrainian SSR in 1966 created favourable conditions for an improvement in the material well-being of the population and for further cultural development. This is shown by the data contained in the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR on the fulfilment of the State plan for the development of the national economy of the Ukrainian SSR in 1966, extracts from which are given below.

The average employment figure for manual and non-manual workers in the national economy of the Ukrainian SSR was more than 13.9 million, an increase of 550,000 over the preceding year.

The average monthly cash wage for manual and non-manual workers in the national economy increased from 93 roubles in 1965 to 96 roubles in 1966, a rise of 3.2 per cent. With the addition of payments and benefits from social funds, the average wage rose from 126 to 130 roubles a month.

About 60 per cent of collective farms changed over to a guaranteed monthly wage for collective farm workers.

Collective farm workers' income from collective production in cash and in kind increased by 6 per cent.

Payments and benefits received by the population from social consumption funds totalled approximately 8,000 million roubles, an increase of 8.3 per cent over the previous year. These funds provided social insurance, free education and medical care; various allowances, pensions, education grants, and free or reduced-rate passes to sanatoria and rest homes; paid vacations; upkeep of nurseries and crèches, and other social and cultural facilities.

There was a further improvement in the living and cultural conditions of the population. Four hundred and ten thousand new apartments with a total area of about 13.6 million square metres — 220,000 square metres more than in 1965 — financed by the State or by manual and non-

manual workers were brought into occupancy in towns and rural settlements.

In addition, 103,000 dwellings were built by collective farms, collective farm workers and the rural intelligentsia from their own resources or with the help of State loans.

During the year, 1.8 million persons moved into new houses or improved their living conditions in existing dwellings.

A large number of general education schools, hospitals and polyclinics, children's pre-school establishments and other cultural and social facilities were built.

Further progress was made in public education, science and culture.

In the past year, over 14 million people have been receiving education in one form or another. 8.5 million persons are studying in general education schools, and about 1.5 million in higher and specialized secondary educational establishments — 739,000 in the former and 719,000 in the latter.

Enrolment in extended-day schools and groups and in boarding schools was 971,000.

In 1966, 550,000 persons graduated from the tenth and eleventh classes of general education day schools in 1966. Of this total, 214,000 continued to study full-time in higher and specialized secondary educational establishments, technical colleges and various courses; 302,000 were placed in industry, transport, building, agriculture, trade and other sectors of the national economy, and a certain number of graduates were called up for military service.

Enrolment at higher and specialized secondary educational establishments totalled 377,000 — 155,600 at the former and 221,400 at the latter.

Last year, 215,600 specialists, including 80,200 with higher education and 135,400 with specialized secondary education were absorbed into the national economy.

More than 150,000 young skilled workers were trained at colleges and vocational technical schools. In addition, about 3 million people obtained higher qualifications or trained for new occupations directly at enterprises or collective farms by receiving individual or group instruction or taking courses.

¹ Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

Scientific workers employed in scientific institutions, higher educational establishments and other organizations numbered more than 97,000 at the end of 1966; of these, 2,000 held the degree of Doctor of Science and 21,000 that of Candidate of Science.

The number of cinema installations reached almost 27,000 and cinema attendance totalled more than 828 million.

Medical services to the population continued to improve in the past year. The number of doctors increased by 4,000. The number of beds in hospitals, sanatoria and rest homes also increased.

The population of the Republic on 1 January 1967 was 45.9 million.

(From the newspaper, *Pravda Ukrainy*,
1 February 1967)

There were no fundamental changes in 1966 in the legislation of the Ukrainian SSR concerning human rights. Only a few legislative and regulatory measures were adopted during the year.

By a decree of 5 July 1966, the Presidium of the Supreme Soviet of the Ukrainian SSR supplemented article 3 of the Act of 29 July 1938 concerning reimbursement to deputies of the Supreme Soviet of the Ukrainian SSR of expenses connected with the fulfilment of their duties (the article provides that deputies shall have the right of free travel on all railways and waterways) by granting deputies of the Supreme Soviet of the Ukrainian SSR the right to free air travel on all Ukrainian airlines.

(*Gazette of the Supreme Soviet
of the Ukrainian SSR*, 1966, No. 27, item 172)

In its ordinance of 23 February 1966 concerning the work of local Soviets of Working People's Deputies in the Lvov region, the Presidium of the Supreme Soviet of the Ukrainian SSR directed the executive committees of local Soviets of Working People's Deputies, *inter alia*, "to devote more attention to the consideration of working people's applications and complaints, to take steps to eliminate their causes, to be available for personal consultations with citizens regularly and at the stated times, to decide carefully and promptly questions referred to them by working people on the spot, to enlist more widely the services of deputies and the community in examining applications and complaints, and to wage a decisive campaign against bureaucracy and red tape in dealing with them".

(*Gazette of the Supreme Soviet
of the Ukrainian SSR*, 1966, No. 8, item 33)

On 26 April 1966, the Presidium of the Supreme Soviet of the Ukrainian SSR adopted an ordinance on the observance of legality in the proceedings of the local Soviets and administrative organs of the Luganskaya region. Noting the existence of shortcomings with regard to the observance of legality in the work of executive

committees of local Soviets, the Presidium of the Supreme Soviet directed the organs concerned to eliminate the shortcomings mentioned in the order. In particular, the Executive Committee of the Luganskaya Regional Soviet of Working People's Deputies was instructed "to ensure strict observance of socialist legality and the rule of law, the protection of social and personal property, and the defence of citizens' rights and legal interests".

(*Gazette of the Supreme Soviet
of the Ukrainian SSR*, 1966, No. 18, item 106)

The shorter period of schooling at secondary general education schools and the almost three-fold increase in the number of graduates of secondary schools in 1966 compared with the previous year have made it necessary to adopt a number of measures to provide for further education, vocational training and job placement for hundreds of thousands of young people.

The ordinance of the Central Committee of the Ukrainian Communist Party and the Council of Ministers of the Ukrainian SSR of 4 March 1966 on measures to expand education and job placement in the national economy for graduates from general education schools in the Ukrainian SSR in 1966 provides for a whole series of specific measures for job placement and further training of young people, the most important of which are:

The establishment of special republic, regional, district, and urban commissions to direct and supervise the implementation of these measures;

Greater enrolment of students in higher and specialized secondary educational establishments;

Greater enrolment of students in existing vocational technical colleges for the acquisition of specific skills, and the creation of fifty-two educational establishments of a new kind: technical colleges;

The placement of young people in jobs in the national economy. To this end, a special quota of jobs in establishments and institutions has been reserved (from 0.5 to 10 per cent of the total number of manual and non-manual workers) and a broad system of young people's vocational training courses has been established.

(*Collected Ordinances of the Ukrainian SSR*,
1966, No. 3, item 31)

Of the principal ordinances adopted in 1966 by the Plenum of the Supreme Court of the Ukrainian SSR, the ordinance of 30 September 1966 concerning measures to eliminate shortcomings and effect improvements in the work of the courts in the campaign against hooliganism, is of a certain interest from the standpoint of the exercise and protection of human rights.

In this ordinance it is emphasized that all violations of social order, and particularly manifestations of hooliganism, impair the existing social order and constitute a danger to individual members of society in their work and their private lives. Wishing to ensure greater guarantees for the

protection of the honour and dignity of citizens from impairment by individual hooligan elements, the Supreme Court has drawn the attention of all

Ukrainian courts to the fact that the intensification of the campaign against hooliganism is one of their prime tasks.

UNION OF SOVIET SOCIALIST REPUBLICS¹

FULFILMENT OF THE STATE PLAN FOR THE ECONOMY OF THE USSR IN 1966

(EXTRACT)

V. Rise in the material and cultural standard of living

The national income used for consumption and capital accumulation was almost 7.5 per cent higher than in 1965.

The average number of manual and non-manual workers employed in the national economy was 79.7 million, an increase of 2.8 million over the previous year.

In 1966, as in previous years, there was no unemployment in the USSR.

The real *per capita* income of workers increased by more than 6 per cent during the year. The rise in incomes resulted from an increase in the cash wages of manual and non-manual workers and collective farm workers and in public consumption funds.

The average monthly wage of manual and non-manual workers in the economy increased by 3.6 per cent.

Increased agricultural production, together with the reductions in collective farms' income tax and in the prices of goods for use in production and electricity made during the past year in accordance with the decision of the March 1965 Plenum of the Communist Party of the USSR, made possible a substantial increase in the income of collective farms. The overwhelming majority of collective farms changed over to a guaranteed monthly wage. Collective farm workers' income from collective production in cash and in kind rose by 16 per cent.

Payments and benefits received by the population from social consumption funds totalled more than 45,000 million roubles, an increase of 7.9 per cent over the previous year. These funds provided social insurance, free education and medical care, allowances, pensions, education grants, and free or reduced-rate passes to sanatoria and rest homes; paid vacations; upkeep of nurseries and crèches, and other social and cultural facilities.

Individual deposits in savings banks increased by 4,200 million roubles, or 22 per cent, during the year, and totalled 22,900 million roubles on 1 January 1967.

The volume of State and co-operative retail trade in the past year amounted to 111,700 million roubles, an increase of 8.7 per cent in comparable prices. The annual trade turnover plan was fulfilled ahead of time. The supply of food-stuffs and many industrial goods to the population was considerably improved.

There was an increase in the total sales of agricultural produce in urban collective-farm markets, and especially of livestock products, which fell in price.

The successful development of the economy and the growth of retail trade turnover and services ensured the stability of the monetary circulation.

There was a further improvement in the living and cultural conditions of the population. 1,850,000 new and modern apartments, financed by the State and by manual and non-manual workers, with a total area of about 80 million square metres—0.8 million square metres more than in 1965—were brought into occupancy in towns and rural localities. In addition, 370,000 dwellings were built by collective farms, collective farm workers and the rural intelligentsia from their own resources or with the help of State loans.

There was large-scale construction of general education schools, hospitals and polyclinics, children's pre-school establishments and other cultural and social facilities, financed by the State and by collective farms.

The amount of household services provided to the population was 17 per cent higher—27 per cent in rural areas—than in 1965.

There was further modernization of towns and other residential areas. Gas was supplied to more than 1.8 million apartments in towns and urban settlements.

Further progress was made in public education, science and culture.

In the past year, more than 72 million persons have been receiving education in one form or another, over 48 million in general education

¹ Texts furnished by the Government of the Union of Soviet Socialist Republics.

schools, 4.1 million in higher educational establishments and 4 million in specialized secondary educational establishments.

Enrolment in extended-day schools and groups and in boarding-schools was about 4 million.

Last year, about 2.6 million persons graduated from the tenth and eleventh classes of general education day schools. Of these, 1.1 million continued their studies at higher educational establishments, specialized secondary schools, vocational technical schools and various courses.

More than 1.1 million specialists entered the economy during the year, of whom about 700,000 had higher education. Enrolment at higher and specialized secondary educational establishments totalled 2.1 million—900,000 at the former and 1.2 million at the latter.

More than a million young skilled workers were trained at vocational technical schools. Over 14 million people obtained higher qualifications or trained for new occupations directly at enterprises or collective farms by receiving individual or group instruction or taking courses.

Scientific workers employed by scientific institutions, higher educational establishments and other organizations numbered about 700,000 by the end of the year.

The number of cinema installations reached 149,000. Cinema attendance totalled 4,200 million.

Medical services were improved. The number of doctors of all types rose over the year by 26,000. The number of beds in hospitals, sanatoria, rest homes and boarding houses increased.

The population of the Soviet Union on 1 January 1967 was 234 million.

ORDINANCE OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE SOVIET UNION (CPSU) AND THE COUNCIL OF MINISTERS OF THE USSR ON GIVING COLLECTIVE FARM WORKERS A GREATER MATERIAL INTEREST IN THE DEVELOPMENT OF COLLECTIVE PRODUCTION

Adopted on 16 May 1966

The Central Committee of the CPSU and the Council of Ministers of the USSR note that there are serious shortcomings in the situation with regard to the distribution of income on collective farms and the remuneration of collective farm workers. On a number of collective farms the level of collective farm workers' remuneration is not enough to give them the necessary material interest in the development of collective production.

Attaching great importance to increasing the material interest of collective farm workers in the development of the collective production of collective farms, the Central Committee of the CPSU and the Council of Ministers of the USSR hereby resolve that:

1. Collective farms shall be recommended:

To introduce, from 1 July 1966, a guaranteed remuneration (in cash and in kind) for collective farm workers in accordance with the basic wage rates for the corresponding categories of workers on State farms;

To establish output norms on the basis of practical conditions, in conformity with the norms in effect for similar work on State farms;

To pay collective farm workers, in addition to a guaranteed remuneration for the volume of work completed, a remuneration for the final result of their work (quality and quantity of output or gross income received);

To make provision in the production and financial plans of collective farms for the necessary funds, in cash and in kind, for the remuneration of collective farm workers and to use them only for that direct purpose;

To settle accounts with collective farm workers with regard to their guaranteed remuneration in cash not less than once a month and in kind in accordance with the production delivery schedule.

2. In the distribution of income on collective farms, funds for the remuneration of collective farm workers shall be allocated first.

Allocations for the replenishment of "indivisible" and other social funds shall be made, in the amounts decided by the collective farms themselves, after funds have been assigned for the remuneration of collective farm workers, for compulsory payments to the State and for contributions to the centralized union social security fund for collective farm workers.

3. In order to meet collective farm workers' needs for agricultural products, collective farms shall be recommended to establish a guaranteed stock for distribution as remuneration in kind. They shall be recommended to allocate to this stock a specific proportion of the gross crop of grain and other agricultural products, so that collective farm workers may, if they wish, receive as part of their guaranteed remuneration grain and other produce and fodder for privately owned cattle, in amounts and in accordance with procedures laid down by a general meeting of collective farm workers.

4. The introduction of the guaranteed remuneration for collective farm workers and further increases in remuneration shall be effected through increased output of agricultural products, increased labour productivity, elimination of

existing shortcomings in establishing output norms and remuneration rates, abolition of excess administrative and service posts, substantial reductions in non-productive expenditure and strict observance of economy measures.

5. The Councils of Ministers of the Union Republics shall be required, within a period of one month, to prepare and, in agreement with the Ministry of Agriculture of the USSR and the State Committee on Labour and Wages of the Council of Ministers of the USSR, to approve recommendations on remuneration for work in collective farms.

6. The State Bank of the USSR shall be required to grant, during the period 1966-1970, loans for terms of up to five years to collective farms whose own funds are insufficient to ensure a guaranteed remuneration for collective farm workers in accordance with paragraph 1 of this Ordinance within the limits of the amounts fixed in the plans for long-term credit to collective farms.

This credit shall be granted to collective farms on the basis of their applications, after consideration and approval by District executive committees.

The amount of the loan shall be up to the difference between the guaranteed remuneration fund and collective farms' own resources allocated for this purpose in their production and financial plans.

The repayment of this loan by collective farms shall begin from the third year after its receipt, with first priority after payment to the budget.

In view of the fact that plans for long-term credit to collective farms for 1966 have already been transmitted to autonomous republics, territories, regions and districts, councils of ministers of republics and executive committees of territories, regions and districts shall, where necessary, redistribute long-term credits among autonomous republics, territories, regions, districts and collective farms in order to provide for the guaranteed remuneration for collective farm workers.

7. In connexion with the introduction of the guaranteed remuneration on collective farms and the increase in collective farm workers' income, the Councils of Ministers of Union Republics shall be required to ensure a corresponding increase in retail trade turnover and the production of consumer goods from local resources in 1966.

8. The Central Statistical Board of the USSR shall be required, in agreement with the Ministry of Agriculture of the USSR and the State Bank of the USSR, to prepare and introduce from 1 August 1966 monthly operational reporting on remuneration settlements with collective farm workers.

9. The Legal Commission of the Council of Ministers of the USSR shall be instructed to submit to the Council of Ministers of the USSR, in conjunction with the Ministry of Agriculture of the USSR and the State Committee on Labour and Wages of the Council of Ministers of the USSR, proposals for amendments to existing legislation arising out of this Ordinance.

ORDINANCE OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE SOVIET UNION (CPSU) AND THE COUNCIL OF MINISTERS OF THE USSR ON MEASURES FOR THE FURTHER IMPROVEMENT OF SECONDARY GENERAL EDUCATION SCHOOLS

Adopted on 10 November 1966

The Central Committee of the Communist Party of the Soviet Union (CPSU) and the Council of Ministers of the USSR note with satisfaction that a cultural revolution, unprecedented in depth and extent, has been carried out in the Soviet Union under the guidance of the Communist Party.

Soviet schools have played a leading role in carrying out this great task. For the first time in the history of mankind, a genuinely democratic educational system, guaranteeing citizens a real opportunity of receiving secondary and higher education, has been established. All peoples in the Soviet Union have schools in their native languages, general compulsory eight-year schooling has been introduced everywhere, and the number of young workers and collective farmers studying part-time is increasing.

At the same time, it must also be noted that the level of education and training in general education schools still does not meet the practical requirements, which have increased.

The Ministries of Education of the Union Republics are not taking the necessary steps to overcome the divergence that has arisen between educational plans and programmes and the contemporary level of scientific knowledge and to ensure that pupils are not overburdened with compulsory studies—a situation which has an adverse effect on the depth of the pupil's knowledge, his retention of it and his health.

There are serious shortcomings in educational work. Many school principals and teachers make insufficient use of one of the most important principles of Soviet education: the education of pupils in a group and through the group, while taking into account their individual natures.

There are major shortcomings in the training and advanced training of teachers and other educational workers. Schools, particularly rural schools, are still not fully staffed by teachers with the appropriate education.

The most important role in solving the tasks of education and communist upbringing of youth must lie with pedagogical science. However, scientific and research institutes in education in the USSR are only slowly working out solutions to the key and vital problems of education. The immense and varied experience acquired by the Soviet school system is not being promptly analysed and given general application. There is almost no co-ordination of pedagogical research at the national level.

The supply of educational materials for schools needs to be substantially improved. Resources allocated for this purpose in a number of republics, territories and regions are not being promptly and fully utilized. Organs of public education and health are not paying sufficient attention to the observance of health and hygiene regulations in school.

Party organizations, Soviets of Working People's Deputies and Young Communist and trade union organizations are still not giving enough help to the public education system in organizing children's education and upbringing, improving joint efforts by the school, the family and society and raising standards with regard to education among the population.

The Central Committee of the CPSU and the Council of Ministers of the USSR draw the attention of Party, Soviet, Young Communist and trade union organizations to the fact that, at a time of rapid scientific, technological and social progress, the role of the school is of unprecedented importance; it must ensure the all-round development of the young as worthy builders of the communist society. In order to develop the country's productive forces and bring about a further rise in the cultural level, it is urgently necessary to achieve a substantial improvement in the quality of pupils' knowledge and to give them the best possible preparation for socially useful work.

In accordance with the decisions of the twenty-third session of the Communist Party of the Soviet Union in the sphere of education and communist upbringing of youth, the Central Committee of the CPSU and the Council of Ministers of the USSR hereby resolve as follows:

1. It is recognized that the Soviet school must continue to develop as a general education, labour and polytechnic school. Its main tasks shall be to instil a lasting knowledge of the fundamentals of science into pupils, to mould in them a highly developed communist consciousness and to train youth for life and for a conscious choice of occupation. By linking all its educational work to life, the school must give its pupils an understanding of the laws of social development and educate them in the revolutionary and labour traditions of the Soviet people; develop in them a strong sense of Soviet patriotism and a readiness to defend their socialist homeland; reveal the significance of the fraternal unity of all peoples in the Soviet Union and their friendship with working

peoples of socialist countries and educate pupils in a spirit of solidarity with all peoples waging the struggle against colonialism and the power of capital for freedom and national independence; resolutely fight against the penetration of bourgeois ideology into the minds of pupils and against the emergence of an alien morality. It is the school's task to give its pupils an aesthetic education, which plays a great role in their ideological and moral development and to promote their physical development and strengthen their health.

2. The most important task of Party and Soviet organs in the sphere of public education shall be to establish universal secondary education for the young in the main by 1970.

The Councils of Ministers of the Union Republics, the Ministry of Education of the USSR and sectoral ministries and departments shall, in accordance with the targets of the national economic plan for 1966-1970, provide for the development during the period of the five-year plan of the system of general education schools and for increased enrolment in them and shall ensure the fulfilment without fail of the plan targets for school construction and the improvement of the supply of educational materials.

3. In order to further improve secondary education and to standardize the principles of polytechnical education and labour training, the Ministry of Education of the USSR and the Ministries of Education of the Union Republics shall be instructed to introduce scientifically based education plans and programmes, with a view to:

Bringing the content of education into line with the requirements of the development of science, technology and culture;

Ensuring continuity in studying the principles of science from classes I to X (XI), a more rational division of educational material between school years, the commencement of systematic teaching of the principles of science from the fourth year of schooling (maintaining existing wage conditions for teachers in classes I to IV);

Eliminating the overburdening of pupils by removing excessively detailed and secondary material from educational programmes and textbooks.

The Ministry of Education of the USSR and the Ministries of Education of the Union Republics shall be required to start the planned and organized transfer of secondary schools to new educational plans and programmes from the school year 1966-1967 and to complete it in the main not later than the school year 1970-1971; to ensure that standard school textbooks are prepared in time, in full accordance with the programmes and in the quantities laid down.

4. The recommendations on school teaching plans and programmes prepared by the Academy of Sciences of the USSR and the Academy of Pedagogical Sciences shall be used as a basis, and the following maximum number of compulsory hours, including labour, physical culture and art

studies, shall be laid down for the standard school curriculum:

Classes I-IV: twenty-four hours per week;

Classes V-X (XI): thirty hours per week.

5. In order to improve teaching conditions, the following shall be the maximum number of pupils for classes in general education schools: Classes I-VIII—forty; Classes IX-X (XI)—thirty-five. Rural national schools shall be permitted to gradually divide classes IV-X (XI) with more than twenty-five pupils into two sub-groups over the course of the next five years for the study of the Russian language.

6. In order to improve pupils' polytechnical education and to prepare them for socially useful work, Party, Soviet, Young Communist and trade union organizations and managers of industrial enterprises, building sites, collective farms and State farms shall be instructed to extend all possible assistance to schools in the organization of labour education, the supply of educational materials, and the assignment of the necessary specialists. Pupils in eight-year and secondary schools shall be systematically given vocational guidance by acquainting them with various sectors of the national economy and culture, enterprises, collective farms, State farms and institutions, and with the widest possible variety of occupations.

7. Taking into account the positive experience acquired by schools, a certain number of secondary schools and classes may have advanced theoretical and practical studies in classes IX-X (XI) in mathematics and computer technique, physics and radio-electronics, chemistry and chemical technology, biology and agrobiolgy, the humanities, etc. Such schools and classes shall be opened in each individual case by decision of the Ministry of Education of the Union Republic.

8. The Minister of Education of the USSR and the Academy of Pedagogical Science of the USSR, together with the Ministries of Education of the Union Republics, shall work out measures to improve the teaching and upbringing of pupils, and to increase the responsibility of school principals and teachers for the quality of the pupils' knowledge; they shall submit to the Council of Ministers of the USSR, within six months, new draft regulations on medals for award to graduates of secondary general education schools, which shall include provision for the introduction of certificates of merit for award to graduates of secondary schools who have been particularly successful in individual subjects in the school's curriculum.

9. The attention of Party and Soviet organs shall be drawn to the practice, which has recently become widespread, of assigning pupils during school hours to agricultural and other work not directly connected with the learning process; this practice leads to the overburdening of pupils and seriously harms the quality of the children's studies and health. It shall not be permitted to take pupils, teachers or school officials away from their direct duties.

10. The Ministry of Education of the USSR, the Ministries of Education of the Union Republics, the Academy of Sciences of the USSR, the Academy of Pedagogical Sciences of the USSR, the Ministry of Higher and Specialized Secondary Education of the USSR and the Publications Committee of the Council of Ministers of the USSR shall:

Take steps to prepare standard high-quality school textbooks, teaching aids and teachers' instruction manuals, engaging leading scholars and experienced teachers to write them;

Pay special attention to the preparation and publication of teaching aids (posters, albums, slides, etc.) on questions relating to education in communist morality, international friendship and fraternal solidarity among the peoples of the world;

Submit to the Council of Ministers of the USSR, within a period of three months, proposals regarding material incentives for leading scholars and specialist authors of school textbooks, and a substantial improvement in the artistic design and printing of textbooks, particularly for the junior classes.

11. Public education organs shall improve the work of schools in instilling conscious discipline and civilized behaviour in pupils. Each school must become an organizational centre for activities concerned with the upbringing of children in its own area. While making strict demands on pupils, school principals and teachers must at the same time show profound respect for them.

The staff of secondary schools shall include the post of organizer of children's extra-curricular education (with the rights of a deputy school principal) in place of the post of deputy director for industrial training.

12. Party and Soviet organs shall make greater demands on public education departments, school principals, physical culture and Young Communist organizations and organizations of the All-Union Voluntary Benevolent Society for the Army, Air Force and Navy of the USSR (DOSAAF) with regard to the nature and quality of pupils' physical education and self-defence and sports instruction.

13. In view of the great importance of school-children's aesthetic education, the Ministry of Education of the USSR, the Ministry of Culture of the USSR, the Committee on Cinematography of the Council of Ministers of the USSR, the Publications Committee of the Council of Ministers of the USSR and unions of creative artists shall be required to work out measures to improve aesthetic education. In particular, provision shall be made for the release of films and the preparation of new shows for schoolchildren; the scheduling of a greater number of children's shows and cinema performances on non-school days and during school vacations; the publication of a school series of selected classical works and the best works of Soviet and foreign authors; the publication of art anthologies and reproductions of the best artistic

works; the organization of special concerts for schoolchildren; the engagement of specialist and creative workers in the field of art for teaching and extra-curricular work with children.

14. The Ministry of Education of the USSR, the Ministry of Culture of the USSR, the Radio and Television Committee of the Council of Ministers of the USSR, the All-Union Central Council of Trade Union Associations, and the All-Union Association "Znanie" shall take steps to ensure a radical improvement in the dissemination by printed and oral means of knowledge of teaching methods among parents and the population in general. Universities and lecture centres for teaching methods shall be set up at schools, enterprises, institutions and organizations, clubs, and cultural institutes and centres. The Academy of Pedagogical Science of the USSR shall prepare a minimum course in teaching methods for parents, together with the necessary textbooks.

15. A substantial improvement in the running of school Young Communist and Young Pioneer organizations and an improvement in the standard of their work shall be regarded as the most important task of the Central Committee of the All-Union Lenin Young Communist League. School Young Communist and Young Pioneer organizations shall concentrate on fostering ideological conviction, a love of knowledge and labour, and the development of initiative and enterprise among schoolchildren. Measures shall be worked out to organize work with children at their place of residence.

Steps shall be taken to provide schools with senior Young Pioneer leaders and to organize, in conjunction with the Ministry of Education of the USSR, the training of Young Pioneer workers.

16. Party, trade union and Young Communist organizations and industrial enterprises, building sites, collective farms, State farms, institutions and organizations shall maintain constant contact with the schools attended by the children of their workers and take an interest in the conditions under which schoolchildren are brought up in the family. They shall discuss questions relating to the upbringing of children at Party, trade union and Young Communist meetings, help the family and the school more actively, and exert an influence on parents who are negligent in bringing up their children. It is considered desirable to have commissions or councils at industrial enterprises, building sites, institutions, collective farms and State farms for assistance to the family and the school in bringing up the younger generation.

17. Proceeding from the principle that the further improvement of public education depends mainly on the teacher, his academic and methodological qualifications and his ideological, political and cultural outlook, the Central Committee of the CPSU and the Council of Ministers of the USSR draw attention to the need to establish appropriate conditions for successful work by

teachers, systematic improvement of their qualifications and full implementation of the laws concerning the protection of labour and privileges and advantages for persons working in education. Constant concern for the teacher's authority and the most correct possible use of his labour for the education and upbringing of youth must be a matter for all Party, Soviet, Young Communist and trade union organs.

18. The Ministry of Higher and Specialized Secondary Education of the USSR and the Ministry of Education of the USSR, in conjunction with the State Planning Committee of the USSR and the Ministries of Education of the Union Republics shall, when the annual plans for the national economy are prepared, fix quotas for enrolment in higher and specialized secondary teachers' training establishments, with a view to meeting the actual need for teachers.

In this connexion, provision shall be made for the training of the necessary number of teachers of music and singing, the fine arts, physical training, drawing and labour in teachers' training colleges, the appropriate departments of pedagogical institutes and specialized secondary and higher educational establishments.

19. With a view to establishing more favourable material and technological conditions for the work of schools, the State Planning Committee of the USSR, the State Building Committee of the USSR, the ministries and departments of the USSR and the Councils of Ministers of the Union Republics shall make provision, in the summary estimates for new industrial enterprises and departmental housing complexes, for the construction of general education school buildings out of the capital investment funds of the sector in question.

Schools in rural areas shall be built in complexes with apartments for teachers, and eight-year and secondary schools, as a rule, shall also include a boarding section for pupils living in places situated far from the school. Funds shall be specifically allocated from the general appropriations for housing construction for the construction of boarding sections and teachers' houses.

School housing belongs to the public education authorities and shall not be occupied by persons not working in the school.

20. Taking into account the great extent of school construction by collective farms and other co-operative organizations at their own initiative, the State Planning Committee of the USSR and the State Committee on the Supply of Materials and Equipment of the Council of Ministers of the USSR shall allocate funds for materials and equipment for these building projects on the same basis as for schools built from State capital investment funds.

21. The State Construction Committee of the USSR shall be required during 1967-1968 to arrange for the preparation and confirmation, in agreement with the Councils of Ministers of the

Union Republics, of improved and more economic plans for school buildings, taking into account climatic zones and the organization of extended-day studies for some pupils.

Newly built school buildings shall be brought into service at the beginning of the academic year.

22. In order to give children without parental care and children from large families State assistance in obtaining an education, quotas for pupils in boarding schools of the ordinary type and in children's homes which are also schools shall be established for the forthcoming five-year period at the 1965 level. The system of boarding schools for mentally and physically retarded children and neurotic children and the system of sanatoria-forestry schools shall be expanded.

23. Party, Soviet, Young Communist and trade union organizations and economic officials shall do everything possible to facilitate the support of schools by industrial enterprises, building sites, collective farms, State farms, institutions, educational establishments, scientific research institutes and communal organizations in order to help them improve the supply of materials and educate the pupils.

Industrial, agricultural and other undertakings and organizations shall be authorized to transfer equipment and material to schools free of charge, and to make expenditures for the construction, repair and equipment of general education schools from capital accumulations over and above the plan.

24. In view of the fact that the situation with regard to the production of educational equipment and its supply to schools is unsatisfactory, the Ministry of Education of the USSR, the State Planning Committee of the USSR, the Council of Ministers of the RSFSR and the State Committee on the Supply of Materials and Equipment of the Council of Ministers of the USSR shall be required to submit to the Council of Ministers of the USSR within six months, proposals for the radical improvement of the production and supply to schools of visual aids and equipment for classrooms, laboratories and school workshops, including provision for the further development of specialized enterprises for this purpose.

25. The Committee on Cinematography of the Council of Ministers of the USSR shall be permitted to issue free of charge to schools, in

agreement with the Ministry of Education of the USSR, the Ministries of Education of the Union Republics and the Ministry of Finance of the USSR, narrow-width popular scientific, newsreel and documentary and artistic films; to transfer to film libraries of public education departments and to their balances, narrow-width films having educational and instructive value. Steps shall be taken to organize the production of new portable cinematic equipment suitable for use in schools.

The Committee on Radio and Television of the Council of Ministers of the USSR shall open, in the central television service and the television services of the Union Republics, studios for educational television programmes for general education schools.

26. At the present stage of development of the general education school it is urgently necessary to raise standards in schools and strengthen the inspectorial staff of public education authorities, particularly district departments.

The Ministry of Education of the USSR, the Ministry of Finance of the USSR and the State Committee on Labour and Wages of the Council of Ministers of the USSR shall be required to prepare and submit to the Council of Ministers of the USSR, within a period of six months, proposals regarding the numbers and salary conditions of inspectors in public education authorities in relation to the number of educational establishments and teachers subject to inspection and the geographical characteristics of different areas.

Local Party organs shall assist departments of public education in nominating for such inspection work competent school principals, teachers and specialists with a good knowledge of school affairs and capable of transmitting valuable experience.

27. The Ministry of Education of the USSR shall be instructed to prepare and submit to the Council of Ministers of the USSR, within a period of six months, a draft Statute for secondary general education schools.

The Central Committee of the CPSU and the Council of Ministers of the USSR call on all Party, Soviet, Young Communist and trade union organizations to make the school system a subject of constant attention and concern, bearing in mind that the communist upbringing of the younger generation and the further development of general education schools are the affair of the whole Party and the entire Soviet people.

ORDINANCE OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE SOVIET UNION (CPSU) AND THE COUNCIL OF MINISTERS OF THE USSR ON MEASURES TO EXPAND THE TRAINING AND PLACEMENT IN THE ECONOMY OF YOUNG PEOPLE GRADUATING FROM GENERAL EDUCATION SCHOOLS IN 1966

Adopted on 2 February 1966²

In connexion with the reduction of the period of instruction in secondary general education

schools by one year and the simultaneous graduation of pupils from the tenth and eleventh classes in 1966, and with the increase in the number of graduates from the eighth class, the Central

² Annexes not included.

Committee of the CPSU and the Council of Ministers of the USSR hereby resolve:

1. The Central Committees of the Communist Parties of the Union Republics, the territorial, regional, urban and district committees of the Party, the Councils of Ministers of the Union and Autonomous Republics, the executive committees of territorial, regional, urban and district Soviets of Working People's Deputies, and ministries and departments shall provide in 1966 for the enrolment of an increased quota of graduates from general education schools in educational establishments for the continuation of their studies and for the prompt employment in the various sectors of the economy, with preparatory vocational training, of those young persons who cannot continue full-time studies.

2. With a view to the establishment of conditions for the further continuation of study and vocational training by young people graduating from general education schools in 1966:

(a) The enrolment of graduates of eight-year schools in the ninth class shall be increased in 1966 by 631,000 over the 1965 level.

A plan for the enrolment in the ninth class of secondary general education schools in 1966 of 2,772,000 graduates of eight-year schools, distributed among the Union Republics and the Ministry of Railways in accordance with annex No. 1, shall be approved.

The Central Committees of the Communist Parties and the Councils of Ministers of the Union Republics, with the participation of Party, Soviet, trade union and Young Communist organizations, shall work out measures to provide universal compulsory eight-year education and to reduce the loss of pupils from general education schools;

(b) The enrolment of students for daytime study in specialized secondary educational establishments in 1966 shall be increased by 124,000 over the 1965 level.

A plan for the enrolment in 1966 of 1,197,645 pupils in specialized secondary educational establishments, including 698,460 for daytime study, distributed among the Union Republics and ministries and departments of the USSR in accordance with annex No. 2, shall be approved;

(c) The enrolment of day students in higher educational establishments in 1966 shall be increased by 34,000 over the 1965 level, principally to train engineering and technical cadres in specialized fields for the mining, metallurgical and power industries and in chemical technology, radio electronics and other specialized fields of new technology, specialists for agriculture, light industry and the food industry and economists for all sectors of the economy.

A plan for the enrolment in 1966 of 868,700 students in higher educational establishments, including 404,200 for daytime study, distributed among the Union Republics and ministries and departments of the USSR in accordance with annex No. 3, shall be approved;

(d) The enrolment of day students in vocational and technical colleges in 1966 shall be increased by 131,800 over the 1965 level.

The plan for the enrolment in 1966 of 1,124,800 day students in vocational technical colleges, distributed among the Union Republics in accordance with annex No. 4, shall be approved.

In allocating places at vocational technical colleges, provision shall be made for the establishment of individual groups of graduates of secondary general education schools.

No reduction in the enrolment of graduates from eight-year schools in vocational technical colleges shall be permitted;

(e) Technical colleges for the training of skilled workers from among graduates of secondary general education schools shall be established within the system of vocational technical education organs at large industrial enterprises, State farms, and construction and other organizations.

A plan for the enrolment in 1966 of 96,800 students in these technical colleges, distributed among the Union Republics in accordance with annex No. 5, shall be approved.

A training period of up to one year in technical and vocational technical college for the training of skilled workers from among graduates of secondary schools for occupations requiring a higher level of general education shall be established.

The State Committee on Vocational Technical Education of the Council of Ministers of the USSR shall be permitted to establish longer training periods for skilled workers for individual occupations of greater difficulty.

The Councils of Ministers of the Union Republics, in conjunction with the appropriate ministries and departments of the USSR, shall find premises for the establishment of technical colleges and shall provide them by 1 July 1966 with the necessary equipment from the capital investment funds allocated for the development of the sectors for which the skilled workers are being trained;

(f) The Councils of Ministers of the Union Republics and the ministries and departments of the USSR shall organize (bearing in mind the need of the various sectors of the economy for cadres) an extensive system of short full-time courses lasting up to six months, or up to one year, for occupations of greater complexity at enterprises and vocational technical colleges (by contract with enterprises and construction and other organizations and from their funds) to train young graduates from secondary schools as skilled workers in industry, construction, transport, communications and municipal services and for State farms, collective farms, and other enterprises and organizations.

A plan for the training through these courses in 1966, from among graduates of secondary schools, of not less than 40,500 construction workers (erectors and mechanical specialists), not less than 43,000 workers in commerce and public catering and not less than 25,600 workers in services to the public, distributed among the Union Republics and ministries and departments of the USSR in accordance with annex No. 6, shall be approved;

(g) Ministries and departments of the USSR shall be instructed to prepare and implement in 1966 measures for the training of graduates from secondary general education schools as skilled workers in enterprises being brought into operation in 1967 and succeeding years, by sending secondary school graduates living in areas where new construction is taking place (in accordance with their wishes) for vocational training at existing enterprises similar to the enterprises to be brought into operation.

3. The Councils of Ministers of the Union Republics and ministries and departments of the USSR shall:

(a) Provide for the increase required under this Ordinance in the enrolment of young persons in secondary general education schools, vocational technical colleges and specialized secondary and higher educational establishments by expanding school premises, educational industrial workshops, study rooms, laboratories and dormitories, increasing the use of the shift system, ensuring that study groups have their full complement of pupils and bringing into operation the educational establishments under construction;

(b) Keep a systematic check on progress in the construction and expansion of the educational buildings provided for in the plan for the development of the national economy in 1966, ensuring that they are brought into operation by the beginning of the academic year.

4. The Councils of Ministers of the Union Republics, the ministries and departments of the USSR and directors of enterprises and construction and other organizations shall take steps to improve the vocational training of young people, to which end they shall:

(a) Strengthen the educational industrial base for the training of workers in production and provide in annual plans for the establishment and expansion of training complexes (centres, educational industrial workshops, areas, sections, workrooms and yards);

(b) Ensure that depot enterprises and construction and other organizations deliver to vocational technical colleges, free of charge, the necessary equipment, machines, instruments and appliances for carrying out the training process and for fulfilling, within the industrial training process, the orders of enterprises and organizations;

(c) Work out specific measures to improve the organization of youth training in industrial trades so that young workers may acquire a quicker and better mastery of the necessary vocational knowledge and practical skills and understanding of safety regulations. The most highly trained engineers, technicians and skilled workers, capable of providing not only vocational training but also correct guidance for young people, shall be assigned to the vocational instruction of youth;

(d) Prohibit the use for purposes other than those for which they were designed of educational industrial premises, social facilities and living

quarters in vocational technical colleges and training complexes, workshops, sections, areas, and workrooms in which the vocational technical training of workers is being carried out.

5. The State Committee on Vocational Technical Training of the Council of Ministers of the USSR and the Councils of Ministers of the Union Republics shall:

(a) Organize in vocational technical colleges courses of up to three years to train highly qualified workers in industry, agriculture, building, transport and enterprises providing services to the public in accordance with the list of occupations agreed with the ministries and departments of the USSR concerned and the All-Union Central Council of Trade Unions;

(b) In drawing up in accordance with the established practice the list of occupations of workers trained directly in industry, fix the length of industrial training courses for youths up to eighteen in relation to their age and the difficulty of the occupation in question, but not for more than one year.

6. Graduates of secondary schools studying at the newly organized technical colleges and in individual groups at vocational technical colleges shall be given grants in the amounts payable to students at vocational technical educational establishments set up on the basis of the former technical colleges, in accordance with Ordinance No. 1573 of the Council of Ministers of the USSR of 2 August 1954.

7. Young people sent by enterprises and organizations to full-time training courses for skilled workers shall be paid 50 per cent of the established wage (salary) for the occupation and level of skill for which they are being trained. Non-local participants in the courses shall be paid the expenses of travel to and from the courses in accordance with the regulations contained in Ordinance No. 1047 of the Council of People's Commissars of the USSR of 19 June 1940 and shall also receive free accommodation in a hotel. By way of exception, living accommodation for participants in these courses may be rented from citizens in 1966-1967 at a rate of not more than three roubles per month per participant above the rentals laid down by local Soviets of Working People's Deputies, to be paid from the funds of enterprises and organizations sending persons to attend courses.

8. A plan for the placement in employment in 1966 of 2,717,200 graduates from general education schools and young persons without secondary education, distributed among the Union Republics in accordance with annex No. 7, shall be approved.

In order that young people graduating from general education schools in 1966 may be placed in employment promptly, the Councils of Ministers of Union Republics shall be required, within two months, to work out specific measures for

each town and district, ensuring that executive committees of Soviets of Working People's Deputies set targets in good time for the placement in employment of young people at enterprises, State farms, collective farms and construction and other organizations located within the town and district, regardless of what department they may come under. Where necessary, young graduates of secondary general education schools shall be directed (in accordance with their wishes) in an organized manner to nearby enterprises and building sites.

9. The Central Committees of the Communist Parties of the Union Republics and the Councils of Ministers of the Union Republics, with the participation of agricultural and educational organs and Young Communist organizations, shall ensure that action is taken among young persons finishing secondary school in agricultural areas to explain the need for them to participate in agricultural production, with a view to the placement of not less than 500,000 graduates of secondary schools in work on collective farms, State farms and other State agricultural enterprises, distributed among the Union Republics in accordance with annex No. 8.

Conditions shall be created in which these young persons may acquire, in courses and directly in industry, the vocational skills needed for agriculture.

The provisions for the payment of wages during training contained in Ordinance No. 1369 of the Council of Ministers of the USSR of 10 December 1959 shall be extended to persons receiving vocational training directly in industry, on State farms and at other State agricultural enterprises.

10. In order to provide workers with an appropriate level of general education for trade and public catering establishments, the proposals of the Ministry of Trade of the USSR and the Central Council of Consumer Associations of the USSR regarding the placement in the system of State trade and consumer co-operatives in 1966 of 314,000 graduates of general education schools, and their preparatory vocational training in colleges, schools and courses and directly in industry, distributed among the Union Republics in accordance with annex No. 9, shall be adopted.

11. So that conditions for the increased employment of graduates of general educational schools may be created, Ordinance No. 1186 of the Council of Ministers of the USSR of 4 December 1963 shall be partially amended as follows:

(a) A quota of from 0.5 to 10 per cent of the total number of manual and non-manual workers in enterprises and organizations, distributed among the sectors of the national economy in accordance with annex No. 10, shall be established for the employment of young persons.

Ministries and departments of the USSR and the Councils of Ministers of the Union Republics shall establish a quota for the employment of youth at enterprises, construction sites and other organiz-

ations under their jurisdiction, within the amounts laid down for the different sectors of the national economy.

The executive committees of territorial, regional, urban and district Soviets of Working People's Deputies shall notify enterprises and construction and other organizations, regardless of the departments they come under, of plans for the placement of young persons within the quotas laid down for them.

By way of exception, the Councils of Ministers of the Union Republics shall be permitted to set youth employment targets in 1966 for enterprises, construction sites, State farms and other organizations located in the Republic, regardless of the department they come under, in excess of the approved quotas from the maximum possible number of trainee and working positions available;

(b) Young people under the age of seventeen employed by industrial enterprises and construction sites, and young people between the ages of seventeen and eighteen during their period of industrial training, shall not be included in the average number of workers employed by enterprises and construction sites on the basis of which labour productivity is assessed.

12. The State Planning Committee of the USSR, the ministries and departments of the USSR, and the Councils of Ministers of the Union Republics shall be required, starting in 1966, to include as a separate entry in labour plans, within the limits of the approved wage fund, the wage fund necessary for the remuneration of the young people referred to in paragraph 11 (b) of this Ordinance, taking into account the youth employment plan established for industrial enterprises and construction sites.

The ministries and departments of the USSR and the Councils of Ministers of the Union Republics shall be granted the right:

(a) To increase the wage fund allocated for the remuneration of young persons within the limits of the general wage fund for manual and non-manual workers;

(b) To redistribute the wage fund for the remuneration of young persons among the enterprises and construction sites under their jurisdiction, regardless of the time-limits laid down for making changes in the quarterly and monthly plans of enterprises and construction sites.

13. The management of industrial enterprises and construction organizations shall be granted the right to establish, in agreement with the appropriate trade union committees, reduced output norms, but by not more than 20 per cent, during the first four months of independent work for workers below the age of eighteen who have graduated from general education schools with industrial training or from short-term courses or have gone through individual or group training directly in industry.

Expenditure connected with the establishment of reduced output norms for these young workers

shall be defrayed from the wage funds of the enterprises and organizations concerned.

The procedure provided for in Ordinance No. 77 of the Council of Ministers of the USSR of 8 February 1965 for the establishment of reduced output norms for young workers employed on machine-tool work at enterprises of the mechanical engineering industry shall be maintained.

14. With a view to establishing greater incentives for enterprises to employ graduates of general education schools, the State Bank of the USSR shall be permitted in 1966-1967 to pay out funds for the payment of wages over and above the established wage fund, in the amount of 1 per cent of the wage fund for each per cent of over-fulfilment of the plan, to profitably operating establishments of the light, food and services industries, provided they accept supplementary targets to increase the output of goods for which there is a popular demand, to provide services to the population and to increase the number of workers in connexion therewith.

15. The Central Committees of the Communist Parties of the Union Republics and the Councils of Ministers of the Union Republics shall be recommended to set up within a period of one month, youth employment commissions in the union and autonomous republics, territories, regions, towns and districts, consisting of the Deputy Chairman of the Council of Ministers of the Republic (Deputy Chairman of the territorial, regional, urban and district Executive Committees), who shall be the Chairman of the commission, and representatives of Party, trade union, Young Communist and economic organizations and educational and vocational technical training authorities, with a small permanent staff provided for within the total establishment and wage fund for administrative organs.

Where young manual and non-manual workers below the age of eighteen have to be released from employment, for whatever reason, enterprises and organizations must, in conjunction with urban (district) youth employment commissions, ensure that they are placed in a new job.

16. The Councils of Ministers of Union and Autonomous Republics, the ministries and departments of the USSR, and the executive committees of territorial, regional, urban and district Soviets of Working People's Deputies, in conjunction with the planning organs, shall be required to ensure the following in 1966 and subsequent years in medium-sized and small towns and workers' settle-

ments where there are inadequate opportunities for using the labour of youth:

(a) The development of new industries and the organization within existing enterprises of workshops and sections giving priority to the employment of young people;

(b) The establishment of branches and workshops of large enterprises and associated and supplementary industries in a co-operative relationship with enterprises in industrial centres;

(c) The expansion of local industrial enterprises on the basis of the utilization of local sources of raw and other materials and industrial and agricultural by-products, the organization and expansion of the output of cultural and consumer goods, building materials and tinned fruit and vegetables and the harvesting of wild fruits and berries etc., and the development of enterprises providing services to the population, particularly in rural areas.

17. The Central Committees of the Communist Parties of the Union Republics and territorial, regional, urban and district committees of the Party, in conjunction with trade-union and Young Communist organizations, shall increase their supervision over the intake of young people into industry, their vocational training and upbringing and the utilization of their labour.

The All-Union Central Council of Trade Unions and local trade-union organizations shall keep the strictest possible check on the observance by managers of the laws concerning the protection of young people's labour; trade-union organizations shall play a greater part in work connected with the industrial and technical training of young people and the creation of the necessary conditions for their labour and rest and for their everyday life.

The Central Committee of the All-Union Lenin Young Communist League, and local Young Communist organs shall increase the responsibility of Young Communist organizations for the labour training of young people entering industry from schools and arouse in young men and women the desire to master a trade and the technical skills and working methods of outstanding workers.

Young Communist organs shall, in conjunction with educational organs, expand their work on vocational guidance for young persons in secondary general education schools, with a view to attracting more of them into work in building, agriculture, trade and public catering enterprises, and enterprises in other sectors connected with the provision of services to the population.

ORDINANCE OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING THE ISSUE OF MEDICAL CERTIFICATES AND THE PAYMENT OF BENEFITS TO WOMEN WHO HAVE ADOPTED NEWBORN BABIES

Adopted on 18 February 1966

The Council of Ministers of the USSR *hereby resolves that:*

1. Women adopting newborn babies directly from maternity homes shall be issued with medical certificates and shall be paid maternity benefits, in accordance with the established procedure, for a period commencing on the day of adoption and ending fifty-six days after the child's date of birth.

Maternity benefits for manual and non-manual women workers in such cases shall be paid from

State social insurance funds and those for collective farm workers from the central union social welfare fund for collective farm workers.

2. The application of paragraph 8 of Decree No. 1414 of the Council of Ministers of the USSR of 13 October 1956 concerning the procedure for granting additional leave without pay and maintaining a continuous service record in case of interruption of work shall be extended to manual and non-manual workers who adopt children directly from maternity homes.

ORDINANCE OF THE COUNCIL OF MINISTERS OF THE USSR AND THE ALL-UNION CENTRAL COUNCIL OF TRADE UNIONS CONCERNING THE CONCLUSION OF COLLECTIVE AGREEMENTS AT ENTERPRISES

Adopted on 6 March 1966

With a view to further increasing the part played by collective agreements in connexion with the granting of greater rights to enterprises and the measures being taken to improve planning, strengthen economic incentives for industrial production and give workers a greater material interest in improving the work of enterprises, the Council of Ministers of the USSR and the All-Union Central Council of Trade Unions hereby resolve that:

1. Collective agreements shall be concluded not later than February each year at industrial, building and forestry, and transport and communication enterprises, geological survey and topographical-and-geodesic organizations and at trade, public catering and service enterprises which have independent balances and are bodies corporate.

Collective agreements shall be concluded by factory, plant and local trade union committees, on behalf of the collective of manual and non-manual workers, with the administration, represented by the director of the enterprise, after consideration and approval at a meeting (conference) of manual and non-manual workers.

Changes and additions to collective agreements may be made during the year in accordance with the established procedure.

2. Collective agreements shall state the obligations of the administration and the collective of manual and non-manual workers with regard to:

The fulfilment of the national economic plan, the introduction of domestic and foreign scientific and technological advances, and the mechanization of labour-consuming and heavy work;

Better utilization of fixed and working capital, economizing on raw and other materials, fuels and

electric power, improving the quality of output, raising profits and increasing profitability;

Improving the organization of work and the fixing of norms, creating conditions for the growth of labour productivity, raising the cultural and aesthetic values of labour, and strengthening industrial and labour discipline;

The development of socialist competition and steps to make it more effective, and the development of inventive ability and rationalization; the generalization and introduction of advanced methods of work;

Improving the organization of manual and non-manual workers' wages and increasing the material interest of workers both in the results of their own labour and in the general results achieved by the enterprise;

In-plant training for new cadres of workers, training for a second trade, increasing the skills of manual workers, engineering and technical workers and non-manual workers, strengthening the supply of materials and machinery for the in-plant industrial and technical training of workers, creating conditions for work in evening schools and advanced training courses, creating the necessary conditions for workers studying part-time at educational establishments, and granting them the privileges to which they are entitled.

3. Collective agreements shall set out the obligations of the administration and of factory, plant and local trade union committees with regard to:

The involvement of workers in production management and in the work of production meetings and working people's creative associations;

Further improving labour protection, safety techniques and industrial hygiene, creating healthy

working conditions for manual and non-manual workers, reducing the rate of sickness and injury, sending manual and non-manual workers to sanatoria and rest homes, the provision of workers' cloakrooms, showers and rooms for nursing mothers and for women's personal hygiene;

Granting privileges and advantages to outstanding industrial workers and workers who have a long record of service and do not permit violations of labour discipline;

The putting into operation and maintenance of housing, children's pre-school establishments, public catering and trade establishments, cultural, service and community facilities, general medical and health establishments, and the use of appropriations for these purposes;

Improvements in the running of dwellings and hostels and in the work of dining rooms, shops, combines and workshops for services to the public, baths, laundries and hairdressing establishments, the development of collective market gardening and horticulture, and the provision of fuel for workers;

Expanding cultural educational and physical culture work at enterprises and strengthening the material base of cultural and educational establishments.

4. Collective agreements must contain the basic provisions on labour and wages questions applicable to the enterprise concerned under the legislation in force and specific normative provisions on labour and wage questions worked out by the administration and by factory, works or local trade union committees within the limits of the rights granted to them.

5. The provisions of collective agreements must not conflict with existing legislation.

6. The following shall be attached to collective agreements: plans for organizational, technological and economic measures aimed at improving the enterprise's industrial and economic activities, improving the establishment of norms and raising the productivity of labour; plans for the introduction of scientific labour organization in workshop and sectors and for the utilization of discoveries, suggestions for rationalization and advanced industrial experience; labour protection agreements; and other documents prepared in

accordance with letters of guidance from the ministry, department and the trade union Central Committee.

7. The procedure for the conclusion and registration of collective agreements shall be laid down by the All-Union Central Council of Trade Unions and the State Committee on Labour and Wages of the Council of Ministers of the USSR.

8. Ministries and departments, in conjunction with central and republic trade-union committees, shall approve letters of guidance laying down basic guidelines for collective agreements, in accordance with the specific development targets of the sector of the national economy concerned.

9. Differences between the administration of the enterprise and factory, works and local trade-union committees over the conclusion of collective agreements shall be resolved by their superior economic and trade union organs, with the participation of the two parties.

10. The fulfilment of obligations under collective agreements shall be supervised by trade union and economic organizations.

11. The administration of the enterprise and factory, works and local trade-union committees shall report to the collective of manual and non-manual workers on the fulfilment of obligations under the collective agreement.

12. Ministries and departments may conclude with central (republic) trade-union committees agreements on the dissemination of advanced experience, the introduction of new technology, discoveries and suggestions for rationalization, labour protection, the development of a system of health and children's establishments and other questions, taking into account the particular features of the sector of the economy.

13. Ordinance No. 226 of the Council of Ministers of the USSR of 4 February 1947, on the conclusion of collective agreements at enterprises, communications organizations, State farms, machine and tractor stations and machine and tractor workshops shall be regarded as no longer in force.

ORDINANCE OF THE COUNCIL OF MINISTERS OF THE USSR ON THE DEVELOPMENT OF PHYSICAL CULTURE AND SPORT

Adopted on 11 August 1966

With a view to the further development of physical culture and sport in the USSR and the achievement of higher standards by Soviet sportsmen, the Council of Ministers of the USSR hereby resolves that:

1. The Councils of Ministers of the Union Republics, the Ministry of Higher and Secondary

Specialized Education of the USSR and the Ministry of Education of the USSR, the territorial and regional executive committees of Soviets of Working People's Deputies and sports organizations shall:

Establish in 1967-1969, with a view to training specialists in physical culture, in all rural eight-year

schools not having enough physical culture lessons to occupy the instructor fully, the post of teacher of physical culture whose duties shall also include the organization of extra-curricular physical culture training;

Introduce, as from the 1966-1967 academic year, two physical culture lessons per week in all classes in schools of all types, within the existing curricula; provide, from 1967, for an increase in allocations for popular sports activities and the acquisition of sports goods and equipment for schools;

Draw up a list of sports installations needed by primary, eight-year and secondary schools and vocational technical colleges, depending upon the number of pupils, and to take measures to establish, within two or three years, level sports centres and villages so that the programme of physical education in schools and colleges may be carried out;

Stipulate that newly constructed schools, colleges and technical colleges shall be brought into operation with the sports facilities they are supposed to have;

Set up physical education departments in the Ministries of Education of the Union Republics, and establish posts for inspectors of physical education in territorial, regional and urban (in the largest towns) education departments within the limits of the establishment and wages fund for organs of state administration;

Establish specialized schools in the public education system on the basis of existing children's sports schools;

Provide for the construction of sports facilities for individual and joint use by higher educational establishments. Encourage the construction of these facilities by the students and pupils on a collective basis, providing educational establishments with the necessary materials, machines and transport. Authorize higher and secondary specialized educational establishments and vocational technical colleges to co-operate and to utilize funds available to educational establishments out of income for work done on contractual basis for the establishment and expansion of sports facilities and health and sports camps;

Improve the utilization of sports facilities so that regardless of what department they come under they may be generally available to the population for physical culture and sports activities, and so that they may be used free of charge during the day, with equipment and installations, for physical culture lessons and sports work with schoolchildren and students at vocational technical colleges and specialized secondary schools. Grant special terms for the hire of facilities for educational activities to higher educational establishments. Organizations thus making use of sports facilities shall be obliged to help service them;

Ministries, executive committees of Soviets of Working People's Deputies, educational establishments, physical culture organizations and organizations of the All-Union Voluntary Benevolent Society for the Army, Air Force and Navy of the USSR (DOSAAF) shall be authorized and

collective farms and trade union organizations shall be recommended to provide amenities and equipment for existing sports facilities and to construct new ones, costing up to 150,000 roubles from non-centralized sources of financing intended for the construction of social and cultural establishments, *inter alia*, through the pooling of resources by various establishments or organizations;

Provide for the construction of collective farms, State farms and district centres of multi-purpose sports areas, stadia and other sports facilities, taking into account the allocations of trade unions, Executive Committees of Soviets of Working People's Deputies and State farms and the annual contributions made to rural sports associations by consumer co-operative organizations and collective farms.

In planning and constructing villages and State farm settlements, areas shall be set aside for the construction of sports facilities. As a rule, rural clubs must be built with sports rooms and grounds.

'2. With a view to providing schools and secondary specialized and vocational technical educational establishments with qualified cadres of physical culture specialists, the State Planning Committee of the USSR, the Ministry of Higher and Secondary Specialized Education of the USSR, the Ministry of Education of the USSR and the Central Council of the Union of Sports Associations and Organizations of the USSR shall provide in the five-year plan for the development of the national economy for the training of physical culture and sports specialists with higher and secondary specialized education, by expanding the intake of pupils into existing educational establishments and by creating new higher and secondary specialized physical culture educational establishments, departments and sections and educational advisory centres.

The Ministries (Committees) of Higher and Secondary Specialized Education and the Ministries of Education of the Union Republics shall be authorized, in agreement with the Ministry of Higher and Secondary Specialized Education of the USSR and the Ministry of Education of the USSR, to organize, in a number of teachers' training colleges and universities, the training as a second speciality of teachers of physical education for understaffed schools.

3. The Central Council of the Union of Sports Associations and Organizations of the USSR, the Ministry of Higher and Secondary Specialized Education of the USSR, the Ministry of Education of the USSR, the Ministry of Defence of the USSR, the State Committee on Vocational Technical Education of the Council of Ministers of the USSR and central councils of sports associations shall take systematic action to improve the qualifications of teachers of physical culture, physical education instructors, coaches and other specialists in physical culture and sport.

To this end:

(a) The Central Council of the Union of Sports Associations and Organizations of the USSR shall be authorized to open in 1967 a department for the advanced training of cadres of coaches and instructors, with a permanent student body of up to 300, at the Central Order of Lenin Institute of Physical Culture in Moscow;

(b) The Ministries of Education of the Union Republics shall set up in institutes for the advanced training of teachers a system for improving the qualifications of teachers of physical education;

(c) Councils of sports associations shall organize from their own funds short-term regional and interregional courses to improve the qualifications of physical culture cadres;

(d) The Union of Sports associations and organizations of the USSR shall provide training for public coaches in special two-year evening schools at higher and secondary physical culture educational establishments;

(e) The wages of physical education instructors, physical culture teachers, coaches and other workers undergoing training at a department for the advanced training of cadres of coaches and instructors shall continue to be paid at their place of work, their return fare and *per diem* allowances shall be paid by the organizations sending them for training, and they shall receive a grant of 30 roubles per month provided that the grant and the continuing wage together do not exceed 130 roubles per month;

(f) The Central Council of the Union of Sports Associations and Organizations of the USSR shall be authorized to establish five prizes (and gold medals to be given with them) to be awarded annually to the best coaches for training sportsmen in the international class and three prizes (with gold medals) to scientists for scientific research work that has had a decisive effect on achieving outstanding sports results.

4. In preparing the economic plans for 1967-1970, the State Planning Committee of the USSR shall examine the proposals of the Central Council of the Union of Sports Associations and Organizations of the USSR, the All-Union Central Council of Trade Unions, the Ministry of Defence of the USSR, the Ministry of Higher and Specialized Education of the USSR, and the Central Councils of the "Dynamo" and "Labour Reserves" Associations for the construction of the sporting facilities (athletic tracks, indoor swimming baths, skating rinks, boarding facilities, etc.) needed for the training of sportsmen for European and World Championships and the Olympic Games.

5. The State Building Committee of the USSR, in conjunction with the All-Union Central Council of Trade Unions, the Central Council of the Union of Sports Associations and Organizations of the USSR and the Central Council of the All-Union Voluntary Benevolent Society for the Army, Air force and Navy of the USSR shall prepare a list of sports facilities for mandatory construction in the over-all construction and reconstruction of towns

and newly-built industrial enterprises, and shall approve in 1967-1968 new model plans for sports facilities for schools, vocational technical colleges, specialized secondary schools, higher educational establishments, rural clubs with sports rooms, micro-regions, district centres and towns, providing for the use of building materials that will reduce the cost and improve the quality of construction.

Sports facilities in micro-regions and housing complexes shall be equipped and brought into operation at the same time as dwellings are brought into occupancy.

6. The State Committee on Science and Technology of the Council of Ministers of the USSR shall set up, in accordance with the established procedure, scientific laboratories at scientific and educational establishments for research in physical culture and sport.

The Ministry of Public Health of the USSR shall provide physical culture, research and education institutes and scientific laboratories dealing with specific problems in physical culture and sport with scientific apparatus for pedagogical and biological research.

7. The Central Scientific Research Institute for Physical Culture shall be re-named the All-Union Scientific Research Institute for Physical Culture. The State Committee on Science and Technology of the Council of Ministers of the USSR shall be instructed to increase the scientific and engineering and technical staff of the Institute.

The Central Council of the Union of Sports Associations and Organizations of the USSR shall be authorized to construct in Moscow in 1967-1969 from its own funds a building for the All-Union Scientific Research Institute for Physical Culture.

8. In the interests of developing industry and increasing the quality of goods for the practice of physical culture, sport and tourism and improving trade in sporting goods:

(a) The State Planning Committee of the USSR, the Councils of Ministers of the Union Republics, the Ministry of Light Industry of the USSR, the Ministry of the Timber, Paper and Pulp and Wood-Processing and the Oil-Refining Industries of the USSR, the Ministry of the Chemical Industry of the USSR and other ministries and departments producing sports goods shall take measures to expand the production and improve the quality of their sports and tourist equipment, clothing and footwear; take measures for the establishment of industrial associations and firms with a view to the specialization of enterprises producing these goods; organize and expand the production of timber, leather, fabrics, synthetic materials and other raw materials, include in plans for scientific research and experiment items relating to the improvement of the technology of the production of materials and sports and tourist equipment;

(b) The Ministry of Trade of the USSR and the Central Union of Consumer Associations of the USSR (*Tsentrosoyuz*) shall improve wholesale and retail trade in sports and tourist goods and shall expand the system of specialized shops;

(c) The Physical Culture Equipment Administration shall become the Central Office for the Production of Sports Goods of the Central Council of the Union of Sports Associations and Organizations of the USSR (*Glavsportprom*);

(d) The Central Council of the Union of Sports Associations and Organizations of the USSR and *Glavsportprom* shall be responsible for:

Working out standards for the operation of sports facilities and equipment; determining the demand for special clothing and footwear;

Establishing the technical requirements for basic sports goods and equipment to be observed by all enterprises, regardless of the department they come under;

Preparation at experimental enterprises under their jurisdiction of the best models and sizes in sports goods for manufacture by mass production;

Execution and co-ordination of scientific research, drawing and designing and experimental work for the creation of new and the improvement of existing sports goods, equipment and installations; organization of technical information services;

(e) The Central Experimental Design Office of the Central Council of the Union of Sports Associations and Organizations of the USSR shall become the All-Union Technological Planning and

Experimental Design Institute for Sports and Tourist Goods;

(f) With a view to expanding the experimental base, the Moscow Rubber Goods Factory No. 4 of the Moscow Urban Executive Committee and the Mukachevsky Ski Factory of the Ministry of the Timber, Paper and Pulp and Wood-Processing Industries of the Ukrainian SSR shall be handed over to the Central Council of the Union of Sports Associations and Organizations of the USSR;

(g) The Central Council of the Union of Sports Associations and Organizations of the USSR shall, from 1 January 1967, be exempt from income tax, and the resources thus freed shall be used for experimental work and for the maintenance of the All-Union Technological Planning and Experimental Design Institute for Sports and Tourist Goods.

9. Allocations shall be continued up to 1970 to the voluntary sports association "Labour Reserves" for physical culture, sports and tourist work among students receiving vocational technical education at the rate of up to eight roubles per student per annum.

10. The Central Council of the Union of Sports Associations and Organizations of the USSR shall, in training combined teams for important competitions, be authorized in individual cases to increase, within existing funds, the standard subsistence expenditure for sportsmen at special training sessions to five roubles per person per day.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE¹

Article 7 and 23 (1) of the Universal Declaration of Human Rights

In the case of *Nagle v. Feilden*, 1966 2QB 633 the Court refused to hold that there were no grounds for arguing that by the common law of England there was a right to work at one's trade or profession without being arbitrarily or unreasonably excluded by anyone having the governance of it, and that it would be capricious and unreasonable to exclude a woman from being a trainer of racehorses on the grounds of sex. This decision illustrates the attitude of the courts towards the right to work and towards discrimination on the grounds of sex.

Article 10 of the Universal Declaration

Criminal Appeal Act 1966

This Act abolished the Court of Criminal Appeal and transferred its functions to the criminal division of the Court of Appeal, and made a number of changes in the powers and procedure of the Court.

The changes include a provision that the Court, when varying a sentence on appeal, shall not pass a sentence of greater severity than that passed at the trial, taken as a whole. It also amends slightly the grounds on which the Court may allow an appeal against conviction.

The Act gives statutory effect to the Court's practice as to the hearing of fresh evidence which was not produced at the trial. It also provides that the time spent by an appellant in custody pending the determination of his appeal shall be reckoned as part of his sentence unless the Court directs otherwise.

Armed Forces Act 1966

This Act includes a provision to debar a civil court from subsequently trying a person who is subject to military law for an offence which is substantially the same as an offence for which he has been tried by court-martial, or which has been

taken into consideration by a court-martial in sentencing him, or for which he has been dealt with summarily by his commanding officer or appropriate superior authority. The provision follows the common-law principle that a person may not be put in jeopardy twice for the same offence.

In the converse case the Act extends the existing law under which a person who is subject to military law and who has been tried for an offence by a competent civil court shall not be liable in respect of that offence to be tried by court-martial or to have his case dealt with summarily by his commanding officer or appropriate superior authority, so that the reference to a civil court in this context includes such a court in any country.

Article 22 and 25 (1) of the Universal Declaration

Social Security

A major review of all social security schemes announced in Parliament in November 1964 was still continuing at the end of 1966. Among the measures so far resulting from the review and which became operative in the second half of 1966 are the replacement of the Ministry of Pensions and National Insurance and the National Assistance Board by a Ministry of Social Security, set up on 6 August 1966; the introduction of earnings-related supplements to unemployment and sickness benefits and widows' allowances; and the inauguration of a new system of supplementary benefits to replace the national assistance scheme. The creation of one Ministry for all social security cash benefits ended the sharp distinction which existed when separate government Departments were responsible for contributory and non-contributory benefits.

The National Insurance Act 1966 introduced, with effect from 6 October 1966, earnings-related supplements to flat-rate sickness and unemployment benefits. These supplements which may also be paid with industrial injury benefit are payable for up to twenty-six weeks and amount to one third of the average of weekly earnings within the £9-£30 wage band, provided that total benefit (including flat-rate and dependancy benefits) does not exceed 85 per cent of those average earnings.

¹ Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

The maximum supplement is thus £7 a week (one third of £21).

The Act also standardized the maximum duration of flat-rate unemployment benefit at 312 days (52 weeks excluding Sundays).

From 5 October 1966, the Act also provided earnings-related supplements to the allowances payable to widows for the period immediately following the husband's death, and extended the period for which the allowances are payable from thirteen to twenty-six weeks.

The cost of the earnings-related supplements is being met by an additional 0.5 per cent contribution on the above-mentioned weekly earnings, payable both by employer and by employee whether contracted out of the graduated retirement pension scheme or not.

Because the earnings-related supplement to sickness benefit is also payable with industrial injury benefit where there is title to the former, the conditions for receipt of injury benefit relating to days of incapacity for work and time limits for claiming were brought into line from October 1966 with those for sickness benefit. The initial period of thirteen weeks for the higher rate of industrial death benefit for widows was extended to twenty-six weeks in line with the corresponding national insurance widow's benefit.

With effect from 31 January 1966, amendments of the Medical Certification Regulations covering both the National Insurance and Industrial Injuries Schemes rationalized the rules governing medical certification thereby reducing substantially the 40 million medical certificates issued by doctors each year for sickness benefit and injury benefit claims.

Following a review by an independent committee, more generous provisions were made under the National Insurance Act 1966, for the assessment of certain types of serious disablement resulting from industrial injury, together with an entirely new allowance for exceptionally severely disabled pensioners.

As from 1 March 1966, extensions and improvements were made in the allowances payable out of the Industrial Injuries Fund to people injured before 5 July 1948 and entitled to weekly payments of workmen's compensation.

As mentioned in the 1965 *Yearbook*,² a 1965 interim reciprocal social security agreement with Guernsey covering unemployment, sickness and industrial injuries benefits was from 4 April 1966 superseded by a trilateral agreement between the United Kingdom, Jersey and Guernsey which covers all national insurance and industrial injuries benefits. A supplementary agreement on pensions concluded with the Irish Republic also came into force on that date.

By virtue of the Ministry of Social Security Act 1966, the former non-contributory pensions and national assistance grants were replaced on

28 November 1966, by a new scheme of supplementary benefits. Such benefits are available to any person, whether or not he qualifies for any of the state insurance benefits, if his weekly requirements assessed under the above-mentioned Act amount to more than his resources, provided he is not in full-time employment. A Supplementary Benefits Commission, appointed by the Minister and consisting of up to eight members chosen for their interest in and knowledge of social problems, is responsible for the administration of this scheme of non-contributory benefits.

Associated with the legislative programme, research continued into many problems underlying the provision of social security on a national scale and much useful statistical and other data has been produced. The results of an enquiry carried out into the financial and other circumstances of a sample comprising more than 10,000 retirement pensioners, mentioned in the 1965 *Yearbook*, were published in a report in June 1966. In the same month a further enquiry was conducted into the financial and other circumstances of about 2,700 families with two or more children, the results of which will also be published. In April 1966 work started on an enquiry into the position of unemployed occupational pensioners aged 60-64.

Legislative changes similar to those referred to above have been effected in the field of social security in Northern Ireland by parallel legislation made by the Northern Ireland Government.

Article 23 (1) of the Universal Declaration

Welfare amenities in the docks

Part II of the Docks and Harbours Act, which received the Royal Assent during 1966, requires the National Dock Labour Board to prepare welfare amenity schemes for the ports specified in Schedule I to the Act. These schemes have then to be submitted to the Minister of Labour for his approval.

Following the Report of the Devlin Committee on the Port Transport Industry, the National Dock Labour Board in conjunction with H.M. Factory Inspectorate surveyed the existing welfare amenities in docks to establish what additional facilities were required and what further improvements were necessary. The surveys were completed for all the specified ports and the survey reports were scrutinised by the National Dock Labour Board and H.M. Factory Inspectorate to ensure a consistency of approach. Reports for all the ports listed in Schedule I to the Act have been accepted by the Ministry of Labour as being suitable to form the basis for the welfare amenity schemes. These will be submitted by the Board for the Minister's approval when Part II of the Act becomes operative i.e. after Part I, which deals with the licensing of employers and the decasualization of dock labour, has been fully implemented.

In order that there will be no unnecessary delay in providing welfare amenities, the National Dock

² See *Yearbook on Human Rights for 1965*, p. 331-332.

Labour Board have recommended their local Boards to persuade employers and port authorities to begin the installations without waiting for Part II of the Act to be brought into force. Her Majesty's Factory Inspectorate have co-operated with the Board in this work and have also been active in trying to get similar welfare amenities installed in those ports not specified in Schedule I to the Act. It is hoped that substantial progress will have been made before Part II of the Act becomes operative. The Act also provides for the holding of an inquiry to consider objections to welfare amenity schemes or proposals to revoke the licence of any person for non-compliance with the requirements of a welfare amenity scheme already approved by the Minister. A preliminary draft of Regulations setting out the procedure to be followed at these inquiries was issued in November 1966. Interested bodies were invited to comment on the draft Regulations by 31 January 1967.

Article 29 of the Universal Declaration

Northern Ireland

In Northern Ireland the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-43, and regulations made under them, enable special measures to be taken for the preservation of the peace and the maintenance of order, subject to the condition that the ordinary course of law, the avocations of life and the enjoyment of property are interfered with as little as possible.

The powers contained in the legislation referred to have been invoked in the course of the last year to the minor extent set out in the Regulations, extracts from which are published below.

The Civil Authorities (Special Powers) Acts (Amending) Regulations (Northern Ireland) 1966 of 14 April 1966

1. At the end of Regulation 5A of the principal Regulations there shall be inserted the following Regulation:

"5B. (1) The Civil Authority, if in any circumstances he considers it necessary so to do for the preservation of the peace and maintenance of order, may by Order prohibit or restrict, during such period or periods as may be

specified, any traffic on railways in Northern Ireland.

"(2) Any such Order may be made so as to apply either generally to any railway or to any specified section or part of a railway in Northern Ireland or to any specified traffic or kind of traffic (being the carriage of passengers or of goods or of both).

"(3) If any person in respect of any traffic so prohibited acts in contravention of any such Order he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding £100 or to both such imprisonment and fine.

"(4) In this Regulation 'specified' means specified in an Order made under this Regulation."

The Civil Authorities (Special Powers) Acts (Amending) (No. 2) Regulations (Northern Ireland) 1966 of 28 June 1966

1. Regulation 24A of the principal Regulations shall have effect as if the following organisation were added to the list of organisations which for the purpose of that Regulation are deemed to be unlawful associations:

"The organisation at the date of this regulation, or at any time thereafter, misappropriating, or claiming to use, or using, or purporting to act under, the name 'the Ulster Volunteer Force' or any division or branch of such organisation howsoever described."

The Civil Authorities (Special Powers) Acts (Amending) (No. 3) Regulations (Northern Ireland) 1966 of 26 July 1966

1. After Regulation 37 of the principal Regulations there shall be added the following Regulation:

"38. Where any member of the Royal Ulster Constabulary not below the rank of head constable suspects that any assembly of three or more persons may lead to a breach of the peace or serious public disorder, or may make undue demands upon the police force, any member of the Royal Ulster Constabulary may require the persons constituting the assembly to disperse forthwith, and any person who fails to comply with such a requirement shall be guilty of an offence against these Regulations."

UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1966¹

INTRODUCTORY NOTE

The election returns in November 1966, when members were elected to the Federal Congress and to many state legislatures, showed a majority generally in favor of candidates who had supported the civil rights and equal opportunity legislation adopted in previous years. There was a significant rise in the number of Negro voters in southern states, credited largely to the effect of the Voting Rights Act of 1965. At the same time, growing impatience with the slow rate of change was reflected in sometimes violent disturbances in northern cities, particularly where Negro unemployment had been a long-term problem. In June, James Meredith, the Negro who had been admitted to the University of Mississippi in 1962 after intervention by the Federal Government, was wounded by a sniper while on a protest march. The sniper was immediately arrested. Hundreds of persons from both north and south joined in his march when he returned. In line with the First Amendment to the United States Constitution, which guarantees the "right of the people peaceably to assemble, and to petition the government for a redress of grievances", federal and state police protected the demonstrators.

The following survey is necessarily selective, confined to official acts of consequence. A more nearly complete picture of achievement would include developments regarding other basic rights guaranteed in State and Federal law, and of the many activities of government agencies, and of the co-operation of the American people themselves, in the promotion and enhancement of individual rights and freedoms for all.

EQUAL PROTECTION OF THE LAW

In continuing efforts to equalize opportunity without distinction as to race, poverty, or other status, Congress amended the Economic Opportunity Act of 1964 to continue and expand programmes in the light of experience over the first two years. The new legislation encouraged

wider use of educational institutions, public and private, for vocational training of young people enlisted in the Job Corps, specifying that at least 23 per cent of the enrollees must be women; set standards of conduct for the Corpsmen, and called for experimental and demonstration projects. For the Neighborhood Youth Corps, which provides a variety of in-service training opportunities for young people, the legislation provided pay for hours spent in training and education as well as work-time, and increased opportunities for co-operation with private organizations. "Special impact programmes" were authorized, directed to the solution of critical problems in particular communities and in low-income neighbourhoods, preferably as part of city-wide plans for social development. Community action programmes, both urban and rural, were given additional authority to expand their area of operation, without regard to boundaries and political sub-divisions. A new adult work-training and employment programme was established through which unemployed or low-income persons might be paid for activities designed to improve the economic or cultural condition of the community, with the additional objective of helping them obtain continued employment, if possible at a higher level. Training, counselling, transportation assistance and other supportive services were provided for this purpose. The legislation continued the Head Start programme for pre-school children, and the legal aid, employment, birth control and family services which had already proved effective. Among provisions of special interest was authorization to pay "representatives of the poor" to attend meetings of agencies directing community action programmes.

FAIR TRIAL

The Bail Reform Act, adopted by Congress in 1966, was also aimed at removing inequities against the poor. Passage was preceded by pioneering efforts in New York City, financed by a special foundation, and by a growing number of private and governmental agencies in other parts of the country. Their studies suggested that persons who could afford bail could go free pending trial, while those unable to raise bail awaited trial in jail,

¹ Information furnished by the Government of the United States of America.

thus were less able to assist in preparations for their defence, to help in locating witnesses, to maintain employment and to maintain family ties.

The Act generally provided for the release of persons charged with non-capital federal offences unless it appeared that they were unlikely to return for trial. Federal district judges were given discretion to impose a number of conditions on release, including release in custody of another person, restrictions on travel or association, cash deposit toward bond, full bail bond or "any other condition deemed reasonably necessary" to assure the person's appearance as required, including a requirement to return to custody after certain hours. The last provision was intended to permit release of accused persons to continue their employment. The Act also provided for giving credit toward sentence for any time served in jail awaiting trial. The Act included penalties for failing to appear as required, and it was made specifically non-retroactive.

Pre-trial protection for persons under arrest, also came under review. With four Justices dissenting, the United States Supreme Court, held invalid the convictions of four accused persons because the police had interrogated them without specifically warning them of their right to be silent or to have the protection of counsel. The Court in effect ruled that a suspect, when taken into police custody, may not be questioned unless he is first warned of his constitutional rights, namely that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning, if he so desires. While some regarded the new standard as making it more difficult to obtain confessions from suspected criminals, experienced observers pointed out this warning would bring nothing new to the educated, who understood the law, or to the "hardened" criminal, who had prior experience with criminal procedures. The requirement for warning was therefore of importance primarily for the ignorant and the poor who might not be familiar with their rights. In his opinion for the majority, Chief Justice Warren referred to records of past abuse and spelled out guidelines for police conduct. "The current practice of *incommunicado* interrogation", he said, "is at odds with one of our nation's most cherished principles".² In later decisions, it was made clear that the *Miranda* decision was not retroactive, so that the new rules would not apply to individuals convicted before 13 June 1966.

FREEDOM OF MOVEMENT

A new Department of Transportation was established to bring together in one cabinet level the many federal agencies dealing with travel and transport by air, ground, and water, including the Coast Guard.

Work continued on the new interstate system of highways, begun under federal grants several years earlier. The 1966 Appropriations Act included special safeguards for the preservation of parklands and historic sites in the construction of such roads. A Highway Safety Act was also adopted, calling for state programmes in keeping with uniform federal standards regarding driver performance, accident records, vehicle registration and traffic control. In other legislation, Congress established safety standards for motor vehicles and equipment used in interstate commerce, and set up a national register of persons who had been refused state drivers' licences for cause, such as driving while drunk, fatal accidents or serious violations.

PROTECTION OF THE FAMILY

The rights of the child were further strengthened through specific legislation protecting against abuse by parents or guardians, with three additional States adopting laws to encourage reporting of suspected cases by physicians or others. West Virginia established a section on family planning and child spacing in the maternal and child health division of the State Department of Health, and authorized local boards of health to establish child spacing clinics. Four States set up legislative study commissions to examine domestic relations, family and property laws with a view to their improvement.

FREEDOM OF SPEECH AND INFORMATION

The First Amendment to the United States Constitution protects freedom of speech and press, and each of the state constitutions contains similar provisions. The Supreme Court dealt with rights to free speech in considering an appeal by Julian Bond, who had been elected to the Georgia House of Representatives in December 1965 but refused a seat by that body because he opposed United States policy in Vietnam and selective service laws under which men were drafted for military service. It was the first time a United States Court had overruled a state legislature's decision on the qualifications of an elected member.

On 5 December 1966, in a unanimous opinion written by Chief Justice Warren, the Supreme Court found that Mr. Bond was merely exercising his right of free speech, which is guaranteed as much to a legislator as to a private citizen; moreover, the First Amendment guarantee of free speech

"requires that legislators be given the widest possible latitude to express their views on issues of policy . . . Legislators have an obligation to take positions on controversial political questions so that their constituent can be fully informed by them and be better able to assess their qualifications for office".

With regard to the Georgia House of Representatives' claim that Mr. Bond could not con-

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

scientiously take the required oath to uphold the State and Federal Constitutions because of his pacifist views, the Court noted that Mr. Bond had insisted he could honestly take the oath, and that the oath requirement

“does not authorize a majority of state legislators to test the sincerity with which another duly elected legislator can swear to uphold the Constitution. Such a power could be utilized to restrict the right of legislators to dissent from national or state policy or that of a majority of their colleagues under the guise of judging their loyalty to the Constitution”.

The opinion also noted the state's admission that the Georgia courts would have had the power to reinstate Mr. Bond if he had been denied his seat because he was a Negro, and reasoned that if courts can intervene to prevent racial discrimination by a state legislature, they can act also to protect rights under the First Amendment. Following this decision, the Georgia House of Representatives seated Mr. Bond as a member.³

Congressional and other inquiries aimed at more complete disclosure of government records led to amendments in 1966 to the Administrative Procedure Act. A principal purpose was to assure the public information on all significant actions by federal agencies. The legislation confirmed existing requirements for the publication of such materials in the Federal Register, which regularly provides descriptions of government organization and functions together with basic procedural and substantive rules. In addition, the legislation requires federal agencies to make available for public inspection and copying a variety of unpublished material, such as final opinions and orders in the adjudication of cases, statements of policy and interpretations, administrative staff manuals, and instructions which may affect the public, together with a current index. Unless the material is so indexed and made available, it may not be relied upon, used or cited as a precedent against any private party. The disclosure requirements do not apply to matters exempted by statute or executive order, such as those affecting national security, or to personnel records, information obtained from private parties on a confidential basis, and similarly privileged material. An earlier exemption for matters requiring “secrecy in the public interest” was deleted.

FREEDOM OF ASSOCIATION

The Supreme Court held unconstitutional an Arizona State statute requiring Arizona State employees to take a loyalty oath. A school teacher contended that she did not understand the legislative gloss interpreting the oath. The Arizona Supreme Court upheld the Act, but the Supreme Court reversed with four of the nine Justices dissenting. The majority opinion reasoned that the

gloss could be interpreted to condemn a member of an organization which had both illegal and legal purposes—for example, the violent overthrow of the government and also independent educational activities—even though the member did not subscribe to its unlawful purpose. Arguing that “those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat either as citizens or public employees”, the Court concluded that the legislative gloss interfered with the freedom of association guaranteed by the First and Fourteenth amendments to the United States Constitution.⁴

PARTICIPATION IN GOVERNMENT

Among the opportunities for public service in the United States is service on juries. The United States Constitution guarantees the right to a jury trial in most cases. Decisions by the United States Supreme Court have made it clear that jury lists must include Negroes in areas where Negroes constitute a significant proportion of the population. However, this had not been true for women in all areas, particularly in the south. While women have long been eligible for jury service in the vast majority of States, some have included only those women who indicate they are willing to serve, or provide special exemptions for women, for example, if they are needed at home to care for young children. In recent years many of these distinctions have disappeared. Since 1957, women have been eligible to serve on Federal juries throughout the nation, but a few states still refused to include women on juries in state courts. A 1966 Federal District Court in the case of *White v. Crook*,⁵ held that the Alabama State law excluding women from jury service denied women equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution, and was therefore invalid. In 1966 also, a number of States took legislative action to remove sex distinctions regarding jury service; South Carolina amended its State Constitution to permit women to serve on State juries on the same terms and conditions as men.

FAVOURABLE CONDITIONS OF WORK

Amendments to the Federal Fair Labor Standards Act extended minimum wage standards for the first time to farm workers, and greatly expanded the coverage of employees in retail stores, hospitals, schools, hotels, restaurants, laundries and dry cleaning establishments, government, construction and other industries, estimated at about eight million in number. It also increased the basic minimum hourly wage, with time and a half for hours in excess of forty in the week. Among various special provisions are protections for handicapped workers and for students.

³ *Bond v. Floyd*, 385 U.S. 116 (1966).

⁴ *Elfbrandt v. Russell*, 383 U.S. 11 (1966).

⁵ 251 F. Supp. 401 (1966).

A number of states adopted legislation expanding minimum wage requirements for local workers. New laws in four States—Georgia, Kentucky, Maryland and South Dakota—provided equal pay for equal work without distinction as to sex; in addition Michigan amended its fair employment practices law to include a prohibition against sex discrimination in employment. By the end of the year, a total of twenty-nine States had equal pay laws and five other jurisdictions prohibited sex discrimination in the rate of pay through their fair employment practices laws.

STANDARD OF LIVING

In a major effort to meet the problems of cities, Congress adopted a Demonstration Cities and Metropolitan Development Act, "to assist comprehensive city demonstration programmes for rebuilding slum and blighted areas and for providing the public facilities and services necessary to improve the general welfare of the people who live in those areas, to assist and encourage planned metropolitan development, and for other purposes." In its declaration of purpose, Congress declared that "improving the quality of urban life is the most critical domestic problem facing the United States. The persistence of widespread urban slums and blight, the concentration of persons of low income in older urban areas, and the unmet needs for additional housing and community facilities and services arising from rapid expansion of our urban population have resulted in a marked deterioration in the quality of the environment and the lives of large numbers of our people while the Nation as a whole prospers."

The Act authorized federal grants and technical assistance to help communities of all sizes to plan, develop and carry out programmes. In order to qualify for aid, community plans must be designed to improve entire slum neighbourhoods, increase the supply of low and moderate cost housing, and make marked progress in meeting any social, health, and other problems of the area, with relocation provisions for any persons displaced during reconstruction. Regional planning agencies were also set up, with responsibility to review applications for grants and co-ordinate plans in the area.

Growing demand for consumer protection against misleading sales policies led to Congressional adoption of a "Fair Packaging and Labelling Act". This requires that any commodity distributed through commercial channels be labelled to show its contents and manufacturer, including an accurate statement of quantity in a uniform location on the display label, in easily legible type. The Act authorizes the Secretary of Commerce to establish standards also on the size of packages and the placing of price indications, and to enlist the co-operation of manufacturers, packers and distributors in dealing with "undue proliferation" of package forms if it appears to "impair the reasonable ability of consumers to make value comparisons." The President had

previously established an Office of Special Assistant on Consumer Affairs, together with a Citizen Advisory Committee, to examine consumer problems and recommend suitable action.

The Supreme Court upheld a ruling by the Federal Trade Commission that a paint company which regularly marked its products "two-for-the-price-of-one" violated the prohibition against "unfair and deceptive acts or practices in Commerce" embodied in the Act creating the Commission.⁶

Concern to protect and improve the environment led to "clean air" and "clean water" legislation expanding earlier programmes to prevent pollution and prevent health hazards. The legislation authorized continued research and action along regional lines, including study of incentives to encourage construction of needed pollution facilities by private industry.

EDUCATION

Educational authorities in various northern States took action to encourage a better mixture of Negro and white students in schools which had become racially segregated because of residential patterns. While in most cases such *de facto* segregation was clearly unintentional, the process of establishing new district lines or arranging to transport children to schools outside their immediate neighbourhood posed a variety of new problems for parents as well as the responsible officials. Nevertheless, the educational achievement of Negroes continued to rise; whereas in 1960, of young people between twenty-four and thirty-four who had completed four years of college only a little more than a third were Negro, by 1965 the proportion had risen to a half. Of those of secondary school age, more than 90 per cent of both Negroes and whites were enrolled in 1966.

In other efforts, programmes were in operation to encourage young people to continue education beyond the school-leaving age, usually sixteen. Both the Neighborhood Youth Corps and the work-study programmes authorized by the Vocational-Education Act of 1963 helped provide part-time work for students from poor families who might not otherwise be able to finish high school. Youth Opportunity Centers established by the Federal-State Employment Service helped in follow-up placement.

SCIENCE AND CULTURE

Congress adopted an Act to implement the 1950 International Agreement on the Importation of Educational, Scientific, and Cultural Materials, which was designed to facilitate the free flow of such materials by the removal of trade barriers. The Senate gave its advice and consent to ratify

⁶ *FTC v. Mary Carter Paint Co.*, 383 US 46 (1965).

cation of this Agreement in 1960, but deposit of the formal instrument had been withheld pending enactment of legislation. The United States forwarded its ratification on 14 October. The Act amends existing tariff schedules to provide for

duty-free treatment of imports of educational, scientific, and cultural materials, in addition to those already so admitted, including certain books, periodicals, works of art, and scientific instruments and apparatus.

UPPER VOLTA

NOTE¹

1. *Ordinance* No. 12/PRES of 14 January 1966

Repeals Act No. 5/63/AN of 29 January 1963 instituting a State Security Court.

2. *Ordinance* No. 67-616/PRES/DTMO of 11 March 1966

Amends Article 123, paragraph 5, of the Labour Code² to read as follows:

"During her maternity leave a woman may claim from the State Insurance Fund the costs of her confinement in an administrative clinic and, where applicable, medical care, as well as half of the wage which she was earning at the time of the suspension of her contract, the other half to be paid by the employer. During that period, she shall retain the right to receive allowances in kind."

3. *Ordinance* No. 22/PRES/J of 12 May 1966

Repeals Act No. 4/64/AN of 27 May 1964³ relating to the provisional release of any untried prisoner or any prisoner committed for trial before the correctional court or assize court, article 1 of which reads as follows:

"Notwithstanding any provisions of the Code of Criminal Instruction to the contrary, the provisional release of an untried prisoner or a prisoner committed for trial before the correctional court or assize court cannot be granted except on the recommendation of the *Ministère public*."

4. *Ordinance* No. 43/PRES of 3 October 1966

Repeals article 14 of Act No. 25/60/AN of 3 February 1960 introducing the identity card in

Upper Volta and organizing the collection of taxes and the civil register. The new article 14 reads as follows:

"With effect from the introduction of fiscal control in the Communes, persons other than those referred to in articles 12 and 13 above who do not pay their taxes within three months from the date on which they fall due may be required to discharge their obligations by performing certain services."

5. *Ordinance* No. 44/PRES/DN of 3 October 1966 (*Journal officiel* No. 40, of 6 October 1966)

Amends and improves article 5 of Act No. 6/63/AN of 12 February 1962 concerning army recruitment. The new article 5 reads as follows;

"Active service shall be performed in the army and the air force. It shall consist of military and civic training.

"However, in exceptional circumstances the administrative and municipal authorities may requisition troops to perform tasks which are in the national interest.

"Young persons may, upon completion of active military service, receive additional general education and vocational training."

6. *Ordinance* No. 45/PRES of 3 October 1966 (*Ibid.*).

Amends article 4 of Act No. 6/63/AN of 12 February 1963 concerning the utilization of manpower with a view to ensuring the economic and social development of the nation. The new article 4 reads as follows:

"The services of the persons in question will be used in the interests of the nation, according to their occupation, abilities or aptitudes and with due regard to their family situation, either individually or in national administrative offices, establishments or services."

¹ Note based on texts furnished by the Government of the Republic of Upper Volta.

² Set forth in Act No. 52-1322 of 15 December 1952.

³ Promulgated by Decree No. 236 bis/PRES/LAN of 1 June 1964.

VENEZUELA

NOTE¹

Special mention must be made of article 26 of the Universal Declaration of Human Rights, which proclaims the right of everyone to free education, states that elementary education shall be compulsory, defines the aims of education and affirms the right of parents to choose the kind of education that shall be given to their children. As we believe that free education cannot be ensured solely through the schools which the Venezuelan Government has built throughout the country and that schoolchildren should also have facilities for vocational education, Decree No. 567 of 17 June 1966, published in *Gaceta Oficial* No. 28,066 of 23 June 1966, recommended to the Office of Over-All Educational Planning that textbooks and teaching materials should be prepared for pupils attending rural and urban educational institutions and published and distributed without charge to any State primary schools or other schools in Venezuela that request them.

ACT OF 11 JULY 1966 RESPECTING THE REPRESENTATION OF WORKERS IN STATE-OWNED INSTITUTIONS, ECONOMIC DEVELOPMENT SERVICES AND UNDERTAKINGS²

SUMMARY

Section 1 of the Act provides that the workers shall be represented on the managing committees, boards of directors or directorates of the autonomous institutions, economic development bodies and undertakings in general of which the State owns all or a majority of the shares, and that the workers' representation shall operate in the manner and subject to the conditions laid down in this Act, except in such cases as shall be prescribed therein.

Under section 2, the confederation, federation or union which is the most representative or the biggest in the industrial sector concerned shall represent the workers as indicated in section 1, and in the case of doubt as to which industrial association should represent them, the Ministry of Labour shall designate by special decision the confederation, federation or union to represent the workers in the manner prescribed in section 1.

To designate the workers' representative, section 3 specifies that the supervisory executive organ having jurisdiction over the institution or body concerned shall request the confederation, federation or union concerned, through the Ministry of Labour, to provide a list of five Venezuelan nationals, out of which a principal and deputy representative shall be chosen. Section 3 also stipulates that the workers' representatives shall be citizens of Venezuela of full legal age.

¹ Note furnished by the Government of Venezuela.

² *Gaceta Oficial*, No. 1032, 18 July 1966, Extraordinary. Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series*, 1966-Ven.1.

GENERAL LAW ON CO-OPERATIVE SOCIETIES³

SUMMARY

The text of this Law was published in the *Gaceta Oficial*, No. 1036 *Extraordinario*, of 11 August 1966.

Article 1 of the Law reads as follows: "This Law shall regulate co-operative societies and membership therein whenever the said societies engage in any co-operative work or service for the co-operative production, distribution and consumption of goods and services."

Under article 3, co-operatives may be either limited liability or else supplemented liability associations.

Article 6 provides that the organization of co-operatives shall be authorized solely between persons who are primary consumers and primary producers and between juridical persons engaged in non-profit making activities.

Other provisions of the Law deal with the creation of co-operatives; membership; working methods and administration; types of co-operatives; levels of co-operative activity; the National Co-operative Council; the Office of the National Superintendent for Co-operatives; economic resources; funds, reserves and profits; taxes and allowances; dissolution and liquidation; and penalties.

³ Translations of the Law into English and French have been published by the United Nations Food and Agricultural Organization as *Food and Agricultural Legislation*, Vol. XV—No. 4, VIII/1.

YUGOSLAVIA

THE DEVELOPMENT IN THE FIELD OF HUMAN RIGHTS RECORDED IN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA DURING 1966¹

After the enactment of the Constitution of 1963,² there followed a period of two years (1963-1965) in the course of which many laws were issued with a view to co-ordinating the existing legal prescriptions with the Constitution. In many sectors human rights were enlarged in conformity with the Constitution and the mechanism, procedures and institutions serving for their exercise were perfected. The year 1966 itself was characterized by the enactment of new federal laws to codify particular subject-matter, to extend human rights, or to further self-management, thereby securing an improved application of human rights. One such federal law is that relating to education and upbringing. One should also stress the significant development in connexion with the freedom of movement representing Yugoslavia's contribution to the International Tourist Year. Parallel with this federal legislation, a major legislative activity has also been recorded on the level of the republics, which issued laws and other acts to elucidate, supplement and consolidate the subject-matter contained in the federal basic and general laws, as well as in laws and other prescriptions in the sphere of republican jurisdiction. The relevant republican laws incorporate to a greater or lesser degree innovations in respect of human rights. Particularly outstanding among them is a law on social protection which in its scope and content constitutes an important legal act in the domain of human rights and which rates due attention.

I. HOME AFFAIRS

Basic Law on Home Affairs (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 49, 1966)

This Law represents a codification of the provisions of various earlier and certain new prescriptions. It regulates matters within federal

jurisdiction, and, by virtue of its being a basic law, its provisions are to be further developed by republican laws.

Article 1 of the Law enumerates the affairs which in terms of the Law are to be considered home affairs. They cover the administrative and technical tasks in the field of public and State security, those connected with associations of citizens, public gatherings, the keeping and bearing of arms and ammunition, fire prevention, citizenship, travel documents for crossing the State frontiers, the duration of stay of foreigners, identity cards, registers, personal names, the registration of domicile and residence, as well as other tasks as established by law. The Law further contains general provisions concerning the work of the authorities of home affairs and the jurisdiction of particular (federal, republican, communal) authorities. The Law stresses that the operatives of the home affairs authorities are bound to protect and guard the life and dignity of individuals in the performance of tasks within their jurisdiction and that they may apply only those measures of coercion which are provided for by the Law and which serve to carry out official duties with minimal harmful consequences to citizens and working as well as other organizations.

The Law also emphasizes the principle of publicity in the work of the authorities of home affairs, which is reflected, particularly, in the obligation of the officials in charge of the organs of home affairs to keep the representative bodies informed on the work of the organs, to keep the public informed on matters of interest to citizens and working and other organizations, as well as to furnish information on matters directly affecting the citizens and organizations.

The Law also lays down the procedure to be observed by the organs of home affairs in instituting criminal proceedings, the powers of the organs in discovering and apprehending the perpetrators of criminal offences, the safeguarding of clues, etc.

The Law specifies the circumstances in which official persons may use firearms, viz. when such is the sole way of their:

- (1) Protecting human life;

¹ Note prepared by Dr. Boško Jakovljević, research fellow, Institute of International Politics and Economy, government-appointed correspondent of *Yearbook on Human Rights*.

² See *Yearbook on Human Rights for 1963*, pp. 369-377.

(2) Preventing the escape of an individual caught in the act of committing a criminal offence for which he is liable to 15 years' rigorous imprisonment or to severe punishment; of an individual deprived of liberty and of an individual against whom a warrant of arrest has been issued because of his having committed a criminal offence for which he is liable to 15 years' rigorous imprisonment or a heavier penalty;

(3) Repelling a direct attack whereby their life is threatened;

(4) Repelling an attack against an object for the security of which they are responsible.

It follows from point 2 that in case of escape firearms may only be used if the gravest criminal offences are involved.

The Law also defines the purview of the State security services.

II. FREEDOM OF MOVEMENT

The Law on Abolition of Visas for Foreign Tourists in the International Tourist Year 1967 (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 47, 1966)

The policy pursued by Yugoslavia to increasingly open its frontiers and to liberalize the traffic of international passengers led to the abolition in 1966 of visas with 17 countries of the world,³ to the abolition of visa fees with another 16 countries and to the opening of negotiations with a series of countries for the conclusion of similar treaties. Besides, the formalities for obtaining visas were simplified in that their issuance was made not only by diplomatic-consular missions, but also on the frontier itself. At the same time, tourist passes valid for three days were introduced, representing the beginning of a system of frontier crossing without a visa. Such a policy brings about the elimination of a series of obstacles to the free movement of individuals.

A new significant measure within this policy has been represented by the Law on Abolition of Visas for Foreign Tourists in the International Tourist Year 1967. Thus Yugoslavia became the first country in the world to enact a special law for the year to assist the development of international tourism. With this Law Yugoslavia unilaterally abolished visas for visitors from all countries of the world, without any limitations as to countries, not even towards the nationals of those countries with which she does not maintain regular diplomatic, political, economic and other relations. The Law does not stipulate reciprocity, it simply does away with visas unilaterally. In addition to facilitating the freedom of movement in 1967, the Law is expected to incite other countries also to abolish visas with Yugoslavia. The text of the Law is brief, reading as follows:

³ By the end of 1966 visas had been abolished, on the basis of bilateral agreements, with Morocco, Tunisia, Algeria, Tanzania, Poland, Czechoslovakia, Bulgaria, Romania, Hungary, Austria, Italy, Cuba, Sweden, Finland, Norway, Denmark and Iceland.

Article 1.

In 1967, the year of international tourism, foreigners who come to Yugoslavia for the purpose of a tourist visit may cross the Yugoslav State frontier without a visa.

Foreigners who come to Yugoslavia for the purpose of a tourist visit may cross the Yugoslav State frontier provided that they are holders of a valid passport or other valid travel document recognized by international treaty, on the basis of which the identity of the holder thereof can be established and which has been issued in accordance with the regulations on the issuance of travel documents of the given foreign States.

Foreigners who come to Yugoslavia for the purpose of a tourist visit may stay temporarily in Yugoslavia for three months, unless otherwise established by international treaty.

Article 2

The provisions of the Law on the Movement and Stay of Foreigners in Yugoslavia (*Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 13, 1965*) relating to the obligation of obtaining visas and to the method of their issuance shall not be applicable in 1967 to foreigners coming to Yugoslavia for the purpose of a tourist visit.

Article 3

This Law shall enter into force on the eighth day following the date of its publication in the *Official Gazette of the Socialist Federal Republic of Yugoslavia*.

III. CONSTITUTIONAL JUDICATURE

The year 1966 was one of successful development of the work of the Constitutional Court of Yugoslavia and the constitutional courts of the six republics which were introduced by the Constitution of 1963 as important new instruments for the protection of the constitutional rights of the citizens. In addition to giving numerous decisions in judicial cases, the constitutional courts followed the phenomena of interest for the realization of constitutionality and legality and submitted proposals and opinions to the assemblies, while pursuing other tasks within their jurisdiction (see Law on the Constitutional Court of Yugoslavia, *Yearbook on Human Rights for 1963* pp. 368-369). Here are a few of the decisions that may be of direct interest for appraising the work of the constitutional courts as instruments for the protection of human rights.

By a decision of 24 February 1966 the Constitutional Court of Yugoslavia abolished the general administrative rules issued by the enterprises "Nameštaj" from Bačka Palanka (regarding annual leave, employment of new workers and the filling of vacancies, the responsibility of workers, etc.), because the rules had not been issued in conformity with the procedure which safeguards the

publicity of deliberations and the laying down of general administrative rules, and also because the rules had taken effect on the date of their issuance and without previous publication. Thus the Court safeguarded democracy in the issuing of general administrative rules of enterprises.

The Court had to deal with a number of disputes involving the rates of communal services. In view of the importance of the services and the fact that they are usually provided by particular organizations, the system of their rates had been specially regulated so as to protect the citizens from unreasonably high charges. In the case of one such dispute, the Constitutional Court of Yugoslavia abolished, by a decision of 28 February 1966, the Decision on Water Rates and on the Tariff for Garbage Disposal which had been issued by the Assembly of the commune of Bosansko Grahovo. The Assembly, namely, had fixed rates and tariffs varying disproportionately for particular categories of users, and in fixing them the assembly failed to apply objective criteria having regard to the extent of the services rendered to particular users thereof.

By a decision of 23 September 1966 the Constitutional Court of Yugoslavia abolished the Decision of the Assembly of the Commune of Banja Luka to levy a tax on the sale of alcoholic beverages in catering establishments in the form of a services tax, given that such beverages already were subject to excise tax. Besides, the Court found that the Assembly lacked the powers to assess the amount of tax payable by working organizations at varying rates. Thus, the Court protected the citizens from the imposition of an unwarranted burden, a burden incompatible with the law, and the working organizations from discrimination in establishing their tax assessment.

During the period of the strengthening of the communes self-contributions were introduced in the form of public dues for particular purposes. In this context disputes arose regarding the powers to adopt such contributions, and representatives of the constitutional courts held consultations on 7 and 8 February 1966, at the Constitutional Court of Yugoslavia, to decide in principle whether a local community (several local communities make up a commune) may adopt such a contribution. It was concluded that local communities may levy a local self-contribution, provided that the majority of the registered electors from the territory of a local community actively express themselves in favour thereof, signifying that a majority of those voting would not suffice. By a decision of 11 November 1966 involving a dispute as to the legality of the levy of a local self-contribution on the whole territory of the Commune of Pozarevac, the Constitutional Court of Serbia abolished the decision of the Assembly of the Commune of Pozarevac of 29 March 1966 levying such self-contribution on the whole territory of the Commune. The contribution could only be levied on the territory of meetings of electors that have pronounced themselves on the subject and not on a territory where such meetings have not been held or where the electors have not pronounced them-

selves on the subject. The decisions of the meetings which have pronounced themselves concerning the contribution cannot be binding for the citizens of other meetings of the same commune. The question of the legality of such a contribution had also been considered by the Constitutional Court of Macedonia. By a decision dated 25 October 1965 the Court abolished the decision whereby the Assembly of the commune of Sveti Nikola had levied a self-contribution for the construction of water supply and sewer systems. The Court found the assembly's decision unlawful in that it had not been published in any official medium of information and in that it entered into force as of the date of its issuance, which constituted a breach of the prescriptions that general administrative rules have to be published before taking effect and that they shall take effect eight days after their publication at the earliest. It was likewise unlawful to levy the self-contribution on persons that were not domiciled on the territory of that town, but only acquired their income there. Consequently, the Assembly of the commune of Sveti Nikola had exceeded its legal powers. In view of the frequency of disputes involving self-contribution the Constitutional Court of Macedonia also made a principled study of the problems arising in connexion therewith. On 31 October 1966 the Court submitted recommendations to the Assembly of Macedonia to issue the necessary prescriptions which would ensure that the levy of the contribution as a special form of direct decision-making by the citizens really is an expression of the wishes of the citizens of a given territory manifested in a democratic way. The said decisions show that the constitutional courts have in such cases acted to protect the citizens from the imposition of duties by local authorities beyond the limits laid down by law.

By a decision dated 28 May 1966 the Constitutional Court of Serbia approved the petition of a department of the Integrated Forest Products Industries "Blagoje Nikolic" in Leskovac to secede and form an independent enterprise. The Industries had contested the department's right to do so, thereby denying the right of the immediate producers to decide themselves on a matter affecting their interests.

By a decision dated 25 November 1965 the Constitutional Court of Bosnia and Herzegovina quashed a provision of the by-laws of the Teachers' Training College in Mostar whereby a pupil who fails to pass to a higher grade without a valid reason (lack of learning zeal and similar causes) has to bear 50 per cent of the cost of his schooling, as well as a decision which decreed the partial payment of expenditure during the school year. In making its decisions the Court was guided by the fact that the material means for the work of schools are provided by the social community and the school has no powers to prescribe a compulsory sharing of the schooling costs, whether as a punitive measure or as a tax obligation of the pupils or their parents.

From these few typical examples, which, of course, do not cover the whole activity of the

constitutional courts in protecting human rights and cannot provide an exhaustive picture of their whole activity in affording such protection, the courts are seen to have protected the citizens with their decisions, either individually or as members of working collectives, against the acts of enterprises, institutions, official authorities, etc., exceeding the powers thereof and infringing the rights of the citizens established by the constitutions and laws. The decisions of the courts did not represent any new rights of the citizens, but only the further development of a new way of protecting human rights.

IV. LABOUR LEGISLATION

Law Supplementing the Basic Law on the Organization and Financing of Employment (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 47, 1966)

In liberalizing the movement of manpower and in developing a policy of open frontiers, this Law implements new measures in the sphere of employment services. Its supplementary provisions define the tasks of the employment offices and services in connexion with the employment of Yugoslav workers in foreign countries. The Law provides for the employment offices and the Federal Office for Affairs of Employment to extend professional assistance in connexion with employment abroad; to make registrations and furnish information concerning employment with foreign employers, the rights and obligations pursuant to the employment legislation of foreign States, the necessary documents for the exercise of such rights and the method of obtaining them; to organize the departure of Yugoslav workers abroad; and to extend other professional assistance in connexion with their temporary employment abroad. The offices and the Federal Office receive offers from foreign employers, organisms and organizations and conclude general contracts concerning employment of Yugoslav workers in foreign countries.

Regarding the new Basic Law on the Organization and Financing of Employment, published in the *Official Gazette of the Socialist Federal Republic of Yugoslavia*, No. 15, 1965, see the report submitted by the Government of the Socialist Federal Republic of Yugoslavia to the International Labour Organisation for the period through 1 July 1965 relating to the Convention on the Organization of the Employment Service of 1948.

V. HEALTH

Law on the Use and Protection of the Sign and Name of the Red Cross (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 49, 1967)

Among the measures for the application of the Geneva Conventions on the Protection of the Victims of War of 12 August 1949 a special law was enacted which regulates in detail the use of

the sign and name of the Red Cross by the medical corps of the armed forces, by civil health services and by the organizations of the Yugoslav Red Cross, in order to afford improved protection to wounded, sick and shipwrecked persons.

Rules on Military Identity Cards and the Identity Cards of the Medical and Escorting Personnel of the Armed Forces of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 16, 1966)

These Rules were issued in view of the application of the relevant provisions of the Geneva Conventions on the Protection of the Victims of War of 12 August 1949 and represent a measure intended to enable the application of the Conventions and the protection of determined categories of the victims of war.

VI. SOCIAL PROTECTION

Law on Social Protection and Social Protection Services (Official Gazette of the Socialist Republic of Serbia, No. 53, 1966)

This is a republican law regulating the social relationships in the sphere of social protection. With certain exceptions in this sphere the Federal authority is competent to enact only general laws, i.e. laws that are not applicable directly. Such a general federal law has not been enacted, and this particular Law represents the first instance in Yugoslavia of the whole subject-matter of social protection being completely regulated by republican legislation. The Law follows the line of the constitutional principle whereby the citizens are guaranteed social security. In the sector of social welfare, matters relating to social insurance and social security had been regulated in detail (war disabled, family legislation, guardianship and other), while social protection remained inadequately covered by general prescriptions.

The Law was adopted following extensive discussions in the course of which the public views obtained were taken into consideration.

The basic conception of the Law is that social protection represents an obligation of the social community. The Law guarantees the basic protection, which is identical for the whole republic. However, social protection is the paramount responsibility of the communes, which may enlarge it in accordance with their possibilities.

The Law contains the basic guiding principles of social protection and specifies the categories of the beneficiaries, the minimum protection guaranteed by statute, the system of financing, the organization of the social protection services and other matters. As regards the beneficiaries, the Law mainly specifies the same circle of persons who have also enjoyed this protection before, but a novelty occurs in that the rights guaranteed by it are now based on the Constitution.

One of the characteristics of the Law is that it is expressive of the intensifying process of de-atatization and that it provides more scope for

self-management in the sphere of social protection, especially so by way of the new method of financing and the status of the social protection services and institutions.

In addition to this Law, the Assembly adopted the Recommendations on the Financing of Social Protection, which was addressed to the communal assemblies.

In view of the importance and novelty of this Law, which codifies and regulates the subject-matter of social protection in a general, very exhaustive and complete way, considerable extracts therefrom are given below. These are of particular interest to those who want to know about the development of the protection of human rights in Yugoslavia.

LAW ON SOCIAL PROTECTION AND SOCIAL PROTECTION SERVICES

Extracts

Chapter I

BASIC PROVISIONS

Article 1

This Law determines the basic principles and the system of social protection, the basic social protection and the organization of the social protection services in the Socialist Republic of Serbia.

Article 2

In terms of this Law "social protection" means the organized undertaking of measures with a view to preventing the occurrence of a position of social need and with a view to extending social assistance to persons requiring it.

"Position of social need" means such a position whereby a person lacks the possibilities to provide himself for his basic livelihood and therefore needs social assistance.

Article 3

The purpose of social protection is to realize the social security of the individual consonantly with the principle of socialist humanism and human solidarity, and this shall be pursued in particular

By preventing the appearance of the causes that provoke a position of social need;

By creating the conditions for making persons, who find themselves in need of social protection, capable of independent life and work;

By securing the essential means of livelihood to materially insecure persons who are incapable of work;

By extending services to persons finding themselves in need of social protection.

Article 4

The rights of the citizens under the basic social protection (basic social protection) shall be uniform for all citizens on the territory of the Socialist Republic of Serbia.

The communes and other bodies responsible for social protection may, in accordance with their possibilities, enlarge the circle of the beneficiaries, establish other forms of and rights under the social protection scheme, as well as prescribe the acquisition of rights under more favourable conditions (the extended social protection).

Article 5

The rights under the social protection scheme shall be rights attached to the person, and shall not be transferable. The rights that involve material benefits may not be interfered with by seizure.

Article 6

The type, form and extent of social protection shall be determined depending on the position of social need of a beneficiary, having regard to the conditions of the environment in which he is living.

The authority competent for the performance of social protection shall consider the wishes of a beneficiary of social protection, if feasible and appropriate.

A beneficiary of social protection is bound to contribute within the limits of his possibilities to the adequate realization of the social protection extended him.

...

Article 8

An individual shall have social protection extended to him on his request and with his consent, and in the case of infants and persons who legally are partly or wholly incompetent, protection shall be extended on the request and with the consent of their representative under the law.

The authority competent for the performance of social protection shall also extend social protection *ex officio* in cases where a person finds himself in a position of social need and where it is in the interest of that person and of the social community to do so.

Article 9

The socio-political and local communities, the working and other organizations shall be responsible for social protection.

Article 10

Those charged with social protection shall develop social protection and shall, according to their possibilities and the needs of the citizens, ensure the necessary material means, found and develop the services and attend to the training and

securing of trained personnel for work on social protection tasks.

...

Article 17

Social protection shall be pursued by

Following and studying social problems for the purpose of realizing the aims and tasks of social protection;

Planning and programming the social activities in the sphere of social protection;

Taking preventive measures intended to preclude the appearance of the causes that bring individuals into the position of social need;

Applying the appropriate forms and measures of social protection to persons in a position of social need.

Article 18

Social protection shall be directly performed by social protection institutions, the appropriate services of the working and social organizations, and the administrative authority (hereinafter termed "the services of social protection").

In the implementation of social protection the services of social protection shall co-operate between them as well as with other pertinent bodies, services, organizations and the citizens.

Article 19

The tasks of social protection shall be executed by social and other qualified workers (jurists, pedagogues, psychologists, physicians, sociologists, economists and others) as workers of the social protection services of the socio-political communities, working organizations in the sphere of social protection and other working organizations.

The by-laws and other general administrative rules of an organization responsible for social protection shall more closely define the posts in which social and other qualified workers are to be employed, as well as the requirements to be met by such persons.

The workers referred to in the last foregoing paragraph shall execute the tasks of social protection consonantly with the principles of social policy, modern methods of social work, scientific attainments and the norms of social ethics.

Workers in the sphere of social protection are bound to treat as an official secret everything that they come to know about the person, the circumstances, and the life of a beneficiary of social protection, unless they are exempted from such obligation by law.

...

Chapter II

BENEFICIARIES AND FORMS OF SOCIAL PROTECTION

1. Beneficiaries of Social Protection

Article 21

Under this Law the beneficiaries of social protection by virtue of the causes and types of social need shall include the following:

1. Children:

- (a) Deprived of parental care;
- (b) Handicapped as to physical and psychological development;
- (c) Neglected as to upbringing;
- (d) Handicapped as to development by family circumstances;

2. Adult persons:

- (a) Materially insecure and incapable of work;
- (b) Aged and deprived of family care;
- (c) Invalids;
- (d) Negatively behaved socially;
- (e) Other persons in a position of social need for other causes.

It shall be the responsibility of the social protection authority to determine the category to which a beneficiary of social protection belongs.

...

2. Forms of Social Protection

Article 25

The forms of social protection shall be the following:

- (1) Material assistance;
- (2) Assistance for getting the capability of work;
- (3) Accommodation in an institution of social protection or with a family;
- (4) Assistance to the family in connexion with diurnal care of and meals in community restaurants and use of institutions for rest and recreation by children;
- (5) Other services that form part of social work.

...

Chapter III

BASIC SOCIAL PROTECTION

A. The Entitlements by Virtue of Social Protection

1. Material Assistance

Article 30

Destitute persons shall be entitled to material assistance.

...

Article 33

The permanent monetary assistance shall be granted at a monthly rate in the form of:

- (1) Basic monetary assistance;
- (2) A supplement for members of the household who are incapable of work;
- (3) An allowance for schooling and capability training;
- (4) An extra allowance.

...

Article 36

The basic monetary assistance shall be fixed at not less than fifty per cent of the minimum rate of personal income established by republican prescriptions.

...

2. Assistance for the capability of Work

Article 44

A blind child shall be entitled to all forms of assistance for getting the capability of work as specified in Article 27 of this Law.

Article 45

Other incapacitated persons (children and adult persons) shall be entitled to assistance for getting the capability of work in the form of material assistance and of compensation of the costs made for getting that capability.

...

3. Accommodation in an Institution of Social Protection or with a Family

Article 48

A dependent and exhausted person or a person suffering from a chronic disease shall be entitled to accommodation in an appropriate institution of social protection, having regard to his housing and family circumstances.

The right to accommodation in an institution of social protection or with a family shall also belong to a child deprived of parental care, provided that conditions to assist him in another way do not exist.

Article 49

A child seriously handicapped in his psychological development shall be entitled to accommodation in an institution of social protection for care and custody.

...

Article 54

Cases involving the exercise of the entitlements by virtue of social protection shall be dealt with by urgent procedure free of tax.

Where an administrative rule is to be issued for the exercise of the entitlements by virtue of social protection, such rule shall be issued not later than 30 days following the date when the request is submitted, respectively following the date when the need for the appropriate service to extend social protection becomes known.

...

Article 56

The communal centre for social work shall take decisions on the entitlements by virtue of social protection in the first instance, and in a commune where such a centre does not exist the administrative authority in charge of matters affecting social protection (hereinafter termed "the communal authority of social protection") shall do so.

The authority specified by the communal assembly shall take decisions on entitlements by virtue of social protection in second instance.

...

Chapter IV

INSTITUTIONS OF SOCIAL PROTECTION

1. General Provisions

Article 59

A working organization which extends social protection to beneficiaries according to this Law and the prescriptions issued in pursuance thereof, as well as of other prescriptions, shall be deemed an institution of social protection (hereinafter termed "the institution").

A working organization whose basic activity consists in the study of the phenomena and problems in the sphere of social welfare shall also be deemed an institution of social protection.

Article 60

The institutions shall perform the following basic activities:

- Diurnal care for children aged up to three years;
- Care and upbringing or intermittent care for children deprived of parental care;
- Care and upbringing, working and vocational training of seriously and considerably psychologically or physically handicapped children as well as of incapacitated adults;
- Care and temporary care for aged persons as well as for destitute persons and those incapable of work;
- Employment and capability training of destitute invalids;
- Provision of meals to destitute persons;
- The organizing of rest and recreation for children and young persons;
- Diurnal care for children suffering from major psychological and physical handicaps;

Care for and upbringing of children whose upbringing has been neglected;

The provision of social welfare services, as well as of other services prescribed by this Law and by prescriptions issued in pursuance thereof;

The study of the phenomena and problems in the sphere of social policy;

The performance of other social welfare activities.

The activity to be pursued by an institution shall be determined by the decision on its foundation and by its by-laws.

Article 61

The activity of an institution shall be deemed an activity of particular interest to society.

2. Types of Institutions of Social Protection and Their Tasks

Article 62

The institutions of social protection shall include the following:

- (1) Centres for social work;
- (2) Homes for children and young persons;
- (3) Creches;
- (4) Institutions for diurnal stay of children suffering from major psychological and physical handicaps;
- (5) Institutions for children and young persons suffering from major and serious psychological and physical handicaps;
- (6) Institutions for children and young persons whose upbringing has been neglected;
- (7) Reception centres for children and young persons;
- (8) Homes for old persons;
- (9) Reception centres for adult persons;
- (10) Kitchens for destitute persons;
- (11) Rest centres for children and youth;
- (12) Institutions for the rehabilitation and employment of incapacitated persons;
- (13) Institutions for family accommodation;
- (14) Institutions of care for adult persons wholly and permanently incapable of work;
- (15) Institutions for studies in the sphere of social welfare;
- (16) Institutions for employment and training of destitute persons and persons affected by difficulties due to special circumstances;
- (17) Other institutions founded for the purpose of providing special forms of social protection.

An institution shall be classified in accordance with the basic form of protection it extends to beneficiaries.

An institution may perform the tasks involving two or more related activities, if so provided for by the decision on its foundation.

Article 63

A centre for social work shall be an institution for the performance of social protection in one or more communes through the application of social work.

The tasks of such a centre shall be:

- (1) To perform social protection in a direct way and to take cognizance of the citizens' entitlements by virtue of social protection established by this Law and the prescriptions issued in pursuance thereof;
- (2) To perform the tasks within the jurisdiction of the guardianship authority on the basis of separate prescriptions, if so empowered;
- (3) To follow and study the problems in the sphere of social protection and to propose measures to the communal assembly, the working and social organizations and the local communities to take measures for their settlement;
- (4) To perform technical supervision of the work of the institutions of social protection on the territory for which it has been founded, save the institutions for studies in the sphere of social policy and the institutions founded by the Republic or province;
- (5) To co-operate in the technical preparation of proposals, plans and programmes for the development of social protection and to give expert opinions on the drafts of prescriptions in this sphere;
- (6) To keep records in the sphere of social protection;
- (7) To see to the co-ordination of work and to extend technical assistance to other institutions of social protection, the services for social work in the working organizations, the local communities and social workers;
- (8) To act for the professional training of and the exchange of experiences between the personnel in the sphere of social protection;
- (9) To perform also other tasks with which it is charged by the decision on its foundation and which are established by the by-laws of the centre.

...

4. Management

Article 82

In the management of an institution of social protection there shall participate, as members of the council (in the expanded composition), the representatives of interested organizations and other representatives of the social community, as well as the representatives of competent beneficiaries of the services of the institution (hereinafter termed "the representatives of the social community").

In the case of an institution founded by the province or Republic, the representatives of the social community shall be nominated to the

council by the chamber of social security and public health of the provincial or Republican assembly, the representatives of the interested organizations shall be delegated thereby, and the representatives of the beneficiaries shall be elected by the meeting of the fully competent beneficiaries of the institution's services.

The by-laws of an institution shall specify the number of representatives of the social community and the interested organizations that are to delegate their representatives to the council of the institution.

Where the assembly of the commune is not the founder of an institution which is situated on its territory, the assembly shall be entitled to delegate to the council of the institution the number of members specified by the by-laws.

6. Technical Supervision of the Work of an Institution

Article 87

Supervision of the technical work of institutions shall be the responsibility of the communal centre for social work and in a commune where such a centre does not exist it shall be the responsibility of the communal administrative authority in charge of social protection affairs or by an institution designated by the communal assembly.

The supervision of the technical work of a communal centre for social work shall be the responsibility of the institution charged with studying the phenomena and problems in the sphere of social policy.

Chapter V

THE FINANCING OF SOCIAL PROTECTION FROM THE REVENUE OF THE REPUBLIC

Article 93

The revenue of the Republic from fines imposed for the infringements referred to in Article 9, Paragraph 1, and Article 39, Paragraph 5, of the Basic Law on Contraventions shall constitute the means for the realization of the tasks of social protection.

One half of the means referred to in the last foregoing paragraph shall belong to the commune on whose territory such revenue is realized and the other half shall belong to the Republic or autonomous province.

In the case of the town of Beograd, the whole amount of the means referred to in the first paragraph of this article which is realized on its territory shall belong to it.

Article 97

A Republican Fund for Social Protection (hereinafter termed "the fund") shall be established for financing the tasks in the sphere of social protection forming the responsibility of the Republic pursuant to this Law and other prescriptions.

Article 99

The fund shall be managed by a management board, which shall have 15 members.

The Chamber of Social Security and Public Health of the Republican Assembly shall nominate 9 members to the board from among interested citizens and the representatives of institutions of social protection and one member each shall be delegated by the Republican Board of the Yugoslav Red Cross, the Republican Board of the Society of Social Workers, the Council for Child Care and Upbringing of Serbia, the Conference for Social Activity of Women of Serbia, the Republican Board of the Federation of Work Disabled of Serbia, and the Republican Board of the Association of Defectologists.

Article 102

The revenue of the fund shall be constituted by:

(1) 1.2 per cent of the part of the federal excise tax belonging to the Republic;

(2) 50 per cent of the fines for the infringements referred to in Article 9, Paragraph 1, and Article 39, Paragraph 5, of the Basic Law on Contraventions that are collected in the communes outside the territories of the autonomous provinces and the town of Beograd;

(3) Grants-in-aid from the budgets and other social funds;

(4) Receipts of donations, gifts, bequests, etc.

Article 112

This Law shall enter into force eight days after its publication in the *Official Gazette of the Socialist Republic of Serbia*.

VII. EDUCATION

General Law on Financial Means for Education and Upbringing (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 21, 1966)

This Law is not applicable directly, but the republics are to enact their laws in conformity therewith when regulating this subject-matter. The Law contains provisions concerning the methods of obtaining means for financing education and upbringing and the management of the means. Schools are financed from sources prescribed by the Law. A contribution from the personal income of the citizens represents a mandatory and perma-

nent source of means. Further sources may include the tax on retail sales of goods and services, then the supplementary means allocated for the purpose by the socio-political communities (federation, republic, province, district, commune). And lastly, such means are also derived from sums allocated by the working organizations, primarily economic enterprises, for the purpose, as well as from donations made by the citizens.

The contribution from personal income is levied by the communes and the republics.

The method of management of the means introduced by the Law constitutes an important innovation. In order to enable the management of the means to be the responsibility of those who are providing them, and in order to have those engaged in upbringing and educational work also participate in the management, the Law provides for the establishment of communities of education. Such communities are set up for particular areas of the republics that constitute a whole with their network of educational and upbringing institutions, as well as for the republics as such. The communities may also be established for particular economic activities or public services. A community has the status of a body corporate. The highest body of a community is constituted by representatives of the educational and upbringing institutions from the area, then of the working organizations in the economy and in social services and of other interested organizations and citizens. Finally, that body is also constituted by a specified number of representatives of the socio-political communities from the territory covered by a given community of education. Thus, the

method serves to ensure the participation both of educational institutions proper and of economic enterprises and other organizations, whose members give a contribution for the financing of the said institutions, as well as of the representatives of the official authorities from the given territory.

The purpose of the communities of education is to attend to the organization and development of the educational and upbringing activities serving the citizens from the given areas, as well as to ensure the means for such activities and to carry on mutual co-operation. The communities manage the means belonging to them.

The relationships between the communities and schools and the mutual rights and obligations are established by contract.

VIII. INTERNATIONAL AGREEMENTS

Among the agreements and other instruments which the Socialist Federal Republic of Yugoslavia has ratified or acceded to in 1966, the following command a particular importance from the viewpoint of the protection of human rights:

The World Convention on Copyright, concluded on 6 September 1952 in Geneva;

The Agreement between Yugoslavia and Austria regulating the employment of Yugoslav workers in Austria, concluded on 9 November 1965 in Vienna;

The Consular Convention between Yugoslavia and the United Kingdom concluded on 2 April 1965 in Beograd.

ZAMBIA

THE LOCAL COURTS ACT, 1966

Act No. 20 of 1966, assented to on 21 April 1966¹

PART II

RECOGNITION, ETC., OF LOCAL COURTS

4. (1) The Minister may, by court warrant under his hand, recognise or establish such local courts as he shall think fit, and any such court shall exercise such jurisdiction as may be conferred by or under the provisions of this Act within such territorial limits as may be defined by such warrant.

5. (1) Local courts shall be of such different grades as may be prescribed, and local courts of each grade shall exercise jurisdiction only within the limits prescribed for such grade:

Provided that no local court shall be given jurisdiction:

(a) To determine civil claims, other than matrimonial or inheritance claims, of a value greater than one hundred pounds; or

(b) To impose fines exceeding fifty pounds; or

(c) To order probation or imprisonment for a period exceeding one year; or

(d) To order corporal punishment in excess of twelve strokes of the cane.

(2) The court warrant of any local court shall specify the grade to which such court belongs.

PART III

JURISDICTION, ETC., OF LOCAL COURTS

8. Subject to the provisions of this Act, a local court shall have and may exercise jurisdiction to the extent set out in its court warrant over the hearing, trial and determination of any civil cause or matter in which the defendant was, at the time when the cause of action arose, resident within the area of jurisdiction of such court or in which the cause of action has arisen within such area.

Provided that civil proceedings relating to real property shall be taken in the local court within the area of jurisdiction of which the property is situate.

9. Subject to the provisions of this Act, a local court shall have and may exercise jurisdiction, to such extent as may be prescribed for the grade of court to which it belongs, over the hearing, trial and determination of any criminal charge or matter in which the accused is charged with having wholly or in part within the area of jurisdiction of such court, committed, or been accessory to the commission of an offence.

11. Subject to any express provision of any other written law conferring jurisdiction, no local court shall have jurisdiction to try any case in which a person is charged with an offence in consequence of which death is alleged to have occurred or which is punishable by death.

12. (1) Subject to the provisions of this Act, a local court shall administer:

(a) The African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law;

(b) The provisions of all by-laws and regulations made under the provisions of the Local Government Act and in force in the area of jurisdiction of such local court; and

(c) The provisions of any written law which such local court is authorised to administer under the provisions of section *thirteen*.

(2) Any offence under African customary law, where such law is not repugnant to natural justice or morality, may be dealt with by a local court as an offence under such law notwithstanding that a similar offence may be constituted by the Penal Code or by any other written law.

Provided that such local court shall not impose any punishment for such offence in excess of the maximum permitted by the Penal Code or by such other written law for such similar offence.

¹ Supplement to the Republic of Zambia Government Gazette, 29 April 1966.

13. The Minister may by order confer upon all or any local courts jurisdiction to administer all or

any of the provisions of any written law specified in such order, and may, subject to the limits referred to in subsection (1) of section five, specify restrictions and limitations on the impositions of penalties by such local courts on persons subject to their jurisdiction who offend against such provisions.

PART IV

PROCEDURE, ETC., OF LOCAL COURTS

17. (1) A local court shall have power to summon before such court any person who:

(a) Is charged with an offence before such court; or

(b) Is the defendant in any civil proceedings before such court; or

(c) Is required to give evidence before such court.

18. (1) Subject to the provisions of this section, a local court may issue a warrant for the arrest of any person against whom criminal proceedings have been instituted:

(a) In lieu of the issue of a summons under the provisions of paragraph (a) of subsection (1) of section seventeen;

(b) Notwithstanding the issue of such a summons, at any time before the time appointed in such summons for the appearance of such person; or

(c) If such person does not appear at the time appointed for him to do so in and by any summons.

(2) No warrant of arrest shall be issued under paragraph (a) or (b) of subsection (1) unless the court concerned has reasonable grounds to believe that the accused will not obey a summons or that, by reason of the gravity of the offence, it is desirable that the accused should be arrested, and no such warrant shall be issued under paragraph (c) of the said subsection unless the court is satisfied that the summons has been served on the person concerned.

20. A local court before which a person arrested is brought shall, without unnecessary delay:

(a) Proceed to the trial of such person for the offence for which he was arrested if it has jurisdiction to deal with the said offence; or

(b) Send such person in custody to another local court, or to the nearest Subordinate Court having jurisdiction, if the local court before which the person arrested was brought has no jurisdiction to deal with the said offence.

21. (1) When any person appears before or is brought before a local court, he may, at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the court, to secure his

appearance, or released upon his own recognizances if the court thinks fit.

23. (1) As soon as a bail bond has been executed, the person for whose appearance it has been executed shall be released, and, when he is in prison the local court admitting him to bail shall issue an order of release to the officer-in-charge of the prison, and such officer, on receipt of the order, shall release him.

(2) Nothing in this section or in section twenty-one shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which a bail bond was executed.

31. Where it is proved on oath to the local court that, in fact or according to reasonable suspicion, anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, vessel, carriage, box, receptacle or place, the local court may, by warrant (called a search warrant), authorise any officer of such local court or other person, not being a member of the local court, named therein, to search such building, vessel, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing, and if anything searched for be found, to seize it and carry it before the local court issuing the warrant or some other local court, to be dealt with according to law.

32. Every search warrant may be issued and executed on a Sunday and shall be executed between the hours of sunrise and sunset, but a local court may, by the warrant, in its discretion, authorise the person to whom it is addressed to execute it at any hour.

33. (1) Whenever any building or other place liable to be searched is closed, any person residing in or being in charge of such building or place shall, on demand of the person executing the search warrant, and on production of the warrant, allow him free ingress thereto and egress therefrom, and afford all reasonable facilities for a search therein.

39. Subject to the provisions of this Act or of any other written law, and to any limitations imposed by its court warrant, a local court in cases of a criminal nature may:

(a) Order the imposition of a fine;

(b) Order the infliction of a term of imprisonment;

(c) Order the administration of corporal punishment;

(d) Order the operation of the whole or any part of a sentence of imprisonment passed upon a person by the court to be suspended for a period not exceeding three years on such conditions,

relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the court may specify in that order;

(e) Make any other order, including an order for compensation or restitution of property, which the justice of the case may require;

and may make any combination of the above order.

43. (1) Subject to the provisions of subsection (5), where a local court has convicted any juvenile or juvenile adult of any offence, it may substitute for any sentence of imprisonment or other punishment which it may lawfully impose for such offence a sentence of such corporal punishment as it shall think fit, not exceeding the amount which it is empowered to order under the provisions of this Act or any other written law.

(2) No corporal punishment shall be ordered by a local court for any female or for any male other than a juvenile or a juvenile adult.

(3) No corporal punishment shall be ordered by a local court for any juvenile or juvenile adult except in accordance with the provisions of subsections (4) and (5).

(4) A local court may, subject to the provisions of subsections (2) and (3) and to any limitations imposed under this Act or any local court rules made under the provisions of this Act, or by its court warrant, order corporal punishment in accordance with the provisions of:

(a) This Act and any local court rules ... and the provisions of any other written law relating to the jurisdiction of local courts; and

(b) Any written law administered by such local court relating to the care and protection of juveniles and the attendance of juveniles at school; and

(c) Any written law administered by such local court relating to the prevention of cruelty to animals.

(5) Subject to the provisions of subsections (2) and (3), a local court may order corporal punishment for any male juvenile or juvenile adult for any offence which is punishable by imprisonment for three months or more, not being imprisonment which may be ordered solely in default of payment of a fine.

(6) Every sentence of corporal punishment imposed by a local court shall be for the person sentenced to be caned, and to be caned once only, and to be caned with a specified number of strokes not exceeding twelve or such less number as may be the maximum prescribed under the provisions of this Act or any other written law.

(7) A sentence of corporal punishment imposed by a local court under the provisions of this Act or any other written law shall not be carried into effect:

(a) If a notice of appeal has been entered, until after the determination of the appeal; or

(b) If no appeal has been entered, until the sentence has been confirmed by an authorised officer.

44. (1) When a local court has ordered compensation to be paid under the provisions of section *thirty-nine* to any person injured or aggrieved by the act or omission in respect of which such compensation has been ordered, such person, if he shall accept such compensation without stipulating to the court that he accepts it only as a partial satisfaction of his claim, shall not have or maintain thereafter any suit for the recovery of damages for the loss or injury sustained by him by reason of such act or omission.

(2) Compensation ordered to be paid under the provisions of section *thirty-nine* may be recovered by the person to whom it is ordered to be paid in the same manner as an award of compensation or damages in a civil cause or matter.

45. (1) Whenever the operation of a sentence of imprisonment has been suspended by a local court under subsection (1) of section *thirty-nine* and the offender has, during the period of suspension, observed all the conditions specified in the order, the sentence shall not be enforced.

PART V

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

47. (1) Any person subject to the jurisdiction of a local court, who, without lawful excuse:

(a) Threatens, intimidates or intentionally insults such court or any member or assessor thereof in his capacity as such; or

(b) Intentionally interrupts the proceedings of such court or otherwise behaves in a disorderly manner before such court; or

(c) Omits to deliver up any document or thing in accordance with the order of such court; or

(d) Not being a person who, in the case before the court is accused of an offence, refuses to answer any question asked by such court which does not tend to incriminate him; or

(e) While any proceedings are pending in such court, makes use of any speech or writing misrepresenting such proceedings, or capable of prejudicing any person in favour of or against any party to such proceedings; or

(f) Refuses to sign any statement made by him which such court lawfully requires him to sign; or

(g) Having the means to pay any compensation awarded against him, refuses or wilfully fails to make such payment after due notice; or

(h) Wilfully disobeys or fails to comply with any other lawful order of such court;

shall be guilty of an offence and shall be liable on conviction, in the case of an offence under paragraph (a), to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment, and in any other case, to a fine not

exceeding twenty-five pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

(2) When any offence under subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the day on which the offence is committed may take cognizance of the offence and sentence the offender to a fine not exceeding twenty pounds.

...

PART VI

TRANSFER OF CASES, REVISION AND APPEALS

...

53. (1) Where any proceedings, civil or criminal, have been commenced in a local court, such local court, or an authorised officer within whose area of jurisdiction such local court is situate, may at any time before judgment, either with or without an application from any interested party in that behalf, by order, and for reasons which shall be recorded in writing on the record of the case, stay such proceedings and, on such terms as

may be just, transfer such proceedings for hearing and determination by some other local court or to a Subordinate Court of the first or second class within whose area of jurisdiction the local court wherein such proceedings have been commenced is situate.

...

54. (1) Every authorised officer shall at all times have access to the records of local courts within the area of his jurisdiction, and may send for and inspect the record of any proceedings before such court and require the production to him of such other evidence as he may deem necessary for the purpose of satisfying himself as to the correctness, legality or propriety of any judgment, order, decision or sentence recorded, made or imposed by such court, or as to the regularity of such proceedings.

...

56. (1) ... any interested party who is aggrieved by any judgment, order or decision of a local court given or made in the case in which he was concerned, and which has not been revised, may appeal therefrom to a Subordinate Court of the first or second class within whose area of jurisdiction such local court is situated.

...

THE LOCAL COURTS RULES, 1966

Statutory Instrument No 293 of 1966²

...

PART VI

CORPORAL PUNISHMENT

14. (1) Every person convicted and sentenced to corporal punishment by a local court shall be remanded in custody on the day of his conviction pending confirmation of such sentence by an authorised officer, and administration of the corporal punishment.

(2) Every person sentenced to corporal punishment by a local court shall immediately be sent to an authorised officer together with the court's record of the case in which he was so sentenced and a warrant of commitment to undergo such sentence signed by a member of such court, and if such officer shall certify on such warrant that he has, under section *forty-three* (7) (b) of the Act, confirmed the sentence of corporal punishment ordered by it or has varied it to an amount specified on such certificate, the said warrant amended by him to conform to any variation so made shall take effect subject to the provisions of section *forty-three* (7) of the Act.

(3) If the local court shall not have produced a warrant of commitment in accordance with this rule the authorised officer, on being satisfied that such court has made an order for such commitment, may issue a warrant therefor in pursuance of such order which shall be deemed to be the warrant which such local court was required to produce.

15. No corporal punishment ordered by a local court shall be administered except in a lawfully established prison or in the presence of an authorised officer, and if possible in the presence of a medical officer, and no such punishment shall be administered in public.

16. No corporal punishment ordered by a local court shall be administered unless, in the opinion of a medical officer, if one is available, or of an authorised officer if no medical officer is available, the person to whom it is to be administered is physically fit to undergo it; and no such punishment shall be continued if, in the opinion of such officer, such person is not physically fit to undergo the remainder thereof.

17. (1) Corporal punishment shall be administered with a rattan cane which shall be:

(a) For the caning of a male juvenile under the apparent age of nineteen years, of length three feet and diameter not more than three-eighths of an inch.

² *Ibid.*, 26 August 1966.

(b) For the caning of a male juvenile adult between the apparent ages of nineteen and twenty-one years, of length four feet and diameter not more than half an inch.

(2) Corporal punishment shall be administered on the buttocks of the person sentenced thereto, from the side, and during such administration a blanket folded at least three times, or equivalent form of protection, shall be placed and kept across the small of the back immediately next to the buttocks of such person and a piece of thin cotton cloth soaked in water and wrung out shall be kept spread over the buttocks of such person.

(3) No sentence of corporal punishment shall be administered by instalments, and if more such sentences than one have been imposed on one day by the same local court on the same person, they shall be administered as if they together constituted one sentence, to be caned once only, with the total number of strokes specified in such sentences up to but not exceeding the limit for any one such sentence mentioned in section *forty-three* (6) of the Act.

18. When any corporal punishment ordered by a local court, as duly confirmed or varied under rule 14 of these Rules, fails to be administered by reason of the operation of rule 16 of these Rules, the authorised officer who confirmed or varied the order for such punishment, on being duly informed of such non-administration and acting in exercise of his powers under section *fifty-four* of the Act, may substitute such other penalty as he considers appropriate.

...

THE PRISONS RULES, 1966

Statutory Instrument No. 383 of 1966³

PART I

PRELIMINARY

...

3. (1) Subject to the provisions of the Act, these Rules shall be applied in accordance with the provisions of sub-rule (2).

(2) The following shall be the guiding principles in the application of these Rules:

(a) Due regard and allowance shall be made for the differences in character and respect for discipline of various classes of prisoners;

(b) Discipline and order shall be maintained with fairness but firmness, and with not more restriction than is required for safe custody of prisoners and to ensure a well-ordered community life;

(c) In the control of prisoners, prison officers shall seek to influence them, through their own

PART VIII

APPEALS

24. At the conclusion of every case in a local court the court shall inform the parties of their rights of appeal.

...

PART IX

MISCELLANEOUS PROVISIONS

28. In the event of the arrest without warrant of any person by an officer of a local court, such officer shall notify the person being arrested of the reason for his arrest and, unless he shall sooner release such person, shall, without unnecessary delay, bring the person arrested before a local court, or a subordinate court, having jurisdiction over the place where the arrest was effected, to be further dealt with according to law.

29. In any case in which an authorised officer proposes in exercise of his powers under section *fifty-four* of the Act to revise any judgment in a criminal case heard in a local court by enhancing, quashing or otherwise varying such judgment to the prejudice of the accused, an opportunity must be given to the accused of being heard.

...

example and leadership, so as to enlist their willing co-operation; and

(d) At all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, so as to rebuild their morale, to inculcate in them habits of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.

PART II

ADMINISTRATION

The Commissioner

5. The Commissioner shall ensure that the provisions of the Act and of these Rules are strictly carried out and shall take all necessary steps to secure uniformity of administration of prisons in the Republic.

...

³ *Ibid.*, 4 November 1966.

Prison Officers – General

7. A prison officer other than an officer in charge shall immediately report to the officer in charge, any contravention of the Act and of these Rules or of the Standing Orders which comes to his notice.

Officer in Charge

10.(1) The officer in charge shall, without delay, investigate any contravention of the Act and of these Rules or of the Standing Orders whenever such contravention is reported to him or otherwise comes to his notice.

PART III

ADMISSION AND CONTROL
OF PRISONERS

97. No prisoner shall be entitled to exercise any right or claim any privilege which is not a right or privilege conferred on such prisoner by or under the Act or these Rules or any other written law.

PART V

LETTERS AND VISITS

128.(1) All prisoners shall be entitled to send and receive letters and to receive visits as provided in these Rules subject to such restrictions as may be necessary for the maintenance of discipline and order in prisons and the prevention of crime.

(2) Except as provided in the Act or these Rules no visits to a prisoner shall be permitted without a pass issued by the officer in charge.

(3) The sending and receiving of letters and the receiving of visits by any prisoner may, at the discretion of the officer in charge, be deferred at any time in case of misconduct on the part of a prisoner but shall not be subject to forfeiture.

(4) When a prisoner who becomes entitled to a letter or a visit under these Rules is, at the time of such entitlement undergoing punishment in separate confinement, such letter or visit shall be deferred at the discretion of the officer in charge.

135. The officer in charge shall permit a legal adviser of a prisoner who is a party to legal proceedings to interview him in connexion with such proceedings in the sight but not in the hearing of a prison officer.

136. Any public officer with a valid warrant, writ, order or any other legal document to be served on a prisoner shall be admitted to the prison at any reasonable time for the purpose.

137. Every civil prisoner shall be subject to the same provisions as regards receiving visits and letters as a convicted criminal prisoner in the first stage of the Progressive Stage System.

138.(1) An unconvicted prisoner shall have facilities:

(a) For seeing his relatives and friends and his legal advisers, and, if he is not a Zambian, his consular representative; and

(b) For sending and receiving letters consistent with the discipline of the prison.

(2) A person who is committed to prison in default of payment of a fine, compensation, debt or costs or in default of finding a surety, shall be allowed to communicate to or to have an interview with, any of his relatives or friends at any reasonable time for the *bona fide* purpose of providing for the payment of such fine, compensation, debt or costs or for the purpose of finding the necessary surety.

139. If a prisoner who is dangerously sick desires to be visited by a near relative or friend, the officer in charge may give permission for such relative or friend to visit the prisoner.

PART VI

PETITIONS AND COMPLAINTS

140.(1) Any prisoner may, through the officer in charge, submit a petition under this rule but subject to sub-rule (5) no prisoner shall be permitted to submit a petition under this rule regarding his conviction or sentence unless and until the expiration of the period within which such prisoner is legally entitled to appeal against such conviction or sentence.

141.(1) A prisoner may make any complaint or application to a visiting justice, an official visitor, the Commissioner, the officer in charge or the chief officer, and in the case of a female prisoner, to the senior woman prison officer but no complaint shall be made to any subordinate officer except to report sickness.

(2) The officer in charge shall make arrangements to ensure that any request made by a prisoner to see the Commissioner, an official visitor or a visiting justice is recorded by the officer to whom it is made and that such request is conveyed without delay to the officer in charge who shall inform the Commissioner, official visitor or visiting justice when such person next visits the prison of such request.

(3) All complaints and applications made by prisoners shall be heard or attended to by the officer in charge every day except Sunday or public holiday and the officer in charge shall record in a book kept for the purpose the action taken in each case.

PART VII

EMPLOYMENT OF PRISONERS

142.(1) The Commissioner may authorise the introduction of an earnings scheme for prisoners in any prison or any part of a prison.

(2) A prisoner under sentence of death shall not be subject to employment and the provisions of this Part shall not apply to such prisoner.

PART XVIII

YOUTH CORRECTIVE CENTRES

221. (1) Every inmate shall be detained in one of the following youth corrective centres (hereinafter referred to as "centres") appropriate to his or her age and sex, namely:

(a) Junior centre for males under the age of eighteen years;

(b) Junior centre for females under the age of eighteen years;

(c) Senior centre for males who have attained the age of eighteen years;

(d) Senior centre for females who have attained the age of eighteen years;

Provided that an inmate under the age of eighteen years may be detained in a senior centre and an inmate aged eighteen years or over may be detained in a junior centre if in either case the Commissioner, having regard to the inmate's mental or physical development, so directs.

(2) A senior and a junior centre for inmates of the same sex may be provided in the same building.

(3) An inmate who has escaped from lawful custody and who has been re-captured shall be transferred immediately to a prison other than a youth corrective centre.

...

225. No mechanical restraint shall be used in a junior centre.

226. No inmate in a junior centre shall be allowed to smoke or have in his possession any tobacco or cigarettes.

227. Arrangements shall be made for the part-time education of inmates either within the normal working hours or outside such hours.

228. At least one hour a day shall be devoted to physical training or to organised games for inmates and such periods shall be deemed to form part of the normal working hours.

229. A library shall be provided in every centre and, subject to such conditions as the Commissioner may determine, every inmate shall be allowed to have library books and to exchange them as often as practicable.

230. (1) Special attention shall be paid to the maintenance of such relations between inmates and their families as are judged by an officer in charge to be desirable in the best interests of the inmates.

(2) So far as is practicable and in the opinion of an officer in charge desirable, an inmate shall be encouraged and assisted to maintain and establish relations with persons or agencies outside the centre as may promote his social rehabilitation.

231. (1) Every inmate shall be entitled to send and receive a letter on admission to a centre and thereafter once in four weeks and to receive a visit once in four weeks.

Provided that the officer in charge may allow an inmate to send a letter and receive a reply in lieu of a visit.

...

232. Except as may be determined by the medical officer or the Commissioner, or as provided under Part VII of these Rules, no inmates shall be allowed to have any food other than the normal diet provided by prison authorities.

...

PART II

**TRUST AND NON-SELF-GOVERNING
TERRITORIES**

A. Trust Territories

AUSTRALIA

NOTE¹

TRUST TERRITORY OF NAURU

A. CONDITIONS OF WORK

(*Universal Declaration, Article 24*)

The *Public Service Ordinance* 1966 (No. 8 of 1966) provides for a five-day working week in the Public Service of the Territory.

¹ Note furnished by Mr. J. O. Clark, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

B. SOCIAL SERVICES

(*Universal Declaration, Article 25*)

The *Social Services Ordinance* 1966 (No. 4 of 1966) amends the principal Ordinance by providing for the payment of child endowment to other Pacific Islanders who are permanent residents on Nauru.

The *Superannuation Ordinance* 1966 (No. 7 of 1966) establishes a pensions scheme for Nauruan officers of the Nauru Administration.

The *Provident Fund Ordinance* 1966 (No. 9 of 1966) extends to all expatriate officers and persons temporarily employed the benefits of a provident fund.

TRUST TERRITORY OF NEW GUINEA

A. REMEDY FOR VIOLATION OF RIGHTS

(*Universal Declaration, Article 8*)

The Papua and New Guinea Act 1966 (No. 84 of 1966) of the Commonwealth provides for an appeal within the Territory from a decision of the Supreme Court. A Full Court of the Supreme Court is constituted to hear and determine appeals from, or cases stated by, single judges of that court. Provision is also made for the High Court of Australia to have jurisdiction to hear and determine appeals from all decisions of the Full Court, with leave of the High Court. Previous to this amendment, an appeal lay to the High Court of Australia by leave from all judgments, decrees, orders and sentences of the Supreme Court, with such exceptions and subject to such conditions as were provided by ordinance. The underlying principle of the establishment of a Full Court is that the judicial system should be appropriate to the emerging status of the Territory.

The Local Courts Ordinance 1966 (No. 55 of 1966) of the Territory of Papua and New Guinea enables a Local Court to vary or waive a recognition and impose a fine in lieu of imprisonment as the District Court may do.

B. THE SUFFRAGE

(*Universal Declaration, Article 21*)

The Papua and New Guinea Act 1966 (No. 84 of 1966) of the Commonwealth amends the Papua and New Guinea Act 1949-1964 to provide for changes in the composition in the House of Assembly which were recommended by the Select Committee on Constitutional Development. At present the House of Assembly consists of sixty-four members, fifty-four of whom are elected from a common roll (forty-four in open electorates and ten in special electorates with candidature reserved for non-indigenous persons) and ten are official members appointed by the Governor-General on the nomination of the Administrator.

After the 1968 elections, there will be ninety-four members in the House of Assembly. The number of open electorates will be increased to sixty-nine and the ten special electorates reserved for non-indigenous candidates will be replaced by fifteen regional electorates with candidates required to have certain minimum educational qualifications.

C. CONDITIONS OF WORK*(Universal Declaration, Article 23)*

The Industrial Organizations Ordinance 1965 (No. 7 of 1966) of the Territory of Papua and New Guinea is designed to discourage the introduction of "closed shop" agreements or compulsory unionism in industrial activities.

The Industrial Relations Ordinance 1965 (No. 17 of 1966) and the Industrial Relations Ordinance 1966 (No. 18 of 1966) of the Territory of Papua and New Guinea are designed to bring

the principal Ordinance into line with the Industrial Organizations Ordinance and are related to the proscribing of "closed shop" agreements.

D. SOCIAL SERVICES*(Universal Declaration, Article 25)*

The Child Welfare Ordinance 1966 (No. 53 of 1966) of the Territory of Papua and New Guinea enables the Director of Child Welfare to provide assistance for a destitute child to a person other than a parent who has the care of the child.

B. Non-Self-Governing Territories

AUSTRALIA

NOTE¹

TERRITORY OF PAPUA²

Papua and New Guinea Act 1966 (No. 84 of 1966)

Local Courts Ordinance 1966 (No. 55 of 1966)

Industrial Organizations Ordinance 1965 (No. 7 of 1966)

Industrial Relations Ordinance 1965 (No. 17 of 1966)

Industrial Relations Ordinance 1966 (No. 18 of 1966)

Child Welfare Ordinance 1966 (No. 53 of 1966)

These enactments are described in the note on the Trust Territory of New Guinea.

TERRITORY OF CHRISTMAS ISLAND

SOCIAL SERVICES

(Universal Declaration, Article 25)

The Tuberculosis Ordinance 1966 (No. 6 of 1966) amends the Tuberculosis Ordinance 1965 and enables the Magistrate's Court, upon the application of the Official Representative, to order the detention for treatment of a person with infectious tuberculosis. It enables an appeal to be made to the Supreme Court against such an order. It provides also for the compulsory examination of the person concerned and repeals the previous provision which abrogated a person's right of redress where his integrity is wrongly invaded.

THE NORTHERN TERRITORY

A. THE FRANCHISE

(Universal Declaration, Article 21)

The Local Government Ordinance (No. 2) 1966 (No. 11 of 1966) provides for assistance for incapacitated voters and for a separate postal ballot paper. It thus enables incapacitated voters and persons absent from their electorates at the time of an election to record their votes.

B. SOCIAL SERVICES

(Universal Declaration, Article 25)

The Silicosis and Tuberculosis (Mine-Workers and Prospectors) Ordinance 1966 (No. 20 of 1966) provides for the medical examination of all workers employed in the mining industry and for the exclusion from that industry of persons suffering from silicosis or tuberculosis with or without silicosis.

¹ Note furnished by Mr. J. O. Clark, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

² This Territory and the Trust Territory of New Guinea are governed under an administrative union by the name of the Territory of Papua and New Guinea.

NEW ZEALAND

NOTE¹

TOKELAU ISLANDS AND NIUE ISLAND

Maori Purposes Act 1966

One of the provisions of this Act allows Government assistance to be given to Tokelau Islanders in obtaining housing in New Zealand.

Niue Act 1966

This Act consolidates with some amendments the laws of Niue Island. Previously the law applicable to Niue had been contained in a statute covering both the Cook Islands and Niue and the purpose of this Act is to provide separate legislation applicable exclusively to Niue.

Tokelau Island Adoption Regulations 1966

These Regulations establish a substantive and procedural law of adoption for the Tokelau Islands.

¹ Note furnished by the Government of New Zealand.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

PACIFIC ISLANDS

THE CONSTITUTION OF FIJI¹

Chapter I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. Whereas every person in Fiji is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

2. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Fiji of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

3. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(a) In execution of the sentence or order of a court whether established for Fiji or some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of the order of a court punishing him for contempt of that court or of another court or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Fiji;

(f) Under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Fiji, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Fiji or for the purpose of restricting that person while he is being conveyed through Fiji in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Fiji or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with

¹ Published as Schedule 2 to the Fiji (Constitution) Order 1966 in *Appendix of certain instruments not registered as S.I. to Statutory Instruments*, 1966, by Her Majesty's Stationery Office, London, 1966.

a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Fiji in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of the court; or

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Fiji,

and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person, or from any other person or authority on whose behalf that other person was acting.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

4. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or

for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) Any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

5. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

6. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:

(a) The taking of possession or acquisition is necessary or expedient:

(i) In the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) In order to secure the development or utilisation of that or other property for a purpose beneficial to the community; and

(b) Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for:

(a) The determination of his interest or right; the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(b) The purpose of obtaining prompt payment of that compensation.

Provided that if any law for the time being in force in Fiji so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the Supreme Court, having jurisdiction under any law to determine that matter.

(3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last foregoing subsection to the extent that the law in question authorises:

(a) The attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(b) The imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section:

(a) To the extent that the law in question makes provision for the taking of possession or acquisition of any property:

- (i) In satisfaction of any tax, duty, rate or due;
- (ii) By way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Fiji;
- (iii) As an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iv) In the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
- (v) In circumstances where it is reasonably necessary to do so because the property is in a dangerous state or injurious to the health of human beings, animals or plants;
- (vi) In consequence of any law with respect to the limitation of actions; or
- (vii) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) To the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property

(including an interest in or right over property) that is to say:

- (i) Enemy property;
- (ii) Property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty-one years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) Property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) Property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by any legislature in Fiji.

(7) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court or any other tribunal or authority in relation to the jurisdiction conferred on the Supreme Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the Supreme Court or applications to the other tribunal or authority may be brought).

7. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property for a purpose beneficial to the community;

(b) That is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) That authorises an officer or agent of the Government of Fiji, or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises

of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or

(d) That authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

8. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account on any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty

that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(a) May by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests or public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) May by law be empowered or required to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(a) Subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) Subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) Subsection (5) of this section to the extent that the law in question authorises a court to try a

member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2) (d) and (e) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(13) In this section "criminal offence" means a criminal offence under the law of Fiji.

9. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious

denomination, and cognate expressions shall be construed accordingly.

10. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of person) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) That imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) That imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Fiji, the right to reside in any part of Fiji, the right to enter Fiji, and immunity from expulsion from Fiji.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For imposing restrictions on the movement or residence within Fiji of any person or on any person's right to leave Fiji that are reasonably required in the interests of defence, public safety or public order;

(b) For imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) For imposing restrictions, by order of a court, on the movement or residence within Fiji of any person or on any person's right to leave Fiji either in consequence of his having been found guilty of a criminal offence under the law of Fiji or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Fiji;

(d) For imposing restrictions on the freedom of movement of any person who does not belong to Fiji;

(e) For imposing restrictions on the acquisition or use by any person of any property in Fiji;

(f) For imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of any public officer;

(g) For the removal of a person from Fiji to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Fiji of which he has been convicted; or

(h) For imposing restrictions on the right of any person to leave Fiji that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (a) of the last foregoing subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as barristers and solicitors in Fiji.

(5) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

13. (1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision:

(a) For the appropriation of public revenues or other public funds;

(b) With respect to persons who do not belong to Fiji;

(c) For the application, in the case of persons of any such description as is mentioned in the last foregoing subsection (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;

(d) For the application of customary law with respect to any matter in the case of persons who, under the law, are subject to that law;

(e) Whereby persons of any such description as is mentioned in the last foregoing subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

(f) For authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin,

political opinions, colour or creed) to be required of any person who is appointed to, or to act in, any public office, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7 (2), section 9 (5), section 10 (2), section 11 (2), or section 12 (3) (a) or (b), as the case may be.

(9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section:

(a) If the law in question was in force immediately before the appointed day and has continued in force at all times since that day; or

(b) To the extent that it repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before that day.

14. (1) Where a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period, the following provisions shall apply, that is to say:

(a) He shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the

provision of law under which his detention is authorised;

(c) Not more than one month after the commencement of his detention and thereafter, during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practise as barristers and solicitors in Fiji;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and

(e) At the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) (d) or (e) of this section shall be construed as entitling a person to legal representation at public expense.

15. (1) If any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction:

(a) To hear and determine any application made in pursuance of the last foregoing subsection;

(b) To determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter.

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court subordinate to the Supreme Court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his judgment, which shall be final, the

raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of the last foregoing subsection, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) No appeal shall lie from any determination by the Supreme Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

(6) Provision may be made by or under a law enacted under this Constitution for conferring on the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred on it by this section.

(7) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the Supreme Court (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

16. (1) In this Chapter unless the context otherwise requires:

“Contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“Court” means a court of law having jurisdiction in Fiji other than a court established by a disciplinary law and includes Her Majesty in Council and, in sections 2 and 4 of this Constitution, a court established by a disciplinary law;

“Disciplinary law” means a law regulating the discipline of any disciplined force;

“Disciplined force” means:

- (a) A naval, military or air force;
- (b) The Fiji Police Force;
- (c) The Fiji Prisons Service; or
- (d) The Aerodromes Fire Service;

“Legal representative” means a person entitled to practise as a barrister and solicitor in Fiji;

“Member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter “a period of public emergency” means any period during which:

- (a) Her Majesty is at war; or
- (b) Part II of the Emergency Powers Order in Council 1939 as from time to time amended or replaced is in operation by virtue of a proclamation made under section 3 of that Order.

(3) For the purposes of this Chapter a person shall be deemed to belong to Fiji if that person is a British subject or a British protected person and:

- (a) Was born in Fiji;
- (b) Has resided in Fiji for a period extending over not less than seven years, during which he has not been absent from Fiji for a period or periods amounting in all to more than eighteen months.

Provided that no period in respect of which a student's permit issued under section 10 of the Immigration Ordinance 1962 or any enactment repealing or in substitution for the same, is in force, shall be counted as residence for the purposes of this paragraph;

(c) Has obtained the status of a British subject by reason of the grant in Fiji of a certificate of naturalization under the British Nationality and Status of Aliens Act 1914 or the British Nationality Act 1948;

(d) Is the child, step-child or child adopted in a manner recognized by law under the age of eighteen years of a person to whom any of the foregoing paragraphs apply; or

(e) Who on the 1st September 1962 was resident in Fiji and who:

- (i) Immediately prior to the said date was entitled under the provisions of subparagraph (ii) of paragraph (a) of section 3 of the Immigration Ordinance (now repealed) to exemptions from the provisions of that Ordinance; or
- (ii) Has been granted by the Principal Immigration Officer or by a court exemption from the provisions of the Immigration Ordinance (now repealed) on account of being domiciled in Fiji.

(4) In relation to any person who is a member of a disciplined force raised under a law made by any legislature in Fiji, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Fiji, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

...

Chapter III

THE EXECUTIVE

...

34. (1) If the Governor, in his discretion, shall so recommend, and a Secretary of State approve, the Governor, in his discretion, may, by instrument under the public seal:

- (a) Appoint members of the Executive Council to be Ministers, and may by directions in writing

assign to them responsibility for any business of the Government of Fiji, including the administration of any department of that Government; and

(b) Appoint members of the Executive Council to be Ministers without Portfolio.

(2) Any appointment made under this section may, with the approval of the Secretary of State, be revoked by the Governor, in his discretion, by instrument under the public seal.

74. (1) Any Bill to amend or repeal any Ordinance to which this section applies or which is in any way repugnant to or inconsistent with the provisions of any such Ordinance, or any resolution the effect of which would be to recommend any amendment of the provisions of this Constitution, shall not be passed by the Legislative Council, unless, in the case of a Bill it has been supported on the second and third readings in the Council, or in the case of such a resolution upon the motion being proposed, by the votes of more than two-thirds of all the elected members of the Legislative Council.

89. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or to act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices, and to remove such persons from office, shall vest in the Governor acting after consultation with the Public Service Commission.

(4) The Public Service Commission, in making recommendations to the Governor for the appointment of public officers, shall:

(a) Give preference, other things being equal, to local candidates who, in its opinion, are suitably qualified; and

(b) Ensure that, so far as possible, each community in Fiji receives fair treatment in the number and distribution of public offices to which appointments are made.

Chapter IV

LEGISLATIVE COUNCIL

43. (1) There shall be a Legislative Council for Fiji which, subject to the provisions of this Constitution, shall consist of:

- (a) Not more than four official members; and
- (b) Thirty-six elected members.

(2) If a person who is not a member of the Legislative Council is elected to the office of Speaker of the Council, that person shall, by virtue of holding that office, be a member of the Council in addition to the members referred to in the last foregoing subsection.

44. (1) There shall be a Speaker of the Legislative Council who shall be elected by the members of the Council from among persons who are members of the Council or who are qualified to be elected as such.

(2) The Speaker shall vacate his office:

(a) If, having been elected from among the members of the Council, he ceases to be a member of the Council otherwise than by reason of a dissolution of the Council;

(b) If any circumstances arise that, if he were not Speaker, would disqualify him for election as such;

(c) If he is required, under section 51 of this Constitution, to cease to perform his functions as a member of the Council;

(d) When the Council first sits after any dissolution; or

(e) If he is removed from office by a resolution of the Council supported by the votes of not less than two-thirds of all its members.

(3) No business shall be transacted in the Legislative Council (other than an election to the office of Speaker) at any time when the office of Speaker is vacant.

45. (1) There shall be a Deputy Speaker of the Legislative Council who shall be elected from among the persons who are members of the Council.

(2) The members of the Legislative Council shall elect a person to the office of Deputy Speaker when the Council first sits after any dissolution and, if the office becomes vacant otherwise than by reason of a dissolution at the first sitting of the Council after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office:

(a) If he ceases to be a member of the Council;

(b) If he is required, under section 51 of this Constitution, to cease to perform his functions as a member of the Council;

(c) If he is elected as Speaker; or

(d) If he is removed from office by a resolution of the Council supported by the votes of not less than two-thirds of all its members.

46. The official members of the Legislative Council shall be the members of the Executive Council who are public officers.

47. (1) The elected members of the Legislative Council shall be persons qualified for election as such in accordance with the provisions of this Constitution, and shall be elected in the manner provided by this Constitution, by regulations made under the Fiji (Electoral Provisions) Order 1965, and by any other law in force in Fiji.

(2) Subject to the provisions of sections 55 and 56 of this Constitution, for the purpose of electing the elected members of the Legislative Council (other than the two members referred to in the next following subsection who are to be elected by the Great Council of Chiefs), voters

shall be registered on three separate rolls, that is to say:

- (a) A roll of persons who are Fijians;
- (b) A roll of persons who are Indians; and
- (c) A roll of persons who are neither Fijians nor Indians.

(3) Subject to the provisions of this Constitution, of the elected members of the Legislative Council:

(a) Fourteen shall be persons who are Fijians, of whom:

- (i) Two shall be elected by the Great Council of Chiefs;
- (ii) Nine shall be elected by voters registered on the said roll of persons who are Fijians; and
- (iii) Three shall be elected by voters registered on the said three separate rolls;

(b) Twelve shall be persons who are Indians, of whom

- (i) Nine shall be elected by voters registered on the said roll of persons who are Indians; and
- (ii) Three shall be elected by voters registered on the said three separate rolls; and

(c) Ten shall be persons who are neither Fijians nor Indians, of whom:

- (i) Seven shall be elected by voters registered on the said roll of persons who are neither Fijians nor Indians; and
- (ii) Three shall be elected by voters registered on the said three separate rolls.

(4) The elected members of the Legislative Council, other than the said two members who are to be elected by the Great Council of Chiefs, shall be elected to represent constituencies.

48. (1) Subject to the provisions of the next following section, a person shall be qualified to be elected an elected member of the Legislative Council if, and shall not be so qualified unless, at the date of his nomination for election, he:

(a) Is qualified to be registered as a voter and is so registered:

- (i) In the case of a person standing for election as one of the members referred to in section 47 (3) (a) of this Constitution, on the roll of persons who are Fijians;
- (ii) In the case of a person standing for election as one of the members referred to in section 47 (3) (b) of this Constitution, on the roll of persons who are Indians; and
- (iii) In the case of a person standing for election as one of the members referred to in section 47 (3) (c) of this Constitution, on the roll of persons who are neither Fijians nor Indians; and

(b) Satisfies the appropriate authority that he is able to speak and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Council; and

(c) Has resided in Fiji for a period of, or periods amounting in the aggregate to, not less

than two years out of the immediately preceding three years.

(2) For the purpose of paragraph (b) of the last foregoing subsection "the appropriate authority" means the officer prescribed by law for the purpose or, if that officer decides that the candidate does not possess the qualifications required by that paragraph and the candidate appeals against the decision in such manner as may be prescribed, the Supreme Court.

49. (1) No person shall be qualified to be elected an elected member of the Legislative Council if, at the date of his nomination for election, he:

(a) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(b) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth;

(c) Is, under any law in force in Fiji, adjudged or otherwise declared to be of unsound mind;

(d) Is, under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(e) Is disqualified for membership of the Council under any law in force in Fiji relating to offences connected with elections to the Council or to any Legislative Council previously established for Fiji by Order of Her Majesty in Council;

(f) Holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election to the Legislative Council; or

(g) Except in the case of a person standing for election at the first general election held after the appointed day as one of the members referred to in section 47 (3) (a) of this Constitution and subject to such other exceptions as may be prescribed by any law in force in Fiji, holds or is acting in any public office.

(2) For the purpose of paragraph (d) of the last foregoing subsection:

(a) Two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

50. (1) Subject to the provisions of this Section an official member of the Legislative Council shall hold his seat in the Council during Her Majesty's pleasure.

(2) An official member of the Legislative Council shall vacate his seat:

(a) On a dissolution of the Council;

(b) If he ceases to hold a public office; or

(c) In the circumstances mentioned in the next following section.

(3) An elected member of the Legislative Council shall vacate his seat:

(a) On a dissolution of the Council;

(b) If he is absent from two consecutive meetings of the Council without having obtained before the termination of either meeting from the Speaker, or other person presiding, permission to be or to remain absent therefrom;

(c) If he ceases to be qualified for registrations as a voter;

(d) If, being a member elected by the Great Council of Chiefs, he accepts nomination as a candidate for election to represent a constituency or, being a member representing a constituency, he accepts nomination as a candidate for election by the Great Council of Chiefs;

(e) If any circumstances arise that, if he were not a member of the Council, would disqualify him for election thereto by virtue of paragraph (a), (b), (c), (e), (f) or (g) of subsection 1 of the last foregoing section; or

(f) In the circumstances mentioned in the next following section.

51. (1) Subject to the provisions of this section, if a member of the Legislative Council is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Council, and his seat in the Council shall become vacant at the expiration of a period of thirty days thereafter.

Provided that the Speaker may, at the request of the member from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be granted without the approval of the Council signified by resolution.

(2) If at any time before the member vacates his seat he receives a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than twelve months or a punishment other than imprisonment is substituted, his seat in the Legislative Council shall not become vacant under the provisions of this section, and he may again perform his functions as a member of the Council.

(3) For the purpose of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

52. (1) Whenever an official member of the Legislative Council is unable, because he is ill, or absent from Fiji, or for any other reason, to perform his functions as a member of the Council, the Governor, in his discretion, may, by instrument under the public seal, appoint to be temporarily a member of the Council a person who is a public officer.

(2) The Governor shall forthwith report to Her Majesty through a Secretary of State any appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Legislative Council shall vacate his seat when he is informed by the Governor that the member in whose place he was appointed is again able to perform his functions as a member of the Council, or when the seat of that member becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Constitution shall apply in relation to a person appointed to be temporarily a member of the Legislative Council as they apply in relation to the member in whose place he was appointed.

53. Any question whether:

(a) A person has been validly elected an elected member of the Legislative Council or whether an elected member of the Council has vacated his seat therein; or

(b) A person has been validly elected as Speaker of the Council from among persons who are not members of the Council or, having been so elected, has vacated the office of Speaker,

shall be determined by the Supreme Court.

54. (1) For the purpose of electing the elected members of the Legislative Council (other than the two members referred to in section 47 (3) (a) (i) of this Constitution who are to be elected by the Great Council of Chiefs), the Governor, in his discretion, by regulations published in the Gazette, shall provide, subject to the provisions of this section, for dividing Fiji into constituencies and shall prescribe the names and boundaries of constituencies so established.

(2) As respects:

(a) The nine members who are to be elected by voters registered on the roll of persons who are Fijians;

(b) The nine members who are to be elected by voters registered on the roll of persons who are Indians; and

(c) The seven members who are to be elected by voters registered on the roll of persons who are neither Fijians nor Indians,

as provided by section 47 (3) of this Constitution, Fiji shall be divided into such number of constituencies as the Governor, in his discretion, may think fit.

(3) As respects the nine members who are to be elected, as provided by section 47 (3) of this Constitution, by voters registered on the said three separate rolls, Fiji shall be divided into three constituencies, each of which shall return three members, of whom:

(a) One shall be a person who is a Fijian;

(b) One shall be a person who is an Indian; and

(c) One shall be a person who is neither a Fijian nor an Indian.

(4) Regulations made under this section may contain any provision that appears to the

Governor, in his discretion, to be necessary or expedient for the purpose of establishing the said constituencies or for any purpose that appears to him to be incidental thereto or consequential thereon.

55. Subject to the provisions of the next following section, a person shall be qualified to be registered as a voter on one of the rolls referred to in section 47 (2) of this Constitution if, and shall not be so qualified unless, he:

(a) Is a British subject or a British protected person;

(b) Has attained the age of twenty-one years; and

(c) Has resided in Fiji for a period of, or periods amounting in the aggregate to, not less than twelve months out of the immediately preceding three years.

56. (1) No person shall be qualified to be registered as a voter on one of the rolls referred to in section 47 (2) of this Constitution or to vote in any election to the Legislative Council, if he:

(a) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state;

(b) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(c) Is, under any law in force in Fiji, adjudged or otherwise declared to be of unsound mind; or

(d) Is disqualified for registration as a voter, or for voting in any such election, under any law in force in Fiji relating to offences connected with elections to the Legislative Council or to any Legislative Council previously established for Fiji by Order of Her Majesty in Council.

(2) For the purpose of paragraph (b) of the last foregoing subsection:

(a) Two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

57. (1) Subject to the provisions of this Constitution and of any other law in force in Fiji, any person who is registered as a voter in a constituency shall, while he is so registered, be entitled to vote at any election to the Legislative Council of a member to be returned by that constituency.

(2) No person shall vote at any election for a constituency:

(a) If he is not registered as a voter in that constituency; or

(b) If he holds, or is acting in, any office the functions of which involve responsibility for, or in connection with, the conduct of that election.

58. (1) Any person who sits or votes in the Legislative Council knowing, or having reasonable grounds for knowing, that he is not entitled to do so shall be liable to a penalty not exceeding twenty-five pounds for every day upon which he so sits or votes.

(2) Any such penalty shall be recoverable by civil action in the Supreme Court at the suit of the Attorney-General.

59. (1) Subject to the provisions of this Constitution, a law enacted under this Constitution may provide for the election of the elected members of the Legislative Council, and in particular, and without prejudice to the generality of the foregoing power, may provide for:

(a) The registration of voters;

(b) The nomination of candidates for election;

(c) The furnishing by a candidate for election of a deposit and the circumstances in which that deposit shall be forfeited;

(d) The ascertainment of the qualifications of voters and of candidates for election;

(e) The holding of elections;

(f) The determination of any question whether a person has been validly elected an elected member of the Council, or whether an elected member of the Council has vacated his seat therein;

(g) The disqualification for election as a member of the Council of any person who holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with the conduct of any election; and

(h) The definition and trial of offences connected with elections and the imposition of penalties therefor, including disqualification for membership of the Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

(2) Subject to the provisions of any law enacted under subsection (1) of this section, any regulations made under the Fiji (Electoral Provisions) Order 1965, and in force immediately before the appointed day, shall, notwithstanding the revocation of that Order, continue in force and may be amended or revoked by the Governor in his discretion.

Chapter IX

MISCELLANEOUS

...

(10) For the purposes of this Constitution:

(a) A person shall be regarded as a Fijian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of the Fiji Islands, the Island of Rotuma, or any island in Melanesia, Micronesia or Polynesia; and

(b) A person shall be regarded as an Indian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of the subcontinent of India.

Provided that, where the identity of the father of any person cannot be ascertained, the male progenitors of that person may instead be traced through that person's mother.

...

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Opened for Signature, Ratification and Accession on 19 December 1966¹

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined

¹ The Covenant is annexed to resolution 2200 (XXI) of the General Assembly, adopted on 16 December 1966.

by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children

and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the

respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1. of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Opened for Signature, Ratification and Accession on 19 December 1966¹

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

¹ The Covenant is annexed to resolution 2200 (XXI) of the General Assembly, adopted on 16 December 1966.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness

of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal

charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) No one to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to

seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from the United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

- (a) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

- (i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the

composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the

Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any

State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment, and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amend-

ments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Opened for Signature, Ratification and Accession on 19 December 1966¹

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant)

¹ The Optional Protocol is annexed to resolution 2200 (XXI) of the General Assembly, adopted on 16 December 1966.

and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies.

This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate

any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

PROTOCOL RELATING TO THE STATUS OF REFUGEES

Opened for accession by the General Assembly resolution 2198 (XXI)
of 16 December 1966¹

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the date-line 1 January 1951,

Have agreed as follows:

Article I

GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . ." and the words "... as a result of such events", in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

¹ Text in Addendum to the Report of the United Nations High Commissioner for Refugees: *General Assembly Official Records, Twenty-first Session, Supplement No. 11 A (A/6311/Rev.1/Add.1)*.

*Article II*CO-OPERATION OF THE NATIONAL
AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to this Protocol undertake to provide them, in the appropriate form, with the information and statistical data requested concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

*Article III*INFORMATION ON NATIONAL
LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V

ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 whereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declaration made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party

concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI

DEPOSIT IN THE ARCHIVES OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

RECOMMENDATION CONCERNING THE STATUS OF TEACHERS

Adopted by the Special Intergovernmental Conference
on the Status of Teachers on 5 October 1966¹

II. SCOPE

2. This Recommendation applies to all teachers in both public and private schools up to the completion of the secondary stage of education, whether nursery, kindergarten, primary, intermediate or secondary, including those providing technical, vocational, or art education.

III. GUIDING PRINCIPLES

3. Education from the earliest school years should be directed to the all-round development of the human personality and to the spiritual, moral, social, cultural and economic progress of the community, as well as to the inculcation of deep respect for human rights and fundamental freedoms; within the framework of these values the utmost importance should be attached to the contribution to be made by education to peace and to understanding, tolerance and friendship among all nations and among racial or religious groups.

4. It should be recognized that advance in education depends largely on the qualifications and ability of the teaching staff in general and on the human, pedagogical and technical qualities of the individual teachers.

5. The status of teachers should be commensurate with the needs of education as assessed in the light of educational aims and objectives; it should be recognized that the proper status of teachers and due public regard for the profession of teaching are of major importance for the full realization of these aims and objectives.

6. Teaching should be regarded as a profession: it is a form of public service which requires of teachers expert knowledge and specialized skills, acquired and maintained through rigorous and continuing study; it calls also for a sense of personal and corporate responsibility for the education and welfare of the pupils in their charge.

7. All aspects of the preparation and employment of teachers should be free from any form of discrimination on grounds of race, colour, sex, religion, political opinion, national or social origin, or economic condition.

8. Working conditions for teachers should be such as will best promote effective learning and enable teachers to concentrate on their professional tasks.

9. Teachers' organizations should be recognized as a force which can contribute greatly to educational advance and which therefore should be associated with the determination of educational policy.

IV. EDUCATIONAL OBJECTIVES AND POLICIES

10. Appropriate measures should be taken in each country to the extent necessary to formulate comprehensive educational policies consistent with the Guiding Principles, drawing on all available resources, human and otherwise. In so doing, the competent authorities should take account of the consequences for teachers of the following principles and objectives:

(a) It is the fundamental right of every child to be provided with the fullest possible educational opportunities; due attention should be paid to children requiring special educational treatment;

(b) All facilities should be made available equally to enable every person to enjoy his right to education without discrimination on grounds of sex, race, colour, religion, political opinion, national or social origin, or economic condition;

(c) Since education is a service of fundamental importance in the general public interest, it should be recognized as a responsibility of the State, which should provide an adequate network of schools, free education in these schools and material assistance to needy pupils; this should not be construed so as to interfere with the liberty of the parents and, when applicable, legal guardians to choose for their children schools other than those established by the State, or so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions which

¹ Text furnished by the Secretariat of UNESCO.

conform to such minimum educational standards as may be laid down or approved by the State;

(d) Since education is an essential factor in economic growth, educational planning should form an integral part of total economic and social planning undertaken to improve living conditions;

(e) Since education is a continuous process the various branches of the teaching service should be so co-ordinated as both to improve the quality of education for all pupils and to enhance the status of teachers;

(f) There should be free access to a flexible system of schools, properly interrelated, so that nothing restricts the opportunities for each child to progress to any level in any type of education;

(g) As an educational objective, no State should be satisfied with mere quantity, but should seek also to improve quality;

(h) In education both long-term and short-term planning and programming are necessary; the efficient integration in the community of today's pupils will depend more on future needs than on present requirements;

(i) All educational planning should include at each stage early provision for the training, and the further training, of sufficient numbers of fully competent and qualified teachers of the country concerned who are familiar with the life of their people and able to teach in the mother tongue;

(j) Co-ordinated systematic and continuing research and action in the field of teacher preparation and in-service training are essential, including, at the international level, co-operative projects and the exchange of research findings;

(k) There should be close co-operation between the competent authorities, organizations of teachers, of employers and workers, and of parents as well as cultural organizations and institutions of learning and research, for the purpose of defining educational policy and its precise objectives;

(l) As the achievement of the aims and objectives of education largely depends on the financial means made available to it, high priority should be given, in all countries, to setting aside, within the national budgets, an adequate proportion of the national income for the development of education.

V. PREPARATION FOR THE PROFESSION

Selection

11. Policy governing entry into preparation for teaching should rest on the need to provide society with an adequate supply of teachers who possess the necessary moral, intellectual and physical qualities and who have the required professional knowledge and skills.

...

Teacher-preparation programmes

19. The purpose of a teacher-preparation programme should be to develop in each student his

general education and personal culture, his ability to teach and educate others, an awareness of the principles which underlie good human relations, within and across national boundaries, and a sense of responsibility to contribute both by teaching and by example to social, cultural and economic progress.

...

Teacher-preparation institutions

25. The staff of teacher-preparation institutions should be qualified to teach in their own discipline at a level equivalent to that of higher education. The staff teaching pedagogical subjects should have had experience of teaching in schools and wherever possible should have this experience periodically refreshed by secondment to teaching duties in schools.

...

VI. FURTHER EDUCATION FOR TEACHERS

31. Authorities and teachers should recognize the importance of in-service education designed to secure a systematic improvement of the quality and content of education and of teaching techniques.

...

VII. EMPLOYMENT AND CAREER

Entry into the teaching profession

38. In collaboration with teachers' organizations, policy governing recruitment into employment should be clearly defined at the appropriate level and rules should be established laying down the teachers' obligations and rights.

...

Security of tenure

45. Stability of employment and security of tenure in the profession are essential in the interests of education as well as in that of the teacher and should be safeguarded even when changes in the organization of or within a school system are made.

46. Teachers should be adequately protected against arbitrary action affecting their professional standing or career.

Disciplinary procedures related to breaches of professional conduct

47. Disciplinary measures applicable to teachers guilty of breaches of professional conduct should be clearly defined. The proceedings and any resulting action should only be made public if the teacher so requests, except where prohibition from teaching is involved or the protection or well-being of the pupils so requires.

...

50. Every teacher should enjoy equitable safeguards at each stage of any disciplinary procedure, and in particular:

(a) The right to be informed in writing of the allegations and the grounds for them;

(b) The right to full access to the evidence in the case;

(c) The right to defend himself and to be defended by a representative of his choice, adequate time being given to the teacher for the preparation of his defence;

(d) The right to be informed in writing of the decisions reached and the reasons for them;

(e) The right to appeal to clearly designated competent authorities or bodies.

...

Women teachers with family responsibilities

54. Marriage should not be considered a bar to the appointment or to the continued employment of women teachers, nor should it affect remuneration or other conditions of work.

55. Employers should be prohibited from terminating contracts of service for reasons of pregnancy and maternity leave.

56. Arrangements such as crèches or nurseries should be considered where desirable to take care of the children of teachers with family responsibilities.

57. Measures should be taken to permit women teachers with family responsibilities to obtain teaching posts in the locality of their homes and to enable married couples, both of whom are teachers, to teach in the same general neighbourhood or in one and the same school.

58. In appropriate circumstances women teachers with family responsibilities who have left the profession before retirement age should be encouraged to return to teaching.

...

VIII. THE RIGHTS AND RESPONSIBILITIES OF TEACHERS

Professional freedom

61. The teaching profession should enjoy academic freedom in the discharge of professional duties. Since teachers are particularly qualified to judge the teaching aids and methods most suitable for their pupils, they should be given the essential rôle in the choice and the adaptation of teaching material, the selection of textbooks and the application of teaching methods, within the framework of approved programmes, and with the assistance of the educational authorities.

62. Teachers and their organizations should participate in the development of new courses, textbooks and teaching aids.

63. Any systems of inspection or supervision should be designed to encourage and help teachers in the performance of their professional tasks and should be such as not to diminish the freedom, initiative and responsibility of teachers.

64. (1) Where any kind of direct assessment of the teacher's work is required, such assessment should be objective and should be made known to the teacher.

(2) Teachers should have a right to appeal against assessments which they deem to be unjustified.

65. Teachers should be free to make use of such evaluation techniques as they may deem useful for the appraisal of pupils' progress, but should ensure that no unfairness to individual pupils results.

66. The authorities should give due weight to the recommendations of teachers regarding the suitability of individual pupils for courses and further education of different kinds.

67. Every possible effort should be made to promote close co-operation between teachers and parents in the interests of pupils, but teachers should be protected against unfair or unwarranted interference by parents in matters which are essentially the teacher's professional responsibility.

68. (1) Parents having a complaint against a school or a teacher should be given the opportunity of discussing it in the first instance with the school principal and the teacher concerned. Any complaint subsequently addressed to higher authority should be put in writing and a copy should be supplied to the teacher.

(2) Investigations of complaints should be so conducted that the teachers are given a fair opportunity to defend themselves and that no publicity is given to the proceedings.

69. While teachers should exercise the utmost care to avoid accidents to pupils, employers of teachers should safeguard them against the risk of having damages assessed against them in the event of injury to pupils occurring at school or in school activities away from the school premises or grounds.

Responsibilities of teachers

70. Recognizing that the status of their profession depends to a considerable extent upon teachers themselves, all teachers should seek to achieve the highest possible standards in all their professional work.

71. Professional standards relating to teacher performance should be defined and maintained with the participation of the teachers' organizations.

72. Teachers and teachers' organizations should seek to co-operate fully with authorities in the interests of the pupils, of the education service and of society generally.

73. Codes of ethics or of conduct should be established by the teachers' organizations, since such codes greatly contribute to ensuring the prestige of the profession and the exercise of professional duties in accordance with agreed principles.

74. Teachers should be prepared to take their part in extra-curricular activities for the benefit of pupils and adults.

Relations between teachers and the education service as a whole

75. In order that teachers may discharge their responsibilities, authorities should establish and regularly use recognized means of consultation with teachers' organizations on such matters as educational policy, school organization, and new developments in the education service.

...

Rights of teachers

79. The participation of teachers in social and public life should be encouraged in the interests of the teacher's personal development, of the education service and of society as a whole.

80. Teachers should be free to exercise all civic rights generally enjoyed by citizens and should be eligible for public office.

81. Where the requirements of public office are such that the teacher has to relinquish his teaching duties, he should be retained in the profession for seniority and pension purposes and should be able to return to his previous post or to an equivalent post after his term of public office has expired.

82. Both salaries and working conditions for teachers should be determined through the process of negotiation between teachers' organizations and the employers of teachers.

83. Statutory or voluntary machinery should be established whereby the right of teachers to negotiate through their organizations with their employers, either public or private, is assured.

84. Appropriate joint machinery should be set up to deal with the settlement of disputes between the teachers and their employers arising out of terms and conditions of employment. If the means and procedures established for these purposes should be exhausted or if there should be a breakdown in negotiations between the parties, teachers' organizations should have the right to take such other steps as are normally open to other organizations in the defence of their legitimate interests.

IX. CONDITIONS FOR EFFECTIVE
TEACHING AND LEARNING

85. Since the teacher is a valuable specialist, his work should be so organized and assisted as to avoid waste of his time and energy.

...

Hours of work

89. The hours teachers are required to work per day and per week should be established in consultation with teachers' organizations.

90. In fixing hours of teaching account should be taken of all factors which are relevant to the teacher's work load, such as:

(a) The number of pupils with whom the teacher is required to work per day and per week;

(b) The necessity to provide time for adequate planning and preparation of lessons and for evaluation of work;

(c) The number of different lessons assigned to be taught each day;

(d) The demands upon the time of the teacher imposed by participation in research, in co-curricular and extra-curricular activities, in supervisory duties and in counselling of pupils;

(e) The desirability of providing time in which teachers may report to and consult with parents regarding pupil progress.

...

Annual holidays with pay

94. All teachers should enjoy a right to adequate annual vacation with full pay.

Study leave

95. (1) Teachers should be granted study leave on full or partial pay at intervals.

(2) The period of study leave should be counted for seniority and pension purposes.

(3) Teachers in areas which are remote from population centres and are recognized as such by the public authorities should be given study leave more frequently.

Special leave

96. Leave of absence granted within the framework of bilateral and multilateral cultural exchanges should be considered as service.

97. Teachers attached to technical assistance projects should be granted leave of absence and their seniority, eligibility for promotion and pension rights in the home country should be safeguarded. In addition special arrangements should be made to cover their extraordinary expenses.

98. Foreign guest teachers should similarly be given leave of absence by their home countries and have their seniority and pension rights safeguarded.

99. (1) Teachers should be granted occasional leave of absence with full pay to enable them to participate in the activities of their organizations.

(2) Teachers should have the right to take up office in their organizations; in such case their entitlements should be similar to those of teachers holding public office.

100. Teachers should be granted leave of absence with full pay for adequate personal reasons under arrangements specified in advance of employment.

Sick leave and maternity leave

101. (1) Teachers should be entitled to sick leave with pay.

(2) In determining the period during which full or partial pay shall be payable, account should be taken of cases in which it is necessary for teachers to be isolated from pupils for long periods.

102. Effect should be given to the standards laid down by the International Labour Organisation in the field of maternity protection, and in particular the Maternity Protection Convention, 1919, and the Maternity Protection Convention (Revised), 1952, as well as to the standards referred to in paragraph 126 of this Recommendation.

103. Women teachers with children should be encouraged to remain in the service by such measures as enabling them, at their request, to take additional unpaid leave of up to one year after childbirth without loss of employment, all rights resulting from employment being fully safeguarded.

Teacher exchange

104. Authorities should recognize the value both to the education service and to teachers themselves of professional and cultural exchanges between countries and of travel abroad on the part of teachers; they should seek to extend such opportunities and take account of the experience acquired abroad by individual teachers.

105. Recruitment for such exchanges should be arranged without any discrimination, and the persons concerned should not be considered as representing any particular political view.

...

X. TEACHERS' SALARIES

114. Amongst the various factors which affect the status of teachers, particular importance should be attached to salary, seeing that in present world conditions other factors, such as the standing or regard accorded them and the level of appreciation of the importance of their function, are largely dependent, as in other comparable professions, on the economic position in which they are placed.

...

XI. SOCIAL SECURITY

General provisions

125. All teachers, regardless of the type of school in which they serve, should enjoy the same or similar social security protection. Protection should be extended to periods of probation and of training for those who are regularly employed as teachers.

...

Medical care

128. In regions where there is a scarcity of medical facilities teachers should be paid travelling expenses necessary to obtain appropriate medical care.

Sickness benefit

129. (1) Sickness benefit should be granted throughout any period of incapacity for work involving suspension of earnings.

(2) It should be paid from the first day in each case of suspension of earnings.

(3) Where the duration of sickness benefit is limited to a specified period, provisions should be made for extensions in cases in which it is necessary for teachers to be isolated from pupils.

Employment injury benefit

130. Teachers should be protected against the consequences of injuries suffered not only during teaching at school but also when engaged in school activities away from the school premises or grounds.

131. Certain infectious diseases prevalent among children should be regarded as occupational diseases when contracted by teachers who have been exposed to them by virtue of their contact with pupils.

Old-age benefit

132. Pension credits earned by a teacher under any education authority within a country should be portable should the teacher transfer to employment under any other authority within that country.

133. Taking account of national regulations, teachers who, in case of a duly recognized teacher shortage, continue in service after qualifying for a pension should either receive credit in the calculation of the pension for the additional years of service or be able to gain a supplementary pension through an appropriate agency.

134. Old-age benefit should be so related to final earnings that the teacher may continue to maintain an adequate living standard.

Invalidity benefit

135. Invalidity benefit should be payable to teachers who are forced to discontinue teaching because of physical or mental disability. Provision should be made for the granting of pensions where the contingency is not covered by extended sickness benefit or other means.

...

Survivors' benefit

138. The conditions of eligibility for survivors' benefit and the amount of such benefit should be such as to enable survivors to maintain an adequate standard of living and as to secure the welfare and education of surviving dependent children.

...

DECLARATION OF THE PRINCIPLES OF INTERNATIONAL CULTURAL CO-OPERATION

Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its fourteenth session, on 4 November 1966¹

The General Conference of the United Nations Educational, Scientific and Cultural Organization, met in Paris for its fourteenth session, this fourth day of November 1966, being the twentieth anniversary of the foundation of the Organization,

Recalling that the Constitution of the Organization declares that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed" and that the peace must be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind,

Recalling that the Constitution also states that the wide diffusion of culture and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern,

Considering that the Organization's Member States, believing in the pursuit of truth and the free exchange of ideas and knowledge, have agreed and determined to develop and to increase the means of communication between their peoples,

Considering that, despite the technical advances which facilitate the development and dissemination of knowledge and ideas, ignorance of the way of life and customs of peoples still presents an obstacle to friendship among the nations, to peaceful co-operation and to the progress of mankind,

Taking account of the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination, the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, proclaimed successively by the General Assembly of the United Nations,

Convinced by the experience of the Organization's first twenty years that, if international cultural co-operation is to be strengthened, its principles require to be affirmed,

Proclaims this Declaration of the principles of international cultural co-operation, to the end that governments, authorities, organizations, associations and institutions responsible for cultural activities may constantly be guided by these principles; and for the purpose, as set out in the Constitution of the Organization, of advancing,

through the educational, scientific and cultural relations of the peoples of the world, the objectives of peace and welfare that are defined in the Charter of the United Nations:

Article I

1. Each culture has a dignity and value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

Article II

Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind.

Article III

International cultural co-operation shall cover all aspects of intellectual and creative activities relating to education, science and culture.

Article IV

The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:

1. To spread knowledge, to stimulate talent and to enrich cultures;
2. To develop peaceful relations and friendship among the peoples and bring about a better understanding of each other's way of life;
3. To contribute to the application of the principles set out in the United Nations Declarations that are recalled in the Preamble to this Declaration;
4. To enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life;
5. To raise the level of the spiritual and material life of man in all parts of the world.

Article V

Cultural co-operation is a right and a duty for all peoples and all nations, which should share with one another their knowledge and skills.

¹ Text furnished by the Secretariat of UNESCO.

Article VI

International co-operation, while promoting the enrichment of all cultures through its beneficent action, shall respect the distinctive character of each.

Article VII

1. Broad dissemination of ideas and knowledge, based on the freest exchange and discussion, is essential to creative activity, the pursuit of truth and the development of the personality.

2. In cultural co-operation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity.

Article VIII

Cultural co-operation shall be carried on for the mutual benefit of all the nations practising it. Exchanges to which it gives rise shall be arranged in a spirit of broad reciprocity.

Article IX

Cultural co-operation shall contribute to the establishment of stable, long-term relations between peoples, which should be subjected as little as possible to the strains which may arise in international life.

Article X

Cultural co-operation shall be specially concerned with the moral and intellectual education of young people in a spirit of friendship, international understanding and peace and shall foster awareness among States of the need to stimulate talent and promote the training of the rising generations in the most varied sectors.

Article XI

1. In their cultural relations, States shall bear in mind the principles of the United Nations. In seeking to achieve international co-operation, they shall respect the sovereign equality of States and shall refrain from intervention in matters which are essentially within the domestic jurisdiction of any State.

2. The principles of this Declaration shall be applied with due regard for human rights and fundamental freedoms.

COUNCIL OF EUROPE

PROTOCOL No. 5 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, AMENDING ARTICLES 22 AND 40 OF THE CONVENTION

Done at Strasbourg on 20 January 1966¹

*The Governments signatory hereto, being
Members of the Council of Europe,*

*Considering that certain inconveniences have
arisen in the application of the provisions of
Articles 22 and 40 of the Convention for the
Protection of Human Rights and Fundamental
Freedoms signed at Rome on 4th November 1950
(hereinafter referred to as "the Convention")
relating to the length of the terms of office of the
members of the European Commission of Human
Rights (hereinafter referred to as "the Com-
mission") and of the European Court of Human
Rights (hereinafter referred to as "the Court");*

*Considering that it is desirable to ensure as far
as possible an election every three years of one
half of the members of the Commission and of one
third of the members of the Court;*

*Considering therefore that it is desirable to
amend certain provisions of the Convention,*

Have agreed as follows:

Article 1

*In Article 22 of the Convention, the following
two paragraphs shall be inserted after para-
graph (2):*

*"(3) In order to ensure that, as far as
possible, one half of the membership of the
Commission shall be renewed every three years,
the Committee of Ministers may decide, before
proceeding to any subsequent election, that the
term or terms of office of one or more members
to be elected shall be for a period other than six
years but not more than nine and not less than
three years.*

*"(4) In cases where more than one term of
office is involved and the Committee of Min-
isters applies the preceding paragraph, the allo-
cation of the terms of office shall be effected by
the drawing of lots by the Secretary General,
immediately after the election."*

Article 2

*In Article 22 of the Convention, the former
paragraphs (3) and (4) shall become respectively
paragraphs (5) and (6).*

Article 3

*In Article 40 of the Convention, the following
two paragraphs shall be inserted after para-
graph (2):*

*"(3) In order to ensure that, as far as
possible, one third of the membership of the
Court shall be renewed every three years, the
Consultative Assembly may decide, before pro-
ceeding to any subsequent election, that the
term or terms of office of one or more members
to be elected shall be for a period other than
nine years but not more than twelve and not
less than six years.*

*"(4) In cases where more than one term of
office is involved and the Consultative Assembly
applies the preceding paragraph, the allocation
of the terms of office shall be effected by the
drawing of lots by the Secretary General im-
mediately after the election."*

Article 4

*In Article 40 of the Convention, the former
paragraphs (3) and (4) shall become respectively
paragraphs (5) and (6).*

Article 5

*1. This Protocol shall be open to signature by
Members of the Council of Europe, signatories to
the Convention, who may become Parties to it by:*

*(a) Signature without reservation in respect of
ratification or acceptance;*

*(b) Signature with reservation in respect of
ratification or acceptance, followed by ratification
or acceptance.*

*Instruments of ratification or acceptance shall
be deposited with the Secretary General of the
Council of Europe.*

*2. This Protocol shall enter into force as soon
as all Contracting Parties to the Convention shall*

¹ *European Treaty Series*, No. 55.

have become Parties to the Protocol, in accordance with the provisions of paragraph 1 of this Article.

3. The Secretary General of the Council of Europe shall notify the Members of the Council of:

(a) Any signature without reservation in respect of ratification or acceptance;

(b) Any signature with reservation in respect of ratification or acceptance;

(c) The deposit of any instrument of ratification or acceptance;

(d) The date of entry into force of this Protocol in accordance with paragraph 2 of this Article.

...

AFRICAN AND MALAGASY COMMON ORGANIZATION

CHARTER OF THE AFRICAN AND MALAGASY COMMON ORGANIZATION

Done at Tananarive, 28 June 1966

The African and Malagasy Heads of State and Government, assembled at Tananarive from 25 to 28 January 1966,

Desirous of ensuring a sound foundation for African unity,

Faithful to the spirit, principles and objectives of the Charter of the United Nations and of the Organization of African Unity,

Considering the decision of the Conference of the African and Malagasy Heads of State held at Nouakchott in February 1965,

Considering the historical, economic, social and cultural ties among their respective countries,

Considering the need to harmonize their economic, social and cultural policies with a view to maintaining conditions of progress and security,

Have agreed upon the following:

Article 1. The High Contracting Parties do by the present Charter establish an organization to be known as the African and Malagasy Common Organization (AMCO). The Organization is open to any independent and sovereign African State which makes application for membership and accepts the provisions of the present Charter.

New members shall be admitted by unanimous decision of the members of the Organization.

Article 2. The AMCO is founded on the solidarity of its members.

In the spirit of the OAU, it is aimed at promoting co-operation and solidarity among the African and Malagasy States with a view to accelerating their economic, social, technical and cultural development.

Article 3. To that end, the Organization shall endeavour to harmonize the action undertaken by Member States in the economic, social, technical and cultural fields to co-ordinate their development programmes and with due regard for the sovereignty and basic freedom of choice of each Member State, to facilitate consultation in matters of foreign policy.

INSTITUTIONS AND ORGANS

Article 4. The Institutions of the Organization shall be:

The Conference of Heads of State and Government;

The Council of Ministers;

The Administrative General Secretariat.

I. Conference of Heads of State and Government

Article 5. The Conference of Heads of State and Government shall be the supreme organ of the Organization.

It shall consist of the Heads of State and Government of the member States or their duly authorized representatives.

Article 6. The Conference shall consider questions of common interest and shall take its decisions in accordance with the provisions of the present Charter and the rules of procedure of the Conference.

Article 7. The Conference of Heads of State and Government shall meet in regular session once a year.

At the request of a member State and subject to the formal approval of two-thirds of the members of the Organization, the Conference shall meet in extraordinary session.

The agenda of an extraordinary session shall, in principle, consist solely of the items for which the Conference has been convened.

Article 8. The Conference shall determine and adopt its rules of procedure.

Article 9. Each member State may be represented by another member State, which shall be entitled to vote on behalf of the former.

A member State may represent only one other member State.

Two-thirds of the total membership of the Organization shall form a quorum. Any decision taken by a quorum and adopted by the required majority shall be binding on all member States.

II. Council of Ministers

Article 10. The Council of Ministers shall consist of the Ministers for Foreign Affairs of member States or such other Ministers as are designated by the Governments of member States.

It shall meet in regular session once a year.

The regular session shall be held a few days before the annual regular session of the Conference of Heads of State and Government and at the same place.

Article 11. The Council shall meet in extraordinary session at the request of a member State and subject to formal approval by two-thirds of the members of the Organization.

The agenda of an extraordinary session of the Council shall consist only of the items for which the Council has been convened.

Article 12. The Council of Ministers shall be responsible to the Conference of Heads of State and Government.

It shall be entrusted with the preparations for the Conference, shall consider any questions referred to it by the Conference and shall ensure the implementation of the relevant decisions.

It shall promote co-operation between member States in accordance with the directives of the Conference of Heads of State and Government and in conformity with the present Charter.

Article 13. Each member State shall have one vote.

Each member State may be represented by another member State, which shall be entitled to vote on behalf of the former.

A member State may represent only one other member State.

Two-thirds of the member States shall constitute a quorum.

Article 14. The Council shall determine and adopt its rules of procedures.

III. The Administrative General Secretariat

Article 15. The African and Malagasy Common Organization shall have an Administrative General Secretariat with headquarters at Yaoundé, Federal Republic of Cameroon.

The Administrative Secretary-General shall be appointed for two years by the Conference of Heads of State and Government on the proposal of the Council of Ministers. He shall be eligible for re-appointment.

...

SIGNATURE AND RATIFICATION

Article 21. The present Charter shall be ratified or approved by the signatory States in accordance with their constitutional procedures.

The original instrument shall be deposited with the Government of the Federal Republic of Cameroon, which shall transmit certified copies of the document to all signatory States.

The instruments of ratification or approval shall be deposited with the Government of the Federal Republic of Cameroon, which shall notify all signatory States accordingly.

ENTRY INTO FORCE

Article 22. The present Charter shall come into force when the Government of the Federal Republic of Cameroon has received the instruments of ratification from two-thirds of the signatory States.

REGISTRATION

Article 23. The present Charter shall, after due ratification, be registered with the Secretariat of the United Nations through the Government of the Federal Republic of Cameroon, in accordance with Article 102 of the Charter of the United Nations.

INTERPRETATION

Article 24. Decisions concerning the interpretation of the present Charter shall be made by a two-thirds majority of the member States of the Organization.

MISCELLANEOUS PROVISIONS

Article 25. The Administrative Secretary-General may accept, on behalf of the Organization, any gifts, donations or bequests made to the Organization, subject to the approval of the Council of Ministers. They shall be entered into the budget of the Organization.

Article 26. A Convention shall be signed by the member States to establish the privileges and immunities to be granted to the staff of the Administrative General Secretariat.

RENUNCIATION OF MEMBERSHIP

Article 27. Any State wishing to withdraw from the Organization shall notify the Administrative General Secretariat in writing.

The latter shall notify the member States.

One year after such notification, the present Charter shall cease to apply to that State and it shall accordingly cease to belong to the Organization.

AMENDMENT AND REVISION

Article 28. The present Charter may be amended or revised if a member State makes a request in writing to the Administrative General Secretariat.

Proposed amendments or revisions, shall be brought to the attention of the Conference only after all member States have been duly notified

and after a period of one year from the date on which the amendment is submitted.

The amendment or revision shall take effect only after ratification or approval by two-thirds of the member States of the Organization.

In witness whereof, we, the African and Malagasy Heads of State and Government, have signed the present Charter.

OTHER INTERNATIONAL AGREEMENTS

CONVENTION ON OLD-AGE, SURVIVORS' AND INVALIDITY INSURANCE BETWEEN THE PRINCIPALITY OF LIECHTENSTEIN AND THE SWISS CONFEDERATION

(concluded at Vaduz on 3 September 1965; date of entry into force: 1 July 1966)¹

PART I

GENERAL PROVISIONS

Article 1

1. This Convention shall apply:

(a) In Switzerland:

- (i) To the federal legislation respecting old-age and survivors' insurance;
- (ii) To the federal legislation respecting invalidity insurance;

(b) In the Principality of Liechtenstein:

- (i) To the legislation respecting old-age and survivors' insurance;
- (ii) To the legislation respecting invalidity insurance.

2. The Convention shall also apply to all legislative or administrative enactments codifying, amending or supplementing the legislation listed in paragraph 1 of this article.

Article 2

Save as otherwise provided in this Convention and its Final Protocol, Swiss and Liechtenstein nationals shall be placed on the same footing with respect to their rights and obligations in the legislation listed in article 1.

PART II

PROVISIONS CONCERNING CONTRIBUTION OBLIGATIONS

Article 3

1. Subject to the provisions of articles 4 and 5, employees who are nationals of one of the contracting States shall be subject to the legislation listed in article 1, paragraph 1 of the State in whose territory they are employed, even if they are resident in the territory of the other contracting State.

2. Where nationals of one or other contracting State are subject, in accordance with paragraph 1, to the legislation of both States because they are gainfully employed in the territory of both States, they shall pay contributions to each of the two insurance schemes only in respect of the earned income they receive in the State concerned. Contributions from earned income received in the territory of a third State shall be paid to the insurance scheme of the State of residence.

3. Persons not in gainful employment shall be subject to the legislation of the contracting State in which they are resident.

Article 4

The principle contained in article 3, paragraph 1 shall admit of the following exceptions:

(a) Nations of one State working for and paid by an employer having his principal place of business in the other State shall be subject to the legislation applicable to the employer.

(b) If employees of an undertaking having its principal place of business in one of the contracting States are sent temporarily to the territory of the other State, the provisions of the State in which the undertaking has its principal place of business shall continue to be applicable for the first twenty-four months of their stay in the other State. If the employment in the other State exceeds twenty-four months, the legislation of the first State may by way of exception continue to apply if and for such time as the competent authorities of both States agree thereto.

(c) Officials of the public authorities (customs, passport control, post office etc.) of one contracting State working in the territory of the other State shall be subject to the regulations of the first State, regardless of whether they are nationals of the one or the other contracting State.

(d) If an employee of an undertaking that extends beyond the border area of one contracting State into the border area of the other contracting State is employed in the part of the undertaking situated in the latter, the legislation of the first contracting State shall apply, as if he were employed where the undertaking has its principal place of business.

(e) Nationals of either State who belong to the travelling personnel of road transport undertakings

¹ *Liechtensteinisches Landesgesetzblatt*, No. 13, 21 June 1966. Text furnished by the Government of Liechtenstein.

and are employed alternately on the territory of the two States shall be subject to the legislation of the State in which the undertaking has its principal place of business.

(f) The regulations of the State to which they belong shall apply to heads and members of diplomatic or consular missions of both contracting States, including members of chancelleries, in so far as they are nationals of one of the contracting States.

Article 5

The competent authorities of the two contracting States may by mutual agreement except individual cases from the provisions of articles 3 and 4.

PART III

PROVISIONS CONCERNING BENEFITS

I. OLD-AGE AND SURVIVORS' INSURANCE

Article 6

1. Nationals of one or other contracting State who have paid contributions to the compulsory or optional insurance scheme of both States for a total of one complete year or more are entitled to receive from the insurance schemes of each State a portion of the ordinary pension, assessed in accordance with articles 7 and 8.

2. On the death of an insured person who fulfils the conditions of paragraph 1, his survivors shall be entitled to receive from the insurance scheme of each State a portion of the ordinary pension, assessed in accordance with articles 7 and 8.

Article 7

In the cases specified in article 6, each of the two insurance schemes shall calculate the pension to be granted by it as follows:

(a) In determining the length of time over which the insured person has paid contributions for the purpose of assessing the pension, each State shall take into account the contribution periods and equivalent periods completed in the compulsory and optional insurance schemes under the legislation of the other State, as if they had been completed in its own insurance scheme.

(b) In determining the average annual contribution, each State shall take into account the contribution years completed and paid-up contributions in the compulsory and optional insurance schemes in both States.

(c) Taking into account the provisions of paragraphs (a) and (b) above, each insurance scheme shall then fix the pension in accordance with the legislation applicable to it, counting periods of time for which contributions were paid both to Swiss and Liechtenstein compulsory or optional insurance schemes only once. Each insurance scheme shall pay to the insured person that

portion of the pension thus fixed which corresponds to the ratio between the contributions paid to it and the sum of the contributions paid to both insurance schemes since 1 January 1948.

Article 8

If the sum of the portions of the pension fixed by the two insurance schemes in accordance with article 7 is less than the pensions which the beneficiary could have claimed, without the application of articles 6 and 7, from the insurance scheme of his home State in accordance with domestic legislation on the basis of the contributions paid and contribution years completed there, the pension payable by the home State shall be increased by the amount of the difference.

...

II. INVALIDITY INSURANCE

Article 10

1. For the purpose of benefit claims in invalidity insurance, Swiss and Liechtenstein nationals insured in one contracting State shall be insured also for the other contracting State.

2. If a Swiss or Liechtenstein national resident in Switzerland or in Liechtenstein claims a benefit under the validity insurance scheme of one or other contracting State, the investigation of the case, especially the determination of entitlement and appropriate measures for settlement of the claim and the assessment of the degree of invalidity, shall be the responsibility of the insurance scheme of the contracting State in which the insured person is resident. The cost of the investigation shall be borne by that State.

3. If a case of invalidity justifies claims against the invalidity insurance schemes of both contracting States, the assessments of the insurance scheme of the State of residence shall be binding for that of the other State and shall not be subject to any further judicial scrutiny in that State.

Article 11

1. Swiss or Liechtenstein nationals resident in Switzerland or Liechtenstein shall have their claims settled exclusively by the invalidity insurance scheme of the State of residence.

2. If an insured person changes his place of residence from one to the other contracting State before or during the completion of settlement of claims, the insurance scheme of the first State shall remain fully liable in the case of non-recurring or short-term claims, and for not more than three months in the case of long-term claims; the competent authorities may, in individual cases, arrange for the transfer of liability by way of exception.

3. For the purposes of the procedure for the settlement of claims by the invalidity insurance scheme of one contracting State, the territory of the other contracting State shall not be deemed to be foreign.

...

PART IV
PROVISIONS FOR GOVERNING
IMPLEMENTATION

Article 13

The competent authorities and institutions of the two contracting States shall, in giving effect to this Convention, afford each other assistance free of charge to the same extent as would be appropriate in the administration of their own legislation. The provision of such assistance shall likewise extend to the administration of optional insurance.

PART V
TRANSITIONAL AND FINAL
PROVISIONS

Article 19

1. This Convention shall also apply, from the date of its entry into force, to earlier insurance cases.

...

Article 20

1. This Convention is concluded for one year from the date of its entry into force. It shall

continue in force from year to year unless it is denounced by one of the contracting States, not later than three months before the expiration of the current period.

2. In event of denunciation, benefit entitlements already acquired under the provisions of this Convention shall be maintained. Entitlements in process of acquisition under its provisions shall be determined by the terms of a negotiated agreement.

Article 21

1. This Convention shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Berne.

2. This Convention shall come into force on the first day of the second month following the exchange of the instruments of ratification.

Article 22

With the entry into force of this Convention, the Convention on Old-Age and Survivors' Insurance between the Swiss Confederation and the Principality of Liechtenstein, dated 10 December 1954, shall cease to have effect.

FINAL PROTOCOL TO THE CONVENTION ON OLD-AGE, SURVIVORS' AND INVALIDITY
INSURANCE BETWEEN THE PRINCIPALITY OF LIECHTENSTEIN AND THE SWISS
CONFEDERATION

On the occasion of the signature of the Convention on Old-Age, Survivors' and Invalidity Insurance concluded this day between the Principality of Liechtenstein and the Swiss Confederation—hereinafter referred to as the Convention—the undersigned plenipotentiaries have made the following agreed declarations, which shall form an integral part of the Convention:

1. The principle of equality of treatment laid down in article 2 of the Convention shall not apply to the legislative provisions of both contracting States respecting:

Optional old-age and survivors' insurance and invalidity insurance for Swiss nationals resident abroad or for Liechtenstein citizens who have settled abroad;

Old-age and survivors' insurance and invalidity insurance of Swiss or Liechtenstein citizens working abroad for, and paid by, an employer in Switzerland or in Liechtenstein.

2. The provisions of article 4 (b) and (e) of the Convention shall apply to all employees, regardless of their nationality.

...

4. If the portions of the pension to be paid in accordance with article 7 (c) of the Convention fall short of specific sums to be agreed by the competent authorities of the two contracting States, they may be paid quarterly, half-yearly or yearly in advance or in arrears.

5. Appeals against the apportionment of pensions made in accordance with article 7(c) of the Convention shall be lodged with the competent appeal court of the contracting State whose insurance scheme apportioned the pension.

6. Article 10, paragraph 2 of the Convention shall apply *mutatis mutandis* to the investigation of the circumstances in the review of invalidity pensions.

7. In principle, the costs arising out of the settlement of claims shall be borne in full by the contracting State responsible for such settlement in accordance with article 11 of the Convention. However, if exceptional hardship results for the insurance scheme of one contracting State from the settlement of claims in respect of nationals of the other State, the competent authorities may arrange between them for a contribution by the invalidity insurance scheme of one State to that of the other.

8. If a Swiss or Liechtenstein national resident in a third State claims a benefit from the invalidity insurance scheme of one or both contracting States, the investigation of the case and any settlement payable shall be the obligation of the insurance scheme of the home State.

...

10. Liechtenstein nationals who are members of the optional old-age and survivors' insurance scheme may, so long as they are resident in Switzerland, cease their contributions to the optional insurance scheme, without losing the entitlements arising out of their earlier contributions.

...

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS¹

I. UNITED NATIONS

1. *Convention on the Prevention and Punishment of the Crime of Genocide* (Paris, 1948; entered into force on 12 January 1951) (see *Yearbook on Human Rights for 1948*, pp. 484-486)

During 1966, the Netherlands became a party to the Convention, by instrument of accession deposited on 20 June.

2. *Convention relating to the Status of Refugees* (Geneva, 1951; entered into force on 22 April 1954) (see *Yearbook on Human Rights for 1951*, pp. 581-588)

During 1966, Gambia by notification of succession of 9 September and Kenya by instrument of accession deposited on 19 May, became parties to the Convention.

3. *Convention on the Political Rights of Women* (New York, 1952; entered into force on 7 July 1954) (see *Yearbook on Human Rights for 1952*, pp. 375-376)

During 1966, the following States became parties to the Convention by instruments of accession on the dates indicated: Afghanistan (16 November), Jamaica (14 August), Madagascar (19 June), Nepal (26 April) and Trinidad and Tobago (24 June).

4. *Slavery Convention of 1926 as amended by the Protocol of December 1953* (signed in New York; as amended entered into force on 7 July 1955) (see *Yearbook on Human Rights for 1953*, pp. 345-346)

During 1966, the following States became parties to the Convention by the instruments and on the dates indicated: Brazil (accession, 6 January), Malta (notification of succession, 3 January), Trinidad and Tobago (notification of succession, 11 April) and Tunisia (accession, 15 July).

5. *Convention on the Status of Stateless Persons* (New York, 1954; entered into force on 6 June 1960) (see *Yearbook on Human Rights for 1954*, pp. 369-375)

By notification of succession of 11 April 1966, Trinidad and Tobago became a party to the Convention.

The notification of denunciation, deposited by Madagascar on 2 April 1965, took effect on 2 April 1966.

6. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (Geneva, 1956; entered into force on 30 April 1957) (see *Yearbook on Human Rights for 1956*, pp. 289-291)

During 1966, the following States became parties to the Convention by the instruments and on the dates indicated: Brazil (accession, 6 January), Malta (notification of succession, 3 January) and Trinidad and Tobago (notification of succession, 11 April).

7. *Convention on the Nationality of Married Women* (New York, 1957; entered into force on 11 August 1958) (see *Yearbook on Human Rights for 1957*, pp. 301-302)

During 1966, the following States became parties to the Convention by the instruments and on the dates indicated: Gabon (accession, 15 August), Malawi (accession, 8 September), the Netherlands (accession, 8 August), Singapore (notification of succession, 18 March) and Trinidad and Tobago (notification of succession, 11 April).

¹ Concerning the status of these agreements at the end of 1965, see *Yearbook on Human Rights for 1965*, pp. 402-406. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of the Organization of American States and the Council of Europe was furnished by the International Labour Office, the Pan American Union and the Secretariat-General of the Council of Europe, respectively. The information concerning the Geneva Conventions of 12 August 1949 was taken from the *Annual Report 1966*, of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depository), the information concerning agreements under the auspices of UNESCO was furnished by the Secretariat of UNESCO.

8. *Convention on the Reduction of Statelessness* (New York, 1961; not yet in force) (see *Yearbook on Human Rights for 1961*, pp. 427-430)

During 1966, the United Kingdom of Great Britain and Northern Ireland became a party to the Convention by instrument of ratification deposited on 29 March.

9. *International Convention on the Elimination of All Forms of Racial Discrimination* (New York, 1965; not yet in force) (see *Yearbook on Human Rights for 1965*, pp. 389-394)

During 1966, the following States became parties to the Convention by the instruments and on the dates indicated: Bulgaria (ratification, 8 August), Czechoslovakia (ratification, 29 December), Ecuador (accession, 22 September), Ghana (ratification, 8 September) and Pakistan (ratification, 21 September).

10. *International Covenant on Economic, Social and Cultural Rights* (New York, 1966) (see above pp. 437-441)

During 1966, the following States signed the Covenant on the dates indicated: Colombia (21 December), Costa Rica (19 December), Honduras

(19 December), Israel (19 December), Jamaica (19 December) and the Philippines (19 December).

11. *International Covenant on Civil and Political Rights* (New York, 1966) (see above pp. 442-450)

During 1966, the following States signed the Covenant on the dates indicated: Colombia (21 December), Costa Rica (19 December), Cyprus (19 December), Honduras (19 December), Israel (19 December), Jamaica (19 December) and the Philippines (19 December).

12. *Optional Protocol to the International Covenant on Civil and Political Rights* (New York, 1966) (see above pp. 450-452)

During 1966, the following States signed the Protocol on the dates indicated: Colombia (21 December), Costa Rica (19 December), Cyprus (19 December), Hungary (19 December), Jamaica (19 December) and the Philippines (19 December).

13. *Protocol relating to the Status of Refugees* (New York, 1966; not yet in force) (see above, pp. 452-454)

During 1966, no States became parties to the Protocol.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention 1947* (Convention No. 82; entered into force on 19 June 1955) (see *Yearbook on Human Rights for 1948*, pp. 420-425)

On 11 July 1966, the United Kingdom of Great Britain and Northern Ireland registered a declaration of application to non-metropolitan territories, applicable with modifications, in respect of Fiji.

2. *Freedom of Association and Protection of the Right to organize Convention, 1948* (Convention No. 87; entered into force on 4 July 1950) (see *Yearbook on Human Rights for 1948*, pp. 427-430)

During 1966, Cyprus and Lesotho² became parties to the Convention by instruments of ratification deposited on 8 May and 31 October respectively.

The United Kingdom of Great Britain and Northern Ireland, on 26 May 1966, registered a declaration of application to non-metropolitan territories, applicable with modification in respect of Fiji and St. Helena.

3. *Right to Organize and Collective Bargaining Convention, 1949* (Convention No. 98; entered into force on 18 July 1951) (see *Yearbook on Human Rights for 1949*, pp. 291-292)

During 1966, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Cyprus (24 May), Guyana (8 June)², Lesotho (31 October)², Panama (16 May) and Paraguay (21 March).

On 17 June and 3 October 1966, the United Kingdom of Great Britain and Northern Ireland registered a declaration of application to non-metropolitan territories, applicable without modification, in respect of St. Helena and Basutoland respectively.

4. *Equal Remuneration Convention, 1951* (Convention No. 100; entered into force on 23 May 1953) (see *Yearbook on Human Rights for 1951*, pp. 469-470)

During 1966, Chad, Jordan and Niger became parties to the Convention by instruments of ratification deposited on 29 March, 22 September and 9 August respectively.

5. *Social Security (Minimum Standards) Convention, 1952* (Convention No. 102; entered into force on 27 April 1955) (see *Yearbook on Human Rights for 1952*, pp. 377-389)

² Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

During 1966, Niger became a party to the Convention by instrument of ratification deposited on 9 August.

6. *Abolition of Forced Labour Convention, 1957* (Convention No. 105; entered into force on 17 January 1959) (see *Yearbook on Human Rights for 1957*, pp. 303-304)

During 1966, Guyana², Morocco and Panama became parties to the Convention by instruments of ratification deposited on 8 June, 1 December and 16 May respectively.

7. *Discrimination (Employment and Occupation) Convention, 1958* (Convention No. 111; entered into force on 15 June 1960) (see *Yearbook on Human Rights for 1958*, pp. 307-308)

During 1966, the following States became parties to the Convention by instruments of ratification on the dates indicated: Chad (29 March), Ethiopia (11 June), Kuwait (1 December), Panama (15 May) and Sierra Leone (14 October).

² Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

8. *Social Policy (Basic Aims and Standards) Convention, 1962* (Convention No. 117; entered into force on 23 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 391-394)

During 1966, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Costa Rica (27 January), Guinea (12 December), Italy (27 December) and Jamaica (4 January).

9. *Employment Policy Convention, 1964* (Convention No. 122; entered into force on 15 September 1966) (see *Yearbook on Human Rights for 1964*, pp. 329-330)

During 1966, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Canada (16 September), Cyprus (28 July), Costa Rica (27 January), Guinea (12 December), Jordan (10 March), Madagascar (21 November), Norway (6 June 1966), Poland (24 November), Senegal (25 April), Tunisia (17 February) and the United Kingdom of Great Britain and Northern Ireland (27 June).

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATIONS

1. *Universal Copyright Convention and Protocols thereto* (Geneva, 1952; entered into force on 16 September 1955) (see *Yearbook on Human Rights for 1952*, pp. 398-403)

During 1966, the following States became parties to the Convention and Protocols 1, 2 and 3 by the instruments and on the dates indicated: Kenya (accession, 7 June), Venezuela (accession, 30 June) and Yugoslavia (ratification, 11 February).

Italy became a party to Protocol 1 by instrument of ratification deposited on 19 December.

2. *Convention concerning the Exchange of Official Publications and Government Documents between States* (Paris, 1958; entered into force on 30 May 1961) (see *Yearbook on Human Rights for 1960*, p. 434)

On 18 May 1966, Malta by a declaration became a party to the Convention.²

² Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

3. *Convention against Discrimination in Education, 1960* (Paris, 1960; entered into force on 22 May 1962) (see *Yearbook on Human Rights for 1961*, pp. 437-439)

During 1966, the following States by the instruments and on the dates indicated became parties to the Convention: Australia (acceptance, 29 November), Italy (ratification, 8 October), Malta (declaration, 5 January),² the Netherlands (ratification, 25 March) and Peru (ratification, 19 December).

4. *Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of Any Disputes which May Arise between States Parties to the Convention against Discrimination in Education* (Paris, 1962; not yet in force) (see *Yearbook on Human Rights for 1962*, pp. 398-401)

During 1966, the following States by the instruments and on the dates indicated became parties to the Protocol: Italy (ratification, 6 October), Malta (declaration, 5 January),² and the Netherlands (ratification, 25 March).

IV. ORGANIZATION OF AMERICAN STATES

During 1966, no ratifications were deposited in respect of the conventions of the Organization of American States.

V. COUNCIL OF EUROPE

1. *Convention for the Protection of Human Rights and Fundamental Freedoms* (Rome, 1950; entered into force on 3 September 1953) (see *Yearbook on Human Rights for 1950*, pp. 418-426)

On 14 January 1966, the United Kingdom of Great Britain and Northern Ireland registered, for a period of three years, a declaration recognizing the competence of the European Commission of Human Rights to receive individual applications.

During 1966, declarations recognizing the compulsory jurisdiction of the European Court of Human Rights were registered by the following States on the dates and for the periods indicated: the Federal Republic of Germany (1 July, five years), Luxembourg (28 April, five years), Sweden (13 May, five years) and the United Kingdom of Great Britain and Northern Ireland (14 January, three years).

2. *European Convention on Establishment* (Paris, 1955; entered into force on 23 February 1965) (see *Yearbook on Human Rights for 1956*, pp. 292-297)

Ireland ratified the Convention on 1 September 1966.

3. *Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Conferring upon the European Court of Human Rights Competence to Give Advisory Opinions* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963*, p. 424)

The Netherlands ratified the Protocol on 11 October 1966.

4. *Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 29, 30 and 34 of the Convention* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963*, p. 425)

The Netherlands ratified the Protocol on 11 October 1966.

5. *European Code of Social Security* (Strasbourg, 1964; not yet in force) (see *Yearbook on Human Rights for 1964*, pp. 331-334)

Norway ratified the Code on 25 March 1966.³

6. *Protocol to the European Code of Social Security* (Strasbourg, 1964; not yet in force) (see *Yearbook on Human Rights for 1964*, p. 335)

Norway ratified the Protocol on 25 March 1966.³

7. *Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 22 and 40 of the Convention* (Strasbourg, 1966; not yet in force) (see above, pp. 460-461).

During 1966, Austria and the Federal Republic of Germany signed the Protocol on 25 January and 3 March respectively, and the following States became parties to it by instruments of ratification deposited on the dates indicated: Denmark (20 January), Ireland (18 February), Norway (20 January) and Sweden (27 September).

³ On page 405 of the *Yearbook on Human Rights for 1965*, instead of Norway, Sweden should have been mentioned as the State which ratified on 25 November 1965 the European Code of Social Security and the Protocol to the European Code of Social Security.

VI. OTHER INSTRUMENTS

1. *Geneva Conventions of 12 August 1949* (entered into force on 21 October 1950) (see *Yearbook on Human Rights for 1949*, pp. 299-309)

On 31 December 1965, Honduras acceded to the Conventions, and during 1966, the following States became parties to these Conventions by the instruments and on the dates indicated: Central African Republic (declaration of continuity, 1 August), Gambia (declaration of continuity, 20 October), Kenya (accession, 20 September), Republic of Korea (accession, 16 August) and Zambia (accession, 19 October).

On 31 December 1966, the number of States formally bound by the Convention was 114.

2. *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome, 1961; entered into force on 18 May 1964) (see *Yearbook on Human Rights for 1961*, pp. 452-454)

On 21 July 1966, the Federal Republic of Germany ratified the Convention with declaration.

INDEX

INDEX

When the item on a particular page to which reference is made in this index is not readily identifiable, a further reference is given in parentheses after the page number.

A

Aliens: Albania 3 (21 November 1964); Argentina 18 (art. 20); Dahomey 99 (heading A); Dominican Rep. 110 (art. 11.1, 4), 112 (art. 55.16, 20); Fed. Rep. of Germany 132 (heading 13); France 142 (heading II.1); Guyana 149 (art. 15); Honduras 168 (1 November 1966); Italy 221 (28 December 1961); Lesotho 245 (sec. 17.4(a)), 247 (sec. 24); Sierra Leone 318 (No. 30 of 1966); Singapore 325 (sec. 14), 329 (art. 2); Yugoslavia 397 (No. 49, 1966), 308 (art. 1); United Nations 444 (art. 13); UNESCO 458 (art. 98).

Arrest (*see* **Liberty, Right to personal; and Security of Person, Right to**).

Assembly, Freedom of: Albania 7 (art. 8); Barbados 26 (sec. 11), 30 (sec. 21); Botswana 38 (sec. 3), 42 (sec. 13); Dominican Rep. 108 (art. 8.7); Guyana 145 (art. 3), 149 (art. 13); Honduras 169 (art. 40), 170 (art. 48); Lesotho 248 (sec. 4), 245 (sec. 15); U.S.A. 389; Yugoslavia 397 (No. 49, 1966); Pacific Islands 421 (sec. 1), 425 (sec. 11); United Nations 445 (art. 21).

Assistance, Public (*see* **Social Security**).

Association, Freedom of: Albania 7 (art. 6); Barbados 26 (sec. 11), 30 (sec. 21); Bolivia 36 (secs. 1, 6); Botswana 38 (sec. 3), 42 (sec. 13); Brazil 56 (18 November 1966); Burundi 60 (23 November 1966); Cuba 93 (Act 1173); Dahomey 104 (art. 10); Dominican Rep. 108 (art. 8.7, 11), 113 (art. 104); Fed. Rep. of Germany 132 (heading 13); Guyana 145 (art. 3), 149 (art. 13); Honduras 169 (art. 13); Israel 211 (heading II.14); Lebanon 238; Lesotho 240 (sec. 4), 245 (sec. 15); Nicaragua 273 (art. 116); Pakistan 288 (paras. 4, 5), 289; South Africa 336 (27 October 1966); Spain 343 (Declaration XIII), 344 (heading III), 346 (heading VI); U.S.A. 391; Venezuela 395 (11 July 1966); Yugoslavia 397 (No. 49, 1966); Pacific Islands 421 (sec. 1), 425 (sec. 11); United Nations 438 (art. 8), 445 (art. 22); UNESCO 458 (art. 75); Status of Agreements 472 (heading II.2, 3).

Asylum, Right to seek and enjoy: Barbados 27 (sec. 13.1), 30 (sec. 22(g)); Fed. Rep. of Germany 128 (heading 8).

Authors', Inventors' and Performers' Rights, Protection of: Brazil 51 (6 April 1966); Dominican Rep. 109 (art. 8.14); Italy 217 (6 September 1952); Norway 284 (heading A.1); Yugoslavia 406 (heading VIII); Status of Agreements 473 (heading III.1), 474 (heading VI.1).

C

Censorship (*see* **Opinion and Expression, Freedom of**).

Childhood (*see* **Family, Rights relating to; and Young Persons, Protection of**).

Citizenship (*see* **Nationality, Right to**).

Conscience (*see* **Thought, Conscience and Religion, Freedom of**).

Copyright (*see* **Authors', Inventors' and Performers' Rights, Protection of**).

Correspondence, Privacy of: Dominican Rep. 108 (art. 8.9); Kenya 229 (rule 18); South Africa 338 (sec. 13); United Nations 445 (art. 17).

Cultural Life, Right to participate in (*see also* **Education, Right to**): Byelorussian S.S.R. 62, 64, 65 (24 December 1966); Dominican Rep. 109 (art. 8.15, 16), 111 (art. 37.5), 113 (art. 101); Finland 138 (heading I.3); India 180 (heading III.A); Israel 205 (heading II.4); Romania 306 (heading B.II (1), (2)), 307 (heading B.II.4-(8)); Sierra Leone 316; Tunisia 361 (5 July 1966); Ukrainian S.S.R. 368; U.S.S.R. 370; U.S.A. 392; United Nations 439 (art. 15); UNESCO 460 (4 November 1966).

D

Declaration of Human Rights (*see* **Universal Declaration of Human Rights**).

Degrading Treatment, Prevention of: Austria 23 (heading 1.(b)); Barbados 28 (sec. 15); Guyana 147 (art. 7); Lesotho 240 (sec. 4), 242 (sec. 8); Singapore 322 (para. 40); Pacific Islands 422 (sec. 5); United Nations 443 (art. 7).

Detainees, Treatment of (*see* **Treatment of Offenders and Detainees**).

Detention (*see* **Liberty, Right to personal; and Security of Person, Right to**).

Discrimination, Prevention of (*see also* **Equal Pay for Equal Work, Right to; Equality before the Law; Women, Status of**): Argentina 18 (art. 16); Australia 20 (heading I.(A)); Barbados 26 (sec. 11), 31 (sec. 23); Bolivia 36 (sec. 4); Botswana 38 (sec. 3), 43 (sec. 15); Canada 79 (anti-discrimination legislation); Chad 85; Dahomey 99 (art. 5); Dominican Rep. 110 (art. 12), 113 (art. 100); Ecuador 120 (art. 30), 121 (15 September 1966); Ethiopia 122 (art. 14); Fed. Rep. of Germany 124 (heading 2); Guyana 145 (art. 3), 149 (art. 15), 155 (art. 120); Israel 204 (heading II.2), 206 (heading II.6), 210 (heading II.12), 211 (heading II.13), 212 (heading II.15); Italy 218 (10 December 1962), 220 (4 May 1966 and 15 December 1966); Kuwait 235 (heading III); Lesotho 240 (sec. 4), 245 (sec. 17); Pakistan 288 (para. 5.(6)), 289; Singapore 320 (para. 32); South Africa 340 (5 October 1966); Pacific Islands 421 (sec. 1), 426 (sec. 13); United Nations 437 (art. 2.(2)), 442 (art. 2.(1)), 446 (art. 24); Status of Agreements 472 (heading I.9), 473 (heading II.7), 473 (heading III.3, 4).

Double Jeopardy, Application of rule against: Barbados 29 (sec. 18.(5) and (6)); Botswana 41 (sec. 10.(5) and (6)); Dominican Rep. 108 (art. 8.2.(h)); Guyana 147 (art. 10.(5)), 148 (art. 10.(6)); Lesotho 243 (sec. 12.(5), (6)); United Kingdom 386 (Armed Forces Act 1966); Pacific Islands 424 (sec. 8.(5), (6)); United Nations 445 (art. 14.7).

Duties to the Community (*see also* **Morality, Observance of; Public Health, Protection of; Public Order and Security, Observance or protection of**): Dominican Rep. 109 (art. 9); Tunisia 360 (3 June 1966); Upper Volta 394 (3 October 1966); Yugoslavia 399 (23 September 1966).

E

Education, Right to: Australia 21 (No. 17 of 1965); Barbados 29 (sec. 19.(2) and (3)); Botswana 42 (sec. 11.(2) and (3)); Byelorussian S.S.R. 62, 64, 67 (24 December 1966); Canada 77 (Training Allowance Act), 79 (Statutory school-leaving age); Ceylon 82 (Act No. 20 of 1966); Chile 86 (Act No. 16526), 87 (Supreme decree No. 428); Cyprus 95 (heading 3), 96 (heading 4); Czechoslovakia 97 (heading I.3); Denmark 106 (heading I.3); Dominican Rep. 109 (art. 8.16); Ecuador 116 (art. 56), 119 (31 May 1966); Fed. Rep. of Germany 135 (heading 18); Guyana 148 (art. 11.(2)-(3)); India 180 (heading II.M, N), 181 (heading III.K, M), 182 (heading III.S, U); Italy 218 (10 December 1962); Lesotho 244 (sec. 13.(2)); Liechtenstein 252 (22 August 1966); Nicaragua 273 (arts. 104, 105); Romania 305 (heading VI); Singapore 322 (para. 39); Thailand 352 (heading I.2), 354 (heading I.13); U.S.S.R. 370, 372, 376; U.S.A. 392; Upper Volta 394 (No. 44/PRES/DN); Venezuela 395; Yugoslavia 399 (25 November 1965), 405 (heading VII); Pacific Islands 425 (sec. 9.(2)); United Nations 439 (arts. 13, 14), 455 (5 October 1966); Status of Agreements 473 (heading III.3).

Electoral Rights (*see* Government, Rights of participation in; and Vote, Right to).

Equal Pay for Equal Work, Right to: Albania 8 (art. 34); Barbados 26 (sec. 11); Ethiopia 122 (art. 14); Italy 220 (4 May 1966 and 15 December 1966); Lebanon 237 (Unlawful gain); Status of Agreements 472 (heading II.4).

Equality before the Law (*see also* Discrimination, Prevention of): Argentina 18 (art. 16); Australia 20 (heading I.(A) and (C)); Dahomey 99 (art. 5); Dominican Rep. 108 (art. 8.5), 110 (art. 12) 113 (art. 100); Ecuador 120 (art. 30); Fed. Rep. of Germany 124 (heading 2); Guyana 145 (art. 3); Kuwait 234 (heading I); Lebanon 237; Lesotho 240 (sec. 4), 245 (sec. 17), 246 (sec. 18); Norway 286 (heading B.1); Singapore 320 (para. 33); U.S.A. 389; United Nations 437 (art. 3), 442 (art. 4), 444 (art. 14), 446 (art. 26).

Expression (*see* Opinion and Expression, Freedom of).

Expropriation (*see* Property Rights).

F

Fair Trial or Hearing, Right to (*see also* Tribunals, Access to and remedies before): Algeria 16 (heading II); Australia 22 (heading II.(B)); Barbados 27 (sec. 13.(2)), 28 (sec. 18), 29 (sec. 18.(9)), 31 (sec. 23), 35 (sec. 80); Botswana 40 (sec. 10); Cameroon 69 (12 April 1966); Ceylon 83 (heading II.4, 9, 10), 84 (heading II.12); Chile 86 (Act No. 16441); Costa Rica 91 (12 March 1966); Dahomey 100 (26 April 1966); Dominican Rep. 108 (art. 8.2.(j)), 113 (art. 109); Fed. Rep. of Germany 126 (headings 4, 5), 135 (1 July 1966); Finland 137 (heading I.1); Guyana 147 (art. 10), 148 (art. 10.(8), (9)), 152 (Chapter V); India 181 (heading III.H); Iran 185 (16 July 1966); 188 (24 September 1966); Israel 200 (heading I.J), 201 (heading I.K), 205 (heading II.3), 213 (heading II.17); Jamaica 223; Kuwait 234 (heading I); Lesotho 240 (sec. 4), 241 (sec. 6.(5)), 243 (sec. 12); Madagascar 258 (Act No. 66-022); New Zealand 271 (heading II.1, 2, 4); Nigeria 282 (2 June 1966); Norway 284 (heading A.3); Pakistan 288 (para. 2); South Africa 334 (12 February 1966), 335 (27 October 1966), 338 (sec. 19); Spain 343 (arts. 29, 31, 34); Sudan 348; Switzerland 351 (heading II.B.5); Trinidad and Tobago 358 (No. 3/1966); Uganda 364 (23 May 1966), 366 (27 July 1966); U.S.A. 389; Upper Volta 394 (14 January 1966); Zambia 407 (21 April 1966); Pacific Islands 424 (sec. 8); United Nations 444 (art. 14); Status of Agreements 474 (heading V.3).

Family, Rights relating to: Albania 12 (arts. 28, 29), 13 (art. 60); Barbados 24 (preamble); Dominican Rep. 109 (art. 8.15); Fed. Rep. of Germany 129 (heading 10); Haiti 161 (art. 10); Hungary 175 (13 March 1966), 176 (1 June 1966); Israel 199 (heading I.G), 210 (heading II.12), 211 (heading II.13); Lesotho 240 (sec. 4), 243 (sec. 11); Romania 302 (heading III); Spain 343 (art. 3); Tunisia 361 (3 June 1966); U.S.A. 390; United Nations 438 (art. 10), 445 (arts. 17, 23).

Forced Labour: Austria 23 (heading 1.(b)); Barbados 28 (sec. 14); Botswana 39 (sec. 6); Guyana 146 (art. 6.(2)); Lesotho 240 (sec. 4), 242 (sec. 9.(2)); Pakistan 288 (para. 5.(1), (2)); Sierra Leone 317 (No. 18 of 1966); Pacific Islands 422 (sec. 4); United Nations 443 (art. 8); Status of Agreements 473 (heading II.6).

G

Geneva Conventions: Status of Agreements 474 (heading VI.1).

Genocide: Argentina 18 (heading III); Israel 200 (heading I.D); Status of Agreements 471 (heading I.1).

Government, Right of participation in (*see also* Petition or Complaint, Right of; Vote, Right to): Australia 20 (heading I.(D)); Barbados 33 (secs. 35-38); Botswana 47 (secs. 34, 59, 62), 48 (sec. 63), 49 (Part 3); Dominican Rep. 107 (arts. 2-4), 110 (arts. 13, 17); Ecuador 119 (art. 53); Guyana 145 (art. 1); Israel 211 (heading II.14), 212 (heading II.15); Lesotho 248 (sec. 1), 249 (secs. 42, 44); Senegal 313 (art. 20); Spain 344 (heading B); U.S.A. 391; United Nations 446 (art. 25).

H

Health (*see* Medical Care, Right to; and Public Health, Protection of).

Holidays with Pay, Right to: Cuba 94 (Resolution 111); Liechtenstein 253 (art. 3); Luxembourg 254 (22 April 1966); UNESCO 458 (art. 94).

Home, Inviolability of the: Algeria 15 (heading I.(3)); Barbados 28 (sec. 17); Botswana 38 (sec. 3), 40 (sec. 9); Dominican Rep. 108 (art. 8.3); Guyana 145 (art. 3), 147 (art. 9); Kenya 230 (Part IV); Lesotho 240 (sec. 4), 242 (sec. 10), 243 (sec. 11); Pacific Islands 421 (sec. 1), 423 (sec. 7); United Nations 445 (art. 17).

Honour and Reputation, Right to: Austria 23 (heading 1.(d)); Barbados 24 (preamble), 30 (sec. 20); Botswana 42 (sec. 12.(2) (b)); Byelorussian S.S.R. 73 (art. 23); Dominican Rep. 108 (art. 8.6); Fed. Rep. of Germany 123 (heading 1); Guyana 149 (art. 12); Israel 202 (heading I.L); Ukrainian S.S.R. 369; United Nations 444 (art. 10), 445 (art. 17).

Housing, Right to adequate: Austria 23 (heading 1.(d)); Bulgaria 58 (heading I); Ceylon 82 (Act No. 12 of 1966), 83 (heading II.2); Dominican Rep. 109 (art. 8.17); Finland 137 (heading I.2.(b)); Haiti 158 (heading B.2), 162 (17 March 1966); India 181 (heading III.E, J, L), 182 (heading III.T); Malaysia 259 (28 April 1966); South Africa 333 (9 February 1966); Thailand 353 (heading I.4); Tokelau Islands 420.

Human Rights (General) (*see also* Universal Declaration of Human Rights): Argentina 19 (heading IV); Barbados 24 (preamble), 26 (sec. 11), 28 (sec. 17); Botswana 38 (sec. 3); Dahomey 104 (art. 10); Dominican Rep. 112 (arts. 37.8, 55.7), 113 (art. 118); France 139 (heading II.(2)); Guyana 150 (art. 16.(2)); Iraq 193 (No. (1) of 1966); Italy 217 (6 May 1963); Japan 225 (heading III); Singapore 319 (Chapter II); Spain 343 (art. 3); Sweden 349 (heading VI); Pacific Islands 427 (sec. 15); Council of Europe 462 (20 January 1966); Status of Agreements 474 (heading V.1).

I

Industry and Trade, Freedom of access to: Dominican Rep. 109 (art. 8.12); India 179 (heading II.D), 181 (heading III.C. O, P), 182 (heading III.V).

Information, Freedom of (*see Opinion and Expression, Freedom of*).

Innocence, Presumption of: Barbados 28 (sec. 18.(2)); Botswana 40 (sec. 10.(2)); Guyana 147 (art. 10.(2)); Lesotho 243 (sec. 12.(2)); Pacific Islands 424 (sec. 8.(2) *a*); United Nations 444 (art. 14.2).

L

Liberty, Right to personal (*see also Forced Labour; Movement and Residence, Freedom of; Slavery and Servitude*): Algeria 15 (heading I.(2)); Australia 22 (heading II.(A)); Barbados 26 (secs. 11, 13, 17); Botswana 38 (secs. 3, 5); Dominican Rep. 113 (art. 105); Fed. Rep. of Germany 125 (heading 3); France 140 (heading I.1), 141 (heading I.5); Guyana 147 (art. 9), 148 (arts. 10.(10) and 11.(6)); Hungary 175 (No. 21 of 1966); Kenya 226 (Part III), 230 (Part IV), 232 (regulations 22-24), 233; Kuwait 234 (heading I); Lesotho 240 (secs. 4, 6); Madagascar 255 (art. 103); Norway 286 (heading B.1); Singapore 325 (sec. 13); South Africa 339 (sec. 22); Pacific Islands 421 (secs. 1, 3); United Nations 443 (art. 9), 444 (art. 11).

Life, Right to: Austria 23 (heading 1.*b*); Barbados 26 (secs. 11, 12); Botswana 38 (secs. 3, 4); Dominican Rep. 107 (art. 8.1); Guyana 145 (arts. 3, 4); Lesotho 240 (secs. 4, 5); Pacific Islands 421 (secs. 1, 2); United Nations 443 (art. 6.1).

M

Marriage, Rights relating to (*see also Marry, Right to*): Albania 3 (arts. 5-7), 6 (art. 29); Argentina (heading III); Byelorussian S.S.R. (12 September 1966); Ceylon 83 (heading II.6, 7); Dahomey 104 (art. 10); Dominican Rep. 109 (art. 8.15.*d*), 110 (art. 12); Finland 138 (heading I.2.*d*); France 139 (heading I.(2)); Italy 220 (4 May 1966); Lesotho 245 (sec. 17.(4)*b*); South Africa 335 (12 February 1966); Tunisia 361 (3 June 1966); Status of Agreements 471 (heading I.7).

Marry, Right to: Albania 3 (arts. 5-7); Dominican Rep. 109 (art. 8.15.*c*); Haiti 161 (art. 11); Japan 225 (heading II); United Nations 438 (art. 10), 446 (art. 23).

Maternity (*see Family, Rights relating to*).

Medical Care, Right to: Australia 21 (No. 37 of 1965); Canada 77 (health programmes); Ceylon 82 (Act No. 2 of 1966); Czechoslovakia 97 (heading I); Italy 217 (14 May 1962); Kenya 228 (rule 8); Netherlands 269 (heading B.1.*b*); Pakistan 290 (heading III.1).

Minors (*see Family, Rights relating to; and Young Persons, Protection of*).

Minorities, Protection of: Ecuador 116 (art. 4), 119 (arts. 53, 54); Guyana 149 (art. 15.(6)*c*); India 183 (*Muslim Anjuman-e-Taleem*); Singapore 320 (para. 32); Pacific Islands 430 (sec. 47.(2), (3)); United Nations 446 (art. 27).

Morality, Observance of: Barbados 28 (sec. 17), 29 (sec. 18.(10)), 30 (secs. 19-22); Botswana 39 (sec. 8.(1)*a*), 42 (secs. 11-14); Byelorussian S.S.R. 75 (art. 46); Dominican Rep. 108 (art. 8.6), 109 (art. 8.15, 17); Guyana 147 (art. 9), 149 (art. 12); Italy 218 (21 March 1950); Lesotho 241 (sec. 7.(3)*a*), 244 (secs. 13.(5), 14.(2)), 245 (sec. 15.(2)); Thailand 352 (heading I.3); United Nations 444 (art. 14).

Motherhood (*see Family, Rights relating to*).

Movement and Residence, Freedom of: Argentina 19 (heading IV); Barbados 27 (sec. 13.(1)*i* and *j*), 30 (sec. 22); Botswana 38 (sec. 5.(1)*i* and *j*), 42 (sec. 14); Burundi (5 November 1966); Ceylon (Act No. 9 of 1966); Chile (Supreme decree No. 676), 87 (Supreme decrees Nos. 216 and 137); Dahomey 99 (art. 4); Dominican Rep. 108 (art. 8.4), 112 (art. 37.9), 112 (art. 55.16, 20); Fed. Rep. of Germany 128 (heading 7); Haiti 157 (heading A.1, 2); Honduras 167 (8 November 1966), 168 (1 November 1966); Israel 197 (heading I.C); Kenya 226 (Part II), 227 (regulations 13, 14), 232 (regulations 22-24), 233; Lesotho 240 (sec. 4), 241 (sec. 7); Romania 306 (heading B.II.(3)), 307 (heading B.II.(9)); Singapore 321 (para. 36), 323; Spain 346 (heading VII); Switzerland 350 (heading I.1); U.S.A. 390; Yugoslavia 397 (No. 49, 1966), 398 (heading II), 406 (heading VIII); Pacific Islands 425 (sec. 12); United Nations 444 (art. 12); Status of Agreements 474 (heading V.2).

N

Nationality, Right to: Albania 5 (art. 22), 6 (arts. 23, 24); Argentina 18 (heading III); Australia 20 (heading I.(B)); Barbados 25 (chapter II); Botswana 45 (chapter III); Dominican Rep. 110 (arts. 11-15); Ecuador 114 (art. 3); Fed. Rep. of Germany 128 (heading 9); France 140 (heading I.2); Guyana 151 (chapter III); India 183 (*Barium Chemicals Ltd.*); Lesotho 247 (chapter III); Singapore 331 (9 December 1966); Pacific Islands 432 (chapter IX); United Nations 446 (art. 24); Status of Agreements 471 (heading I.7).

O

Offenders, Treatment of (*see Treatment of Offenders*).

Opinion and Expression, Freedom of: Austria 23 (heading 3.*a* and *b*); Barbados 26 (sec. 11), 29 (sec. 18.(10)), 30 (sec. 20); Botswana 38 (sec. 3), 42 (sec. 12); Brazil 51 (6 April 1966), 55 (30 August 1966); Cameroon 72 (21 December 1966); Ceylon 82 (Act No. 37 of 1966); Dahomey 100 (12 January 1966); Dominican Rep. 108 (arts. 8.2.*f*), 6, 10); Ecuador 118 (arts. 29, 30); Fed. Rep. of Germany 130 (heading 12); Guyana 145 (art. 3), 148 (art. 10.(10)), 149 (art. 12); Haiti 157 (heading A.3); Honduras 167 (22 November 1966), 169 (art. 40), 170 (arts. 41-48); Israel 197 (heading I.A), 205 (heading II.4), 210 (heading II.11); Italy 218 (10 November 1965 and heading III), 219 (20 January 1965); Kenya 229 (rules 15, 18); Kuwait 234 (headings I, II), 235; Lebanon 237 (Press); Lesotho 240 (sec. 4), 244 (sec. 14); Madagascar 255 (16 March 1966); Malta 264; Mauritania 266 (13 July 1966); Nigeria 278 (17 January 1966); Philippines 296 (headings I, II); Romania 307 (heading B.II.(4)); Sierra Leone 316; Singapore 327, 330; South Africa 337 (sec. 7); Spain 347 (heading IX); Tunisia 361 (5 July 1966); Uganda 363 (17 February 1966); U.S.A. 390; Yugoslavia 397 (No. 49, 1966), 406 (heading VIII); Pacific Islands 421 (sec. 1), 425 (sec. 10); United Nations 444 (art. 14), 445 (arts. 19, 20); Status of Agreements 473 (heading III.2).

P

Petition or Complaint, Right of: Albania 9 (art. 58); Guyana 153 (art. 53.(2)*a*); India 180 (heading II.L); Iran 185 (30 June 1966); 190 (24 December 1966); Italy 223 (heading I.3); Japan 224 (heading I.3); Romania 303 (heading V); 304 (art. 14); Yugoslavia 309 (28 May 1966).

Press, Freedom of (*see Opinion and Expression, Freedom of*).

Privacy, Right to (*see also Correspondence, Privacy of; Home, Inviolability of the*): Algeria 15 (heading I.(3)); Austria 23 (heading 1.(d)); Barbados 26 (sec. 11); Botswana 38 (sec. 3), 40 (sec. 9); Ceylon 83 (heading II.1); Fed. Rep. of Germany 127 (heading 6); Guyana 145 (art. 3), 147 (art. 9); Lesotho 240 (sec. 4), 243 (sec. 11); Netherlands 268 (heading A.1); Switzerland 351 (heading III.A); Pacific Islands 421 (sec. 1), 423 (sec. 7); United Nations 445 (art. 17).

Property Rights: Albania 4 (arts. 8, 14, 15), 5 (arts. 16, 17); Australia 20 (heading I.(C)); Barbados 26 (sec. 11), 28 (secs. 16, 17), 30 (sec. 22.(d)); Botswana 38 (sec. 3), 39 (sec. 8); Canada 80 (28 June 1966, 5 December 1966); Ceylon 83 (heading II.3); Cuba 93 (Act 1180), 94 (Resolution 120-66); Dahomey 99 (heading A), 104 (art. 10); Dominican Rep. 109 (art. 8.13); Fed. Rep. of Germany 129 (heading 11); France 139 (heading I.(2)); Guyana 145 (art. 3), 147 (arts. 8,9); India 179 (heading II.F), 180 (heading III.D), 183 (*Union of India*); Israel 212 (heading II.16); Kenya 226 (regulation 4), 231 (Part V); Lebanon 239; Lesotho 240 (sec. 4), 242 (sec. 10), 245 (secs. 16, 17.(4)(b)); Nicaragua 273 (art. 63); Sierra Leone 318 (No. 30 of 1966); Singapore 322 (para. 41); South Africa 332 (9 February 1966), 333 (chapter IV); Tunisia 362 (26 July 1966); Pacific Islands 421 (sec. 1), 422 (sec. 6), 423 (sec. 7).

Public Amenities, Access to: Byelorussian S.S.R. 62; Lesotho 246 (sec. 17.(7)).

Public Health, Protection of (*see also Medical Care, Right to*): Barbados 27 (sec. 13.(1)(g)), 28 (sec. 17), 30 (secs. 19-22); Botswana 38 (sec. 5.(1)(g)), 39 (sec. 8.(1)(a)), 42 (secs. 11-14); Bulgaria 58 (heading II.(C)); Cuba 93 (Act 1174); Dominican Rep. 109 (art. 8.15, 17); Finland 138 (heading II.1, 2); France 142 (1 June 1966); Guyana 147 (art. 9), 148 (art. 11.(6)), 149 (art. 12); Haiti 157 (heading A.5); Hungary 176 (21 October 1966); Honduras 173 (14 November 1966); India 182 (heading III.W); Lesotho 241 (sec. 7.(3)), 242 (sec. 10.(2)(a)), 243 (sec. 11.(2)(a)), 244 (secs. 13.(5), 14.(2)), 245 (sec. 15.(2)); New Zealand 271 (heading I.1); San Marino 311 (17 February 1966); Sweden 349 (heading V); Switzerland 351 (heading III.C); Ukrainian S.S.R. 368; U.S.S.R. 371, 382; Yugoslavia 400 (heading V); Christmas Island 419; United Nations 439 (art. 12).

Public Order and Security, Observance or protection of: Barbados 27 (sec. 13.(5)), 28 (sec. 17), 30 (secs. 19-22); Botswana 39 (sec. 8.(1)(a)), 42 (secs. 11-14); Byelorussian S.S.R. 75 (art. 46); Dominican Rep. 108 (art. 8.6-10), 111 (art. 37.7), 112 (art. 37.8); Ecuador 116 (art. 55); Guyana 147 (art. 9), 148 (arts. 10.(10) and 11.(6)), 149 (art. 12), 150 (art. 16); Lesotho 241 (sec. 7.(3)(a)), 242 (sec. 10.(2)(a)), 243 (sec. 11.(2)(a)), 244 (secs. 12.(10)(b), 13.(5)(a), 14.(2)(a)), 245 (sec. 15.(2)); Nigeria 179 (11 February 1966), 280 (24 May 1966); Sierra Leone 317 (No. 17 of 1966); Thailand 352 (heading I.3); Trinidad and Tobago 357 (No. 440/65); United Kingdom 388; United Nations 442 (art. 4), 444 (art. 14).

Public Service, Right of access to (*see also Government, Right of participation in*): Algeria 17 (heading III); Australia 21 (heading I.(D)); Chile 86 (Supreme decree No. 153); Ecuador 116 (art. 57); Israel 212 (heading II.15), 213 (heading II.17); Lebanon 237; Lesotho 246 (sec. 17.(5)); Spain 344 (heading II); United Nations 446 (art. 25); UNESCO 458 (art. 80).

Punishment (*see Treatment of Offenders and Detainees*).

R

Refugees (*see also Asylum, Right to seek and enjoy*): Argentina 18 (heading III); Italy 217 (23 November 1957); United Nations 452 (16 December 1966); Status of Agreements 471 (heading I.2), 472 (heading I.13).

Religion (*see Thought, Conscience and Religion, Freedom of*).

Remuneration, Right to just and favourable (*see also Equal Pay for Equal Work, Right to*): Albania 8 (art. 34); Canada 80 (1 July 1966); Ceylon 82 (Act No. 4 of 1966); Dominican Rep. 108 (art. 8.11); India 182 (*Jalan Trading Co. Private Ltd.*); Spain 343 (Declaration III), 345 (Decree No. 2419); UNESCO 458 (art. 82), 459 (art. 114); Status of Agreements 472 (heading II.4).

Residence, Freedom of (*see Movement and Residence, Freedom of*).

Rest and Leisure, Right to (*see also Holidays with Pay, Right to*): Albania 8 (chapter IV); Chile 86 (Act No. 16581), 87 (Supreme decree No. 202); Dominican Rep. 108 (art. 8.11); Israel 199 (heading I.E); Japan 224 (heading I.1); Liechtenstein 252 (16 May 1966); Malaysia 262 (sec. 5); Switzerland 350 (heading B.6); UNESCO 458 (art. 89).

Retroactive Application of Law, Prevention of: Barbados 29 (sec. 18.(4)); Botswana 41 (sec. 10.(4)); Guyana 147 (art. 10.(4)); Lesotho 243 (sec. 12.(4)); Pacific Islands 424 (sec. 8.(4)); United Nations 445 (art. 15).

S

Security of Person, Right to: Algeria 15 (heading I.(3)); Australia 23 (heading 1.(b)); Barbados 26 (sec. 11); Botswana 38 (sec. 3), 40 (sec. 9); Dominican Rep. 107 (art. 8.2); Guyana 145 (art. 3), 146 (art. 15.(2)), 148 (art. 10.(7)); Israel 200 (heading I.H); Italy 217 (17 June 1960); Japan 224 (heading I.2); Kenya 230 (Part IV); Lesotho 242 (sec. 10); Romania 306 (heading B.I); Spain 347 (heading X); Switzerland 350 (heading II.B); Thailand 352 (heading I.1), 355 (heading II); Pacific Islands 421 (sec. 1); United Nations 443 (art. 9).

Slavery and Servitude: Argentina 18 (art. 15); Austria 23 (heading 1.(b)); Barbados 28 (sec. 14); Botswana 39 (sec. 6); Guyana 146 (art. 6.(1)); Lesotho 240 (sec. 4), 242 (sec. 9); Pacific Islands 422 (sec. 4); United Nations 443 (art. 8); Status of Agreements 471 (heading I.4, 6).

Social Insurance (*see Social Security*).

Social Security: Albania 7 (art. 4), 10 (1 January 1967), 12 (arts. 28, 29); Australia 21 (No. 41 of 1966); Bulgaria 59 (heading III.(3)(f)); Canada 76 (21 December 1966 and 1 April 1966), 77 (social assistance programmes); Chad 85 (4 May 1966); Chile 86 (Acts Nos. 16395 and 16494); Cyprus 95 (headings 1,2); Dahomey 104 (art. 10); Dominican Rep. 108 (art. 8.11), 109 (art. 8.15); Fed. Rep. of Germany 135 (heading 17); Finland 137 (heading I.2.(c)), 138 (heading I.2.(d)); France 142 (heading II.1); Hungary 175 (13 March 1966 and No. 30 of 1966); India 178 (heading II.A), 182 (heading III.Q); Ireland 194; Israel 198 (heading I.D), 199 (heading I.F); Italy 216, 217 (17 December 1962), 221 (25 January 1966); Liechtenstein 252; Netherlands 268 (heading A.2, 3), 270 (heading 2); Norway 284 (heading A.4), 285 (heading A.5, 6); Pakistan 288 (para. 2), 290; Poland 297 (headings I.2, II); 298 (heading III); Romania 300 (heading A), 307; San Marino 311 (25 November 1966); Senegal 313 (Section I); Spain 346 (headings V, VIII); Sweden 349 (headings I-IV); Switzerland 350 (headings I.2.B.3, 4 and II.A.3), 351 (heading III.B); United Kingdom 386, 387; Yugoslavia 400 (heading VI),

401; Nauru 417 (heading B); New Guinea 418 (heading D); United Nations 438 (art. 9); UNESCO 458 (art. 81), 459 (heading XI); Other Agreements 467, 469; Status of Agreements 472 (heading II.1, 5), 473 (heading II.8), 474 (heading V.5).

Speech, Freedom of (*see* Opinion and Expression, Freedom of).

Standard of Living, Right to adequate: Bolivia 36 (sec. 9); Byelorussian S.S.R. 62; Ceylon 82 (Act No. 16 of 1966); Dominican Rep. 109 (art. 8.17); Finland 137 (heading I.2.(a)); Haiti 157 (headings A.4 and B.1), 159 (17 February 1966); India 181 (heading III.I), 182 (heading III.R); Iran 184 (7 June 1966); Ivory Coast 222 (5 August 1966); New Zealand 271 (heading I.2); Panama 292; Peru 295 (27 July 1966); South Africa 332 (9 February 1966); Thailand 353 (heading I.5, 6, 9); Ukrainian S.S.R. 367; U.S.S.R. 370, 371; U.S.A. 392; Upper Volta 394 (No. 6/63/AN); Venezuela 396; United Nations 439 (art. 11); African Organization 464 (28 June 1966).

Stateless Persons: Italy 217 (6 September 1952); Status of Agreements 471 (heading I.5), 472 (heading I.8).

Strike or Lockout, Right to: Dominican Rep. 108 (art. 8.11.(d)); Ecuador 115 (art. 47); South Africa 336 (27 October 1966); Uganda 364 (23 May 1966); United Nations 438 (art. 8.1.(d)).

T

Thought, Conscience and Religion, Freedom of: Barbados 26 (sec. 11), 29 (sec. 19); Botswana 38 (sec. 3), 42 (sec. 11); Canada 81 (15 November 1966); Dominican Rep. 108 (art. 8.8), 109 (art. 8.15); Fed. Rep. of Germany 130 (heading 12); France 139 (heading II.(1)); Guyana 145 (art. 3), 148 (art. 11); Israel 204 (heading II.2), 209 (heading II.10); Kenya 228 (rule 9); Kuwait 234 (heading I); Lesotho 240 (sec. 4), 244 (sec. 13); Singapore 321 (para. 38); New Guinea 417 (No. 84 of 1966); Pacific Islands 421 (sec. 1), 425 (sec. 9); United Nations 444 (art. 14.5), 445 (art. 18).

Trade Unions (*see* Association, Freedom of).

Treatment of Offenders and Detainees (*see also* Degrading Treatment, Prevention of): Algeria 14 (heading I.(1)), 15 (heading I.(4)); Australia 22 (heading II.(A)); Barbados 27 (secs. 13.(1)(h), (4), 15, 18), 31 (sec. 22.(4)); Botswana 38 (sec. 5), 40 (sec. 10.(2) and (3)), 44 (sec. 16.(2) and (3)); Ceylon 83 (heading II.11); China 88 (heading I); Denmark 106 (heading II); Dominican Rep. 108 (art. 8.2.(a)-(g)); Ecuador 114 (art. 8); Guyana 146 (art. 5.(3)-(6)), 147 (art. 10.(2), (3)), 150 (art. 17); India 181 (heading III.F); Israel 205 (heading II.5), 206 (heading II.7), 207 (heading II.8), 209 (heading II.9); Japan 224 (heading I.5), 225 (heading III.3); Kenya 227 (Part V), 228 (Part III); Lesotho 241 (sec. 6.(2)), 243 (sec. 12.(2), (3)), 246 (sec. 18(2)); Madagascar 255 (arts. 68, 136), 256, 257; Morocco 267; New Zealand 271 (heading I.3.(a)); South Africa 337 (sec. 8), 338 (secs. 11, 12); Upper Volta 394 (12 May 1966); Zambia 410 (No. 293 of 1966), 411 (No. 283 of 1966); Pacific Islands 422 (sec. 3.(2)), 427 (sec. 14); United Nations 443 (art. 9), 444 (art. 14.3).

Tribunals, Access to and remedies before: Albania 9 (chapter IX); Algeria 16 (heading II); Australia 22 (heading II.(c)); Barbados 27 (sec. 13.(3)), 32 (sec. 24), 35 (sec. 87); Botswana 44 (sec. 18); Ceylon 82 (Act No. 25 of 1966); Chile 86 (Act No. 16437); Cuba 93 (Resolution 100); Dahomey 102 (arts. 40, 42), 103

(Section III); Honduras 172 (art. 122); Iran 185 (30 June 1966); Kenya 227 (Part IV), 232 (regulations 25, 26); Lesotho 242 (sec. 7.(4)), 246 (sec. 20); New Zealand 271 (heading I.3.(b)); Norway 286 (heading A.7); Romania 304 (art. 14); Singapore 323 (para. 44); Spain 345, 346 (heading VI); Sudan 348; United Kingdom 386 (Criminal Appeal Act 1966); United Nations 442 (art. 3.(a)); UNESCO 458 (art. 84).

U

Universal Declaration of Human Rights: Argentina 18 (headings I, II); Kuwait 234 (heading I); Morocco 267; Pakistan 288 (para. 1); Venezuela 395; United Nations 437 (preamble), 442 (preamble).

V

Vote, Right to: Australia 20 (heading I.(D)); Barbados 34 (secs. 41-44); Botswana 47 (secs. 34, 59, 62), 48 (sec. 68); Brazil 52 (4 May 1966); Cameroon 73 (art. 26); Dahomey 104 (art. 10); Denmark 106 (heading I.1, 2); Dominican Rep. 110 (arts. 13, 17), 111 (arts. 21, 22, 24, 25), 112 (arts. 49, 88); Ecuador 114 (art. 4), 115 (arts. 13-16), 116 (7 March 1966), 120 (11 August 1966 and 26 July 1966), 121 (26 July 1966); Fed. Rep. of Germany 132 (heading 14); Guyana 154 (arts. 58-60), 155 (arts. 65, 66), 156 (art. 30); Haiti 158 (heading B.4), 164 (22 October 1966); Iran 185 (4 July 1966); Israel 197 (heading I.B), 211 (heading II.14); Lesotho 249 (secs. 42-44); Nicaragua 274 (arts. 155, 181), 275 (art. 310), 276 (art. 2); Norway 284 (heading A.3); Romania 302 (heading IV); Singapore 329 (art. 2); South Africa 339 (27 September 1966); Spain 343 (14 December 1966), 344 (heading B); U.S.A. 389; New Guinea 417 (No. 84 of 1966); The Northern Territory 419; Pacific Islands 429 (chapter IV), 430 (sec. 48); United Nations (art. 25).

W

Wages (*see* Remuneration, Right to just and favourable).

Women, Status of (*see also* Equal Pay for Equal Work, Right to): Albania 8 (arts. 23, 24, 32), 9 (art. 46), 10 (art. 7), 11 (art. 8); Argentina 18 (heading III); Australia 20 (No. 28 of 1965, No. 85 of 1966, No. 86 of 1966 and No. 61 of 1965); Barbados 26 (sec. 3); Botswana 45 (sec. 23.(3), (4)), 46 (sec. 26); Canada 79 (maternity protection), 80 (women's affairs); Ceylon 82 (Acts Nos. 1 and 5 of 1966); Chad 85; Chile 86 (Acts Nos. 16434 and 16494); Dominican Rep. 109 (art. 8.15), 110 (art. 11.4); Ecuador 117 (art. 8); Ethiopia 122 (art. 14); Finland 138 (heading I.2.(d)); France 139 (heading I.(2)); Guyana 151 (art. 22), 152 (art. 25); Hungary 175 (13 March 1966), 176 (21 October 1966); Israel 197 (heading I.C), 210 (heading II.12), 211 (heading II.13); Italy 220 (4 May 1966); Japan 225 (heading II); Lesotho 247 (sec. 24), 248 (secs. 27, 28.(4)); Liechtenstein 251 (heading B); Netherlands 270 (heading I); Romania 301 (heading II); Senegal 313 (art. 20); South Africa 335 (12 February 1966), 340 (sec. 12); Spain 344 (heading II); Sweden 349 (heading IV); Tunisia 360 (30 April 1966); U.S.S.R. 381; United Kingdom 386 (*Nagle v. Feilden*); Upper Volta 394 (11 March 1966); United Nations 437 (art. 3), 446 (art. 23); UNESCO 459 (arts. 101-103); Status of Agreements 471 (heading I.3).

Work, Conditions of (*see also* Remuneration, Right to just and favourable; Rest and Leisure, Right to): Albania 7 (12 September 1966); Australia 21 (No. 7 of 1966); Bulgaria 58 (headings II, III); Burundi 60 (2 June 1966); Byelorussian S.S.R. 68 (7 October 1966); Canada 77 (occupational safety); Chad 85; Chile 86 (Act No. 16455); Colombia 90 (20 April 1966); Ecuador 121 (18 October 1966); Ethiopia 122 (6 May 1966); Fed. Rep. of Germany 134 (heading 16); France 142 (heading II.2); Gambia 144 (28 October 1966); India 179 (heading II.H), 180 (heading III.B), 181 (heading III.G); Israel 199 (heading I.E); Italy 215 (15 July 1966); Netherlands 268 (heading B.1); Pakistan 288 (para. 3); Spain 344 (heading IV); Switzerland 350 (heading B.1, 2, 5, 7); Thailand 353 (heading I.8); Tunisia 360 (30 April 1966); U.S.S.R. 381; U.S.A. 391; Nauru 417 (heading A); New Guinea 418 (heading C); United Nations 438 (art. 17); UNESCO 458 (art. 82); Status of Agreements 472 (heading II.3), 473 (heading II.9).

Work, Right to and to free choice of: Burundi 60 (2 June 1966); Ceylon 82 (Act No. 26 of 1966); Cuba 93 (Resolution 92); Dahomey 104 (art. 10); Dominican Rep. 108 (art. 8.11); Fed. Rep. of Germany 133 (heading 15); Honduras 168 (1 November 1966); Hungary 176 (21 October 1966); Israel 203 (heading II.1); Italy 219 (decision No. 63); Japan 224 (heading I.4); Kenya 228 (rule 7); Kuwait 235 (heading III); Norway 286 (heading B.2); Poland 297 (heading I.1); Spain 343 (Declaration III); Switzerland 351 (heading III.D); Ukrainian S.S.R. 367; United Kingdom 386 (*Nagle v. Feilden*); Yugoslavia 400 (heading IV).

Y

Young Persons, Protection of (*see also* Family, Rights relating to): Albania 4 (arts. 9, 10), 8 (arts. 18, 23, 24, 28), 9 (arts. 35, 46), 12 (art. 29); Australia 21 (Nos. 42 and 79 of 1965); Barbados 26 (sec. 10.(2)), 27 (sec. 13.(1)(f) and (2)), 29 (sec. 18.(10)), 30 (sec. 19.(4)); Botswana 38 (sec. 5.(1)(f)), 45 (secs. 20-24), 47 (sec. 30); Brazil 55 (30 August 1966), 56 (20 October 1966); Canada 78 (child welfare programmes), 80 (youth); Chile 86 (Act No. 16434); Dominican Rep. 109 (art. 8.15), 110 (art. 11.1, 3); Finland 138 (heading I.2.(d)); France 139 (heading I.(1), (3)), 140 (heading I.3), 141 (heading I.4); Guyana 148 (art. 10.(10)), 151 (art. 21), 152 (arts. 23, 24); Haiti 158 (heading B.3), 160 (25 February 1966); Honduras 168 (4 November 1966); Hungary 175 (Act III of 1966); India 178 (heading II.B), 180 (heading II.L); Iran 188 (15 November 1966); Israel 197 (heading I.C); Lesotho 245 (sec. 17.(4)(b)), 247 (secs. 23, 25), 248 (sec. 26); Liechtenstein 251 (heading A), 253 (art. 2.3); Malaysia 261 (28 April 1966); Netherlands 269 (heading B.1.(b)); New Zealand 271 (heading II.3), 272 (heading II.6); Norway 285 (heading A.6); Romania 301 (heading II); Singapore 331 (art. 2); South Africa 335 (12 February 1966), 338 (sec. 16); Switzerland 351 (heading III.C.1); Thailand 353 (heading I.7); Tunisia 360 (30 April 1966), 361 (3 June 1966); U.S.S.R. 381; Upper Volta 394 (No. 44/PRES/DN); Yugoslavia 404 (art. 62 (2)); Zambia 413 (Part XVIII); New Guinea 418 (heading D); Tokelau Islands 420; Pacific Islands 432 (chapter IX); United Nations 438 (art. 10), 439 (art. 12), 444 (arts. 10, 14.4), 446 (art. 24).