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* * *

ABBREVIATIONS

IAEA	International Atomic Energy Agency
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization

YEARBOOK ON HUMAN RIGHTS
FOR 1975-1976

INTRODUCTION

The *Yearbook on Human Rights for 1975-1976* has been prepared on the same basis as that for 1973-1974, in accordance with the directives laid down in Economic and Social Council resolution 1973 (LIV) of 18 May 1973. Part I concerns national developments; part II contains information relating to Trust and Non-Self-Governing Territories; part III covers international developments.

Part I contains concise accounts in narrative form of legislative and other national developments during the period 1975-1976.

The following 55 States contributed to the present *Yearbook*: Afghanistan; Australia; Austria; Barbados; Belgium; Bulgaria; Burma; Byelorussian Soviet Socialist Republic; Canada; Cape Verde; Cyprus; Czechoslovakia; Democratic Yemen; Denmark; Finland; France; Gambia; German Democratic Republic; Germany, Federal Republic of; Guyana; Hungary; India; Iran; Iraq; Ireland; Israel; Italy; Jamaica; Japan; Lao People's Democratic Republic; Libyan Arab Republic; Luxembourg; Madagascar; Mauritius; Netherlands; New Zealand; Norway; Panama; Papua New Guinea; Philippines; Poland; Portugal; Republic of Korea; Romania; Seychelles; Singapore; Spain; Suriname; Sweden; Thailand; Turkey; Ukrainian Soviet Socialist Republic; United Kingdom of Great Britain and Northern Ireland; United States of America; Venezuela.

The following four Governments reported that no new developments for treatment in the *Yearbook* had occurred during the period under review: Botswana, Kenya, Nauru, Tonga.

The material has been arranged under subject headings related to the pertinent articles of the Universal Declaration of Human Rights, and an effort has been made to present the contributions of the different countries in as consistent a manner as possible. In accordance with the decision of the Economic and Social Council in paragraph 4 (b) of resolution 1793 (LIV), texts of constitutions, laws or court decisions are not reproduced.

New constitutions were adopted in Afghanistan, Madagascar, Papua New Guinea, Portugal, Seychelles, Suriname and Thailand. Relevant provisions of these constitutions, which reiterate many of the rights set forth in the Universal Declaration, are described briefly under headings related to specific articles of the Declaration, as are a number of constitutional amendments and revisions adopted in other countries during the period.

A great deal of legislation affecting the enjoyment of the rights and freedoms set forth in the Universal Declaration was adopted, the subjects including: social questions, with particular reference to the improvement of pensions and benefits and assistance to mothers and children and the handicapped; education; the administration of justice; protection of employment and improvement of working conditions; protection against arbitrary interference with privacy; and improvement of the status of women. Some Governments sent information concerning decisions handed down by the courts on cases of alleged infringements of human rights and fundamental freedoms, and many reported that international human rights instruments had entered into force in their domestic law.

Part II of the *Yearbook* contains information relating to the exercise, in certain Trust and Non-Self-Governing Territories, of the right of peoples to self-determination.

One of the most notable developments in the international field was the entry into force of the International Covenants on Human Rights and of the Optional Protocol to the International Covenant on Civil and Political Rights. This is dealt with in part III, which contains a brief account of United Nations activities in the field of human rights and information, in tabular form, on the status of certain international agreements relating to human rights.

The designations employed and the presentation of the material in this publication 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, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

PART I

NATIONAL DEVELOPMENTS

AFGHANISTAN

Introduction

A new Constitution for the Republic of Afghanistan was drafted during 1976.¹ Chapter four of this Constitution is devoted to human rights and contains many of the basic principles proclaimed in the Universal Declaration of Human Rights. Some of the provisions of the Constitution are described briefly below under headings related to specific articles of the Universal Declaration.

A. Non-discrimination

(article 2 of the Universal Declaration)

All the people of Afghanistan, both women and men, without discrimination or privilege, have equal rights and obligations before the law (Constitution, art. 27).

B. Right to liberty

(article 3 of the Universal Declaration)

According to article 28 of the Constitution, liberty is the natural right of human beings, unless it is detrimental to the liberty and dignity of others, or is contrary to the benefit and security of the public and the national interest. The right is to be regulated by law.

C. Prohibition of forced labour

(article 4 of the Universal Declaration)

The imposition of forced labour is not permissible, even for the State. The prohibition of forced labour shall not bar the application of the laws that are to be promulgated for the regulation of collective activity in the public interest (Constitution, art. 43).

D. Prohibition of torture and inhuman or degrading punishment; right not to be subjected to arbitrary arrest, detention or exile

(articles 5 and 9 of the Universal Declaration)

The prohibition of torture and punishment incompatible with human dignity is laid down in article 31 of the Constitution, which also stipulates that crime is a personal deed and that the pursuit, arrest or detention of an accused person, or the execution of a sentence against him, shall not affect any other person.

Article 32 states that the method and means of recovering debts shall be regulated by law and that the indebtedness of one person to another cannot cause the deprivation or limitation of the liberty of the debtor.

Article 30 stipulates that no one shall be pursued, arrested or detained, except in accordance with the provisions of the law.

Article 34 states that no Afghan shall be sentenced to exile.

E. Right to a fair trial; non-retroactivity of criminal law

(articles 10 and 11 of the Universal Declaration)

In accordance with article 30 of the Constitution, the accused is recognized to be innocent unless found guilty by a final judgement of a competent court. Furthermore, no deed

¹ The Constitution was promulgated by the Grand Assembly on 24 February 1977.

shall be considered a crime except by virtue of the law; no one shall be punished except by the judgement of a competent court; and no one shall be punished except under the provisions of a law in force prior to the commission of the act with which the accused is charged.

Article 31 stipulates that every person has the right to appoint defence counsel for the defence of a charge brought against him.

F. Protection against arbitrary interference with privacy
(*article 12 of the Universal Declaration*)

According to article 35 of the Constitution, a residence is inviolable. No one may enter or search a person's residence without his permission or a warrant of a competent court, except in the circumstances and according to the procedures specified by law. In the case of a witnessed crime, the responsible official may on his own responsibility enter or search a person's residence without his permission or the prior permission of a court. However, after such entry or search, the official is bound to obtain the order of the court within the time the law determines.

Article 37 proclaims that freedom and secrecy of communications between persons, whether in written form or by telephone, telegraph or other means, are inviolable. The State does not have the right to interfere with communications, except by virtue of the provisions of the law. In urgent cases which shall be defined by law, the responsible official, without prior permission of the court, may interfere with communications on his own responsibility. However, he is then bound to obtain the order of the court within a time-limit determined by law.

G. Freedom of movement and residence
(*article 13 of the Universal Declaration*)

In accordance with article 33 of the Constitution, every Afghan has the right to travel and settle anywhere within the territory of his country, except in areas prohibited by law. Every Afghan also has the right to travel abroad and return to his homeland in accordance with the provisions of the law.

Article 34 specifies that no person shall be given a sentence that forbids him from residing at a given place, or from moving therefrom, except in circumstances permitted by law for ensuring public security and the public interest.

H. Right to own property; right not to be arbitrarily deprived of one's property
(*article 17 of the Universal Declaration*)

Article 36 of the Constitution guarantees the right to own property. No person's property may be confiscated except by decision of a competent court and in accordance with the law. The expropriation of private property is permitted only by virtue of the law for the purpose of ensuring the interests of the public and in exchange for just compensation. No person may be prohibited from acquiring property and exercising the right of ownership therein, except as provided by law. The ways of utilizing property are to be regulated and guided by the law for the purpose of ensuring the interests of the public.

I. Freedom of thought; freedom of expression
(*articles 18 and 19 of the Universal Declaration*)

Article 38 of the Constitution lays down that freedom of thought and expression is inviolable. Every Afghan has the right to express his thought through speech, writing, pictures, or similar means, in accordance with the provisions of the law. The right to establish printing houses and to issue publications is reserved to citizens of Afghanistan, in

accordance with the provisions of the law. The establishment of large printing houses and the establishment and operation of public radio and television transmitters are the exclusive right of the State.

J. Freedom of peaceful assembly
(*article 20 of the Universal Declaration*)

In accordance with article 39 of the Constitution, citizens of Afghanistan have the right to assemble, without carrying weapons, for the purpose of securing permissible and peaceful objectives, in accordance with the provisions of the law.

K. Right to take part in government
(*article 21 of the Universal Declaration*)

Every Afghan who attains the age of 18 has the right to vote in accordance with the provisions of the law (Constitution, art. 29).

AUSTRALIA

Introduction

During the period covered by this report, legislation was introduced in Australia dealing specifically with a number of matters of importance in relation to the maintenance of human rights.

The main principles that have emerged in the development of these measures at the federal level are as follows:

(a) Comprehensive legislation is required to supplement common law guarantees of human rights;

(b) Comprehensive remedies need to be developed for the enforcement of human rights;

(c) Formal administrative machinery needs to be established to investigate infringements of human rights and attempt to achieve a settlement of issues by conciliation; and

(d) Facilities need to be established to foster programmes of education and research and other programmes on a systematic basis to promote human rights.

In relation to the first principle, there has been a recognition of the fact that legislation can deal with specific problems relating to human rights with a particularity and comprehensiveness that could not be achieved by means of judicial interpretation of general guarantees. Moreover, the embodiment of rights comprehensively in legislative form has an important educative value; it can make people more aware of their rights and make infringements of rights more obvious and conspicuous. Secondly, importance has been placed on the utilization of a comprehensive framework of practical and effective remedies. Legislative guarantees (apart from their use as an educative mechanism) are of little value unless they can be given practical expression. Thirdly, the view has been taken that it is not sufficient to rely merely on legal remedies and judicial review as a means of enforcement. It is considered that administrative machinery should be established to investigate infringements of rights on a systematic basis. Moreover, it is thought that the utilization of processes of mediation and conciliation is often a more satisfactory way of tackling individual infringements of human rights than reliance on legal processes. The fourth principle relates to the important role to be played by programmes of education and research and other programmes to promote human rights. The importance of programmes designed to change community attitudes that result in the denial of rights and the need for a long-term approach to supplement action on individual complaints have thus been recognized.

Australia ratified the International Covenant on Economic, Social and Cultural Rights on 10 December 1975. Australia also has under consideration measures relating to the implementation of the International Covenant on Civil and Political Rights. At the end of 1976, the Australian Government announced its intention to establish a Human Rights Commission to ensure that laws, acts and practices conform with the Covenant and to give individuals a specific right to complain to the Commission about alleged infringements of the Covenant.

The Queensland State Parliament has established by statute a Treaties Commission with functions to examine the implications for Queensland of international treaties and conventions, to report to the Queensland Parliament on legislation to implement such treaties and conventions, and to advise the Queensland Government on related matters. The Committee presented its first report, which was of a general nature, on 1 December 1976.

In 1976 the Parliament of the State of Western Australia enacted the Legislative Review and Advisory Committee Act. The Committee established by this Act is empowered to examine and report on whether any statutory regulations in that state trespass unduly on personal liberties or unduly make rights dependent upon administrative

rather than judicial decisions. The Committee is also given similar powers, upon request by the Parliament, to examine and report on state enactments and proposals for future legislation.

Another development in Australia of importance in relation to the maintenance of human rights has been the establishment by federal legislation of a Law Reform Commission, which commenced operation on 1 January 1975. The legislation establishing the Commission provides that, in the performance of its functions, the Commission is to review laws to which the legislation applies; and consider proposals, with a view to ensuring: (a) that such laws and proposals do not trespass unduly on personal rights and liberties and do not unduly make the rights and liberties of citizens dependent upon administrative rather than judicial decisions; and (b) that, as far as practicable, such laws and proposals are consistent with the articles of the International Covenant on Civil and Political Rights. The Law Reform Commission established by this legislation and the law reform commissions established in the Australian states have had under consideration a number of references that have significant implications for the maintenance of human rights.

Particulars of other legislation and developments that have had implications for the maintenance of human rights in Australia during 1975 and 1976 are set out below under headings related to specific articles of the Universal Declaration of Human Rights.

A. Non-discrimination

(article 2 of the Universal Declaration)

I. ELIMINATION OF DISCRIMINATION ON GROUNDS OF RACE

Australia ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 30 September 1975. Before the International Convention was ratified by Australia, legislation was introduced in the Federal Parliament of Australia, called the Racial Discrimination Act 1975,¹ to proscribe acts of racial discrimination.

The Act makes it unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. This provision has a wide application to forms and manifestations of racial discrimination and is based on the definition of racial discrimination in the International Convention. The Racial Discrimination Act also contains a wide provision guaranteeing equality before the law in the enjoyment of rights without discrimination based on race, colour or national or ethnic origin. In addition, there are other provisions in the Act relating to employment, accommodation, access to places and facilities, the provision of goods and services, the right to join trade unions, and discriminatory advertisements.

The remedies provided by the Act include those of an injunction restraining the doing of discriminatory acts, an order requiring acts of a remedial nature to be done, an order cancelling a contract, and damages in respect of the loss suffered by an aggrieved person and the loss of dignity, the humiliation and the injury to the feelings of an aggrieved person.

The Act recognizes the value of mediation and conciliation in tackling individual instances of racial discrimination and the tensions that are associated with individual disputes. The Act therefore establishes a Commissioner as an independent statutory authority to investigate complaints and attempt to achieve a settlement by conciliation. The Act also makes specific provision for the development of programmes to promote an understanding and acceptance of the Act and for the development of programmes of education and research and other programmes to combat racial discrimination.

The Racial Discrimination Act of Australia also embodies a number of technical provisions that are of importance in dealing effectively with racial discrimination. The Act avoids

¹ No. 52 of 1975 (*Gazette*, 1975, No. 221).

provisions that would hamper the Commissioner in his role as independent conciliator, such as those requiring him to form an opinion as to the legal issues before embarking on the conciliation process. The Act gives the Commissioner power to act on his own initiative. He does not have to wait until a complaint of a breach of the Act is made to him. The Act applies specifically to discrimination on the ground that a person is an immigrant, in the circumstances outlined in the legislation. The Act allows positive orders to be made, as well as injunctions, and permits damages to be obtained for the distress caused by humiliation. In addition, the Act makes it an offence to intimidate a person or dismiss him from employment because he seeks a remedy under the Act.

In addition to the legislation referred to above, the Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act was passed by the Federal Parliament in 1975 and a Racial Discrimination Act was passed by the South Australian Parliament in 1976.

An Australian Ethnic Affairs Council has been established to advise the Federal Minister for Immigration and Ethnic Affairs on all aspects of ethnic community affairs in Australia. The terms of reference of the Council include the promotion and development of harmonious relations within the Australian community and the fostering of understanding of migrant cultures. The Council will also assist in the provision of material relating to the observance and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

The Ethnic Affairs Commission Act 1976 of New South Wales established the Ethnic Affairs Commission, whose main function is to investigate and report on what legislative, administrative or other action is necessary and practicable to promote the integration of different ethnic groups within that state.

2. ELIMINATION OF DISCRIMINATION ON GROUNDS OF SEX

The Sex Discrimination Act 1975 of South Australia has been enacted to render certain acts unlawful where discrimination on the grounds of sex or marital status occurs. The areas covered include employment, education and the provision of goods, facilities and services. The Act establishes a Commissioner for Equal Opportunity and a Sex Discrimination Board. The Commissioner's main role is one of conciliation; if this is unsuccessful, the matter is referred to the Board, which has the power to grant an injunction, award damages, including damages for injury to feelings, or order specific redress for previous discriminatory acts. There is a right of appeal to a court from a decision of the Board.

3. COMMITTEES ON DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

Committees on discrimination in employment and occupation have been established in Australia at the national and state levels. The state committees have a tripartite structure and include representatives appointed from federal and state labour departments and worker and employer organizations. The National Committee, while having substantially the same structure, except for state government representation, includes three additional representatives with special knowledge of employment problems encountered by women, Aborigines and migrants. The main functions of the state committees are to investigate complaints of discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, made to them by individuals or groups and, where discrimination is found to exist, to resolve the complaints by conciliation. The National Committee considers complaints referred to it by the various state committees if they involve policy matters in relation to federal employment or if the state committees have been unable to resolve them. If the National Committee is also unable to resolve a complaint, a report on the matter may be tabled in the Australian Parliament by the Minister for Employment and Industrial Relations. The National Committee is also responsible for advising the Federal Government on national policy and for the development of a national education and publicity campaign to influence community attitudes, to eliminate discriminatory practices and to promote equality of opportunity in employment and occupation.

B. Right to life

(article 3 of the Universal Declaration)

The State of South Australia abolished capital punishment by the Statutes Amendment (Capital Punishment Abolition) Act 1976.

The death penalty for the crimes of murder and treason was abolished in the State of Victoria by the Crimes (Capital Offences) Act 1975.

C. Equality before the law

(article 7 of the Universal Declaration)

The Australian Legal Aid Office established in 1973 by the then Attorney-General continued to operate in 1975 and 1976. The Office provides legal advice and assistance on all matters of federal law, including family law, for everyone in need, and on matters of both federal and state law to persons for whom the Commonwealth Government has a special responsibility, for example, pensioners, ex-servicemen and newcomers to Australia. By the end of 1975 the Australian Legal Aid Office had, in addition to offices in the capital cities, opened a total of 25 regional offices. The emphasis was on the establishment of "store-front" offices.

The policy of the Federal Government is to rationalize legal aid throughout Australia by means of a comprehensive scheme under which legal aid, other than Aboriginal legal aid, would be provided in each state and territory through a single Commission that would absorb the Australian Legal Aid Office and state and territory law society schemes.

The Aboriginal and Torres Strait Islanders Legal Service continued to operate during this period. The Service was established by the Federal Government specifically to provide legal advice and assistance to Aboriginals or Torres Strait Islanders regarding civil and criminal matters. A notification system, under which police inform the Service of matters involving Aboriginals, has been implemented in the States of Victoria, South Australia and the Northern Territory. The Service operates independently of the Australian Legal Aid Office.

D. Right to an effective remedy

(article 8 of the Universal Declaration)

During the period covered by this report, a number of reforms have been introduced by legislation of the Federal Parliament that will give in the federal area a system of administrative law that is highly attuned to the protection of individual rights. An Administrative Appeals Tribunal has been established to give a right of appeal against specified administrative decisions. An Administrative Review Council has been established that will review administrative laws and procedures at the federal level and ensure that administrative procedures provide proper protection for the rights of individuals. Legislation establishing a Commonwealth Ombudsman has been enacted. The Ombudsman is empowered to investigate the grievances of members of the public about administrative actions of officials of federal departments and statutory authorities. In addition, the preparation was commenced of legislation to simplify procedures for judicial review of administrative decisions and actions by federal ministers and officials and to require full reasons for a decision to be given by federal ministers and officials where the reasons are requested by a person whose interests are adversely affected by the decision.

The Parliament of New South Wales passed the Ombudsman (Amendment) Act 1976 to extend the power of its Ombudsman to enable him to investigate certain actions of local government bodies.

E. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

The Law Reform Commission established under federal legislation issued comprehensive reports with respect to complaints against the police and criminal investigation depart-

ments and the implementation of these reports is under consideration by the Federal Government.

F. Right to privacy; protection of reputation

(article 12 of the Universal Declaration)

In 1975, the Parliament of New South Wales passed the Privacy Committee Act, which established an independent committee to receive and investigate complaints concerning privacy, to conduct research on the subject and to suggest any necessary reforms to the government of that state.

In April 1976, the Law Reform Commission established under federal legislation was given a reference for a major review of the laws to protect privacy. Later in the year, the Commission was given a reference on a related topic, laws of defamation.

G. Marriage law; protection of the family

(article 16 of the Universal Declaration)

The "Family Court of Australia" was established by the Family Law Act 1975² of the Federal Parliament, which applies throughout Australia. The legislation was designed to eliminate the high cost, delays and indignities experienced by parties under the previous divorce legislation. In this regard, the Act removed the element of matrimonial fault from divorce proceedings and established one ground of divorce based on irretrievable breakdown of marriage provable by 12 months' separation. The legislation makes no distinction between husband and wife concerning maintenance, property and custody of children. In relation to custody, the paramount consideration is the welfare of the child. The Act also provides for the establishment of a counselling service to provide help, encouragement and counselling to parties with matrimonial problems, with due regard being given to human problems and not merely to legal rights. The procedures relating to divorce and ancillary matters have also been streamlined.

In proceedings under the Act, the courts are required to have regard to:

- (a) The need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- (b) The need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- (c) The need to protect the rights of children and to promote their welfare; and
- (d) The means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage.

H. Right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

The Parliament of New South Wales passed the Cattle Compensation (Amendment) Act 1976 to provide for compensation to be paid by the government of that state to owners of cattle destroyed because of disease.

In Victoria, the Lands Compensation (Amendment) Act 1976 increased from \$A 35,000 to \$A 75,000 the amount that may be paid by way of compulsory loans to dispossessed home-owners.

In the Supreme Court of South Australia it was decided that legislation for compulsory acquisition of property must be strictly construed, and that if two constructions were fairly open, that which favours the citizen must be adopted.³

² No. 53 of 1975. (Gazette, 1975, No. G 35).

³ *Palais Parking Station Pty. Ltd. v. Shea* (1976) 13 S.A.S.R.

I. Freedom of thought, conscience and religion

(article 18 of the Universal Declaration)

In 1975 the State of South Australia proclaimed the Scientology (Prohibition) Act 1968 Repeal Act 1973-1974 to remove bans on the practice of scientology.

J. Right to social security; right to an adequate standard of living

(articles 22 and 25 of the Universal Declaration)

In 1976 the Federal Parliament enacted the Aboriginal Land Rights (Northern Territory) Act 1976, which provides for Aboriginals to have inalienable freehold title to land on reserves in the Northern Territory and for machinery to enable consideration of Aboriginal claims to land outside reserves in that territory.

Also in that year the Federal Parliament passed the Aboriginal Councils and Associations Act 1976 to provide a simple, uniform and flexible means of incorporation for Aboriginal bodies throughout Australia.

During 1975 and 1976, the Federal Parliament passed a number of amendments to the Social Services Act to improve the pensions, benefits and allowances available under that legislation. The most significant amendments were:

- (a) Periodic increases in pension and benefit rates;
- (b) Provisions made for automatic adjustment of most pensions and benefits on a six-monthly basis in line with increases in the cost of living;
- (c) Abolition of the means test on age pensions for persons over 70 years of age;
- (d) A significant increase in family allowances (previously called child endowment).

Also in 1976 the Federal Parliament amended the Compensation (Commonwealth Government Employees) Act and the Seamen's Compensation Act to increase the rates of compensation and lump-sum payments under those enactments.

K. Right to education

(article 26 of the Universal Declaration)

Primary and secondary education continues to be free in government schools in all states and territories.

The Federal Parliament has continued to provide funds during the period for post-secondary education. In consequence, education at universities, colleges of advanced education and technical and further education institutions has been free since 1974. In addition, schemes of student allowances were reviewed in the light of increasing costs and other factors and since 1975 means-tested allowances have been made available to full-time matriculation students over 19 years of age in certain cases. Special schemes of allowances were also provided for Aboriginals, handicapped children and rural and isolated children.

During 1975 most state education departments undertook initiatives as part of International Women's Year to assist schools to counteract sexual bias. The Australian Schools Commission produced a report entitled *Girls, School and Society*.

Special educational provisions introduced by the Federal Government for Aboriginals and Torres Strait Islanders include non-competitive student allowances at secondary and post-school level; residential hostels in selected urban areas; special educational programmes, including remedial bicultural and bilingual-bicultural programmes; special provisions for the training and employment of Aboriginal teachers and teacher-aides; and an increase in the number of bilingual schools in the Northern Territory from 12 to 21.

During 1975 and 1976, with the assistance of federal funds from the Schools Commission's Special Education Program, nearly all States have initiated special programmes to assist handicapped students and to upgrade the number of specialist teachers and support staff and the level of special materials and equipment. In 1976, the Commission announced the extension of the programme to children in institutions.

The Schools Commission's Disadvantaged Schools Program, initiated by the Federal Government in 1974, provides additional funds to schools in areas which are relatively deprived socially and economically. During 1975 and 1976 approximately 13 per cent of Australian children attended schools receiving support under the programme. In 1976 the programme was extended to meet the particular needs of children in rural and isolated areas. Several state education authorities also extended correspondence programmes to children at upper secondary and pre-school level.

L. Right to protection of interests resulting from literary or artistic production

(article 27 of the Universal Declaration)

The Federal Government established in 1975 a working party to consider proposals to protect Aboriginal folklore from commercial and other exploitation. The working party is continuing its deliberations with input from appropriate Aboriginal organizations.

In 1976 the Copyright Law Committee on Reprographic Reproduction reported on necessary changes to the Australian Copyright Act in the light of rapid advances in the use and availability of photocopy machines and other means of reprographic reproduction. The implementation of the report is under consideration by the Federal Government.

AUSTRIA

A. Non-discrimination; protection of ethnic groups

(articles 2, 7 and 27 of the Universal Declaration)

The Act on Ethnic Groups of 7 July 1976¹ has the following main objectives. First, it has established basic rules (set forth in part III of the Act) for the provision, where warranted, of special assistance to ethnic groups designed to ensure their continued existence and the preservation of their national characteristics. A second objective of the Act is to provide the members of ethnic groups with a body which will defend their legitimate interests. To this end, it has envisaged the establishment of Ethnic Groups Advisory Boards (*Volksgruppenbeiräte*) to advise the Federal Government, and the provincial governments if they so request, on the method of organizing the assistance to ethnic groups. In appointing the members of the Ethnic Groups Advisory Boards, the Federal Government must take into account the predominant political and philosophical opinions in the ethnic group concerned (art. 4, para. 1). It may, however, be necessary to compromise in order to achieve a representative and democratically constituted membership of the Ethnic Groups Advisory Boards, because the principle that nobody shall be obliged to disclose the fact that he belongs to an ethnic group has been laid down. For this reason, and in order to stress the democratic aspect, members of elected bodies are included in the membership of the Boards, as are persons nominated by churches or religious societies and those nominated by associations representative of the ethnic group concerned; the latter must constitute half the membership of the Board.

Rules concerning the affixing in specified areas of bilingual topographical terminology and inscriptions and the admission of the ethnic groups' languages as official languages in addition to German have been laid down in the Act.

Furthermore, the Act has made provision for avoiding any discrimination. Neither exercise nor non-exercise of the rights enjoyed by individuals in their capacity as members of an ethnic group shall be prejudicial to anyone. Consequently, it is within the discretion of members of ethnic groups whether or not they exercise their legal rights as such (art. 1, para. 3). Moreover, nobody is obliged to declare that he belongs to an ethnic group. Any such declaration is voluntary.

B. Right to liberty; right not to be subjected to arbitrary arrest or detention; right to compensation

(articles 3, 9 and 10 of the Universal Declaration)

An important decision was rendered by the Supreme Court on 18 June 1975.² It provides that paragraph 5 of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) shall be deemed to be an immediately applicable law, granting to everyone arrested or detained in contravention of the law an enforceable right to compensation in respect of the damage suffered, including *symbolische Schaden* (non-material damage).

The Supreme Court stated that, in contrast to most international agreements, which usually imposed on the contracting parties only the obligation to enact corresponding domestic laws or otherwise to comply with them, the European Convention contained provisions, such as paragraph 1 of article 25, that granted to individuals rights that were immediately effective.

¹ *Bundesgesetzblatt*, No. 396/1976.

² No. 1 Ob 226/74.

Paragraph 5 of article 5 of the European Convention immediately established the obligation to pay compensation and, after incorporation in the law of the States parties, granted an enforceable right to compensation. This interpretation was borne out particularly by the fact that, irrespective of an extension of liability beyond that provided under the domestic law at the time of ratification of the Convention, the Republic of Austria, as a contracting party, had made no use of the possibility open to it under article 64 of the Convention to make a reservation in respect of that provision. (The only reservation made in regard to article 5 of the European Convention concerns the measures of deprivation of liberty as provided in the Laws concerning Administration Procedure.)

Violation of the fundamental right to freedom constituted therefore one of the grounds on which a right to compensation for non-material damage was recognized. In this connexion the Supreme Court made reference to the decisions of the European Court of 22 June 1972 and 7 April 1974 concerning the Ringelsen³ and Neumeister cases, respectively.

The Court stated that for the purpose of ascertaining the extent of compensation, the determinants were the length and the intensity of the hardship found. The physical and psychological condition of the victim should also be taken into account.

C. Right to an effective remedy

(article 8 of the Universal Declaration)

The Amendment of 15 May 1975⁴ to the Federal Constitutional Law has considerably extended the jurisdiction of the Constitutional Court and of the Administrative Court.

In the first place, it has ensured better legal protection of individuals from acts of the Administration by extending the competence of the Administrative Court to include the determination of the lawfulness of the "exercise of an authority's immediate power to issue orders and enforce them in relation to a specific individual"—the so-called *faktische Amtshandlung* (immediate official act), which includes, for instance, the use of arms by policemen and the seizure of arms and official documents (Federal Constitutional Law, art. 130, para. 1, subpara. (b), and art. 131a). It should, however, be noted that even before the adoption of this Amendment, the Constitutional Court dealt with such acts as *Bescheide* (rulings), as laid down in article 144 of the Federal Constitutional Law.

Secondly, changes have been made in the system of examination of laws and orders. The right of appeal has been considerably extended. Anyone alleging that his rights have been violated by a law or an order is now entitled to appeal to the Constitutional Court to rescind such provision as being unconstitutional or unlawful. In scrutinizing the conditions for a proceeding, the Constitutional Court must examine whether the legal rule concerned has become effective in respect of that person without a judicial decision having been pronounced or a *Bescheid* having been issued.

A further change with respect to the examination of laws is that the list of those entitled to contest a rule has been enlarged; rescission of a legal provision by the Constitutional Court may be requested, with respect to a federal law, by a court of second instance or by one third of the members of the *Nationalrat* (National Council) and, with respect to a provincial law, by one third of the members of the *Landtag* (Provincial Legislative Assembly), provided that the provincial constitutional law so stipulates (Federal Constitutional Law, art. 140, para. 1).

D. Duties to the community; freedom of conscience

(articles 18 and 29 of the Universal Declaration)

The Federal Constitutional Act of 10 June 1975⁵ introduced a new article 9a in the Austrian Federal Constitution. It states that the task of the national defence system is to

³ See *Yearbook on Human Rights for 1972*, pp. 329-332.

⁴ *Bundesgesetzblatt*, No. 302/1975.

⁵ *Ibid.*, No. 368/1975.

defend the country against aggression from outside and, among other things, to protect the constitutional institutions and their capacity to act, as well as the democratic freedoms of the population (para. 1). It provides for compulsory military service for all male Austrian citizens. Conscientious objectors are exempted from military service; however, they must perform alternative service (para. 3).

E. Freedom of the press

(article 19 of the Universal Declaration)

The Press Promotion Act of 2 July 1975⁶ has provided a basis for translating into reality the freedom of the press guaranteed by article 13 of the Basic State Act of 1867, paragraphs 1 and 2 of the Decision of the Provisional National Government of 30 October 1918, and article 10 of the European Convention on Human Rights. The Act provides for financial assistance to be granted to Austrian daily and weekly papers that fulfil the stipulated requirements (art. 2). Any influence by the State or the Government on the management of the papers assisted under the Act is excluded.

F. Right to take part in government

(article 21 of the Universal Declaration)

An important law enacted by Parliament in the period under review is the Political Parties Act of 2 July 1975.⁷ In view of the great importance of political parties and their activities for political rights, an urgent need for this law was felt.

Article I, which has the authority of a constitutional rule, lays down that the existence and plurality of political parties constitute an essential part of the democratic order of the Republic (principle of plurality of political parties); that their responsibilities shall include participation in policy formation and that the establishment and activities of political parties shall be free (freedom of establishment and freedom of activities).

Article II makes allowance for the fact that funds are required for the fulfilment of the constitutional mandate imposed on the political parties. Federal grants for the purpose of public information activities are made available upon request to every political party represented in the Parliament. Such requests may also be submitted by parties which, though not represented in Parliament, have in a general election won more than 1 per cent of the vote. This provision reflects the constitutional principle set forth in article I.

⁶ *Ibid.*, No. 405/1975.

⁷ *Ibid.*, No. 404/1975.

BARBADOS

A. Right to an effective remedy

(article 8 of the Universal Declaration)

The Supreme Court (Constitutional Redress) Rules 1975¹ relate to the fundamental rights and freedoms of the individual as provided for in articles 1 to 27 of the Universal Declaration of Human Rights and guaranteed under chapter 3 of the Constitution of Barbados. These rules set out the manner in which an application for redress may be made to the High Court by a person who alleges that his fundamental rights and freedoms are being or are likely to be contravened.

B. Right to just and favourable conditions of work and to protection against unemployment; right to an adequate standard of living

(articles 23 and 25 (1) of the Universal Declaration)

The Employment of Women (Maternity Leave) Act 1976 (Act 1976-16)² has been passed. Section 6 of this Act states that no employer shall dismiss an employee between the date of her submission to him of a medical certificate stating that she is pregnant and the date of the expiration of her maternity leave or of any additional leave granted. Furthermore, legislation has been passed with a view to the ratification of the ILO Maternity Protection Convention (Revised), 1952 (No. 103).

The Protection of Wages (Amendment) Act 1975 (Act 1975-16)³ has amended the 1951 Act with respect to deductions from and assignment of wages. It should be noted that Barbados has ratified the ILO Protection of Wages Convention, 1949 (No. 95), article 10 of which provides that wages may be attached or assigned only in a manner and within limits prescribed by national laws or regulations; and that wages shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family.

C. Right of all children to enjoy the same social protection

(article 25 (2) of the Universal Declaration)

The Succession Act of 1975 (Act 1975-46)⁴ makes provision for all children, whether born in or out of wedlock, to enjoy the same social protection. Under this Act the illegitimate child has inheritance rights similar to those of the legitimate child and for the purposes of the Act there is no discrimination against the illegitimate child.

¹ *Statutory Instruments, Supplement No. 160 (Official Gazette, Supplement. 4 August 1975).*

² *Official Gazette, Supplement, 19 July 1976.*

³ *Ibid.*, 5 June 1975.

⁴ *Ibid.*, 13 November 1975.

BELGIUM

A. Non-discrimination

(article 2 of the Universal Declaration)

In accordance with the Act of 9 July 1975 approving the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention entered into force in Belgium on 6 September 1975.

B. Equal protection of the law

(article 7 of the Universal Declaration)

Prior to the Royal Order of 14 January 1975¹ concerning the situation of persons of no fixed abode, aliens in this category authorized to reside permanently in Belgium had no domicile in a specific commune, but were issued by the Ministry of Justice with a "card for persons of no fixed abode", which had to be renewed every three months and endorsed each month by the commanding officer of the gendarmerie brigade in whose jurisdiction the bearer of the card had pitched camp.

The new regulation puts an end to this situation and meets the concern expressed in recommendation No. 563 of the Assembly of the Council of Europe concerning the situation of gypsies and other persons of no fixed abode in Europe.

Henceforth, aliens of no fixed abode at present authorized to reside permanently in Belgium will be placed on an equal footing with foreign strolling players, itinerant vendors and boatmen living in caravans, cars or boats; they must have their names included, within the time-limit specified, in the aliens' register of the commune in which they wish to receive official communications. This commune issues them with a residence permit which is valid for one year and may be extended for a similar period, either by the commune which issued them with the residence permit or by the commune through which they are passing.

C. Right to all the guarantees necessary for defence

(articles 10 and 11 of the Universal Declaration)

By the Act of 22 January 1975,² the Code of Criminal Procedure was amended to provide that, if the accused does not speak any of the national languages, the judge shall appoint a counsel for the defence who knows the language of the accused or a language known by him. Failing that, the judge shall make available to counsel, with a view to preparing the defence of the accused, an interpreter, whose emoluments, for up to a total of three hours, will be defrayed by the Treasury.

D. Marriage and the family

(article 16 of the Universal Declaration)

I. THE MATRIMONIAL RÉGIME; EQUAL RIGHTS AND DUTIES OF THE SPOUSES

Under the Act of 14 July 1976³ on the respective rights and duties of the spouses and on matrimonial régimes (the property rights arising from a marriage), the spouses enjoy equal rights as regards the administration of the communal estate. The Act completely reforms matrimonial régimes and the rights and duties of the spouses. It seeks to grant them complete equality of rights and powers in all matters.

¹ *Moniteur belge*, 23 January 1975.

² *Ibid.*, 20 February 1975.

³ *Ibid.*, 16 September 1976.

Article I of the Act amends articles 212 to 226 of the Civil Code, i.e. chapter VI of Book I entitled "Respective rights and duties of the spouses". These peremptory provisions form what is sometimes known as the primary régime, to which all spouses, irrespective of their matrimonial régime, are subject. It contains provisions relating to the choice of the couple's legal residence, the exercise of a profession by each of the spouses, the taxing of their incomes, and the contribution of the spouses to the expenses of the marriage, all of which are based on the idea of complete equality of rights between the spouses. The purpose of a new provision, contained in article 215, is to protect the family dwelling, by making it impossible for a spouse who is the sole owner to dispose of it without the other spouse's consent. Similarly, if the building has been rented by one of the spouses, before or after the marriage, the right to the lease shall be considered to belong jointly to the two spouses, so that neither of them is able to end it without the consent of the other. The same chapter on the respective rights and duties of the spouses also contains various provisions designed to remedy emergency situations in the household, either when one of the spouses fails to contribute to the expenses of the household or seriously neglects his duties, or when the understanding between the spouses is seriously disturbed.

Article II of the Act is even wider in scope, since it replaces the whole of title V of Book III of the Civil Code, i.e. articles 1387 to 1581 concerning matrimonial régimes specifically. It contains general provisions applicable to all persons concluding marriage contracts, the most important of which are those enabling spouses henceforth "to make any modifications they deem appropriate to their matrimonial régime" and which regulate the procedure to be followed in changing the régime: the amending instrument, preceded by an inventory and the settlement concerning the respective rights of the spouses, must first be submitted to the court, which may refuse to approve it if the proposed change is likely to jeopardize the interests of the family, the children or third parties.

The new legal régime, to which all spouses who married without signing a contract will be subject, is described in new articles 1398 to 1450 of the Civil Code, and is basically that of the joint estate of husband and wife comprising only property acquired after marriage, the joint estate itself consisting mainly of the incomes of the spouses and the property acquired therewith.

Although the notion of joint estate is more circumscribed than that of the community of chattels and acquets set out in the Civil Code, major innovations have been made in the matter of administration of the estate. Indeed, the purpose of the new provisions is to confer completely equal powers on the spouses in an area where previously the husband—the "lord and master" of the family unit—reigned supreme. The joint estate is now administered by both spouses "on condition that each respects the decisions taken by the other". In addition, decisions on a number of more important matters relating to the administration of the joint estate and enumerated in the Code require the agreement of both spouses, or, failing that, the authorization of the court.

The last section of the chapter on the new legal régime contains, sometimes in simplified form, the usual provisions on the dissolution of the régime (an exception being that in the event of divorce the matrimonial advantages which normally benefit the surviving spouse are lost for both spouses), on the compensation which may be due to or by the joint estate (with a new rule based on French law permitting such compensation to be revalued to offset currency depreciation), on the payment of joint debts and on the sharing of assets.

Chapter III deals with clauses which may modify the legal régime, a distinction being made between those which enlarge the scope of the joint estate (up to community of all property) and those whose effect is to depart from the rule concerning the equal division of joint property (clause providing for the allocation of a specific portion of the estate before it is divided, the unequal division clause), generally to the advantage of the surviving spouse.

Only the separate-estates régime is dealt with separately, in a chapter which also covers judicial separation; the latter may henceforth be applied for by either spouse.

Attention is drawn to the importance of the transitional provisions, which are so worded that, after one year, all spouses who married without signing a contract or who chose the legal régime will, *ipso jure*, be subject to all the rules of the new régime. The aim of these provisions is that all spouses, even those who married before the entry into force of the Act, should benefit from its provisions, particularly those which eliminate inequality between husband and wife; spouses whose marriage contract comprised an agreement modifying the rules of the standard prenuptial settlement or provided for separate estates with "community" of acquests will also, *ipso jure*, be subject, after one year, to all the rules relating to the administration of their own property or the joint property, and to the rules governing joint liability and the rights of creditors. Spouses who wish to maintain their régime, whether legal or contractual, as it existed under the previous law will have to make a declaration to that effect within a period of one year from the entry into force of the new Act.

2. PROTECTION OF THE FAMILY

The Royal Orders of 16 October 1975 (amended by the Royal Order of 11 March 1976⁴), 1 August 1975 and 5 February 1976⁵ regulate, for the Walloon, Brussels and Flemish regions respectively, the establishment of services to assist families and elderly persons and the provision of grants for these services. These orders replace the former laws, which were applicable throughout the country.

The purpose of these services is to provide temporary assistance to families and elderly persons, by making available to them a home helper (family or senior citizen) to assist them in their educational and household tasks in certain circumstances, such as sickness, confinement, overwork, death or prolonged absence of a father living alone with dependent children, sickness of a child whose mother goes to work, and serious disability of a member of the family.

E. Right to take part in government

(article 21 of the Universal Declaration)

On 19 July 1976 Parliament adopted an Act⁶ under which leave of absence is granted for the performance of political duties, with a view to improving the quality of political representation and promoting the democratization of politics.

The purpose of this Act is to enable workers in the private sector to stay away from work without loss of pay in order to carry out certain political functions. The political functions covered by this Act are those which do not require full-time participation (members of provincial, urban-centre, federation and communal councils, members of public social welfare centres, etc.). The length of such absences is specified in the Royal Order of 28 December 1976; in general it varies from half a day to three days per month.

Leave of absence is granted not only to permit representatives to attend meetings but also to enable them to carry out missions which are directly connected with their mandates or functions.

F. Right to social security; right to an adequate standard of living

(articles 22 and 25 of the Universal Declaration)

1. THE SOCIAL SECURITY SCHEME

In accordance with the Royal Order of 28 January 1975,⁷ unemployed persons receiving benefits and bound by an accelerated vocational training contract are covered by the general scheme as from 1 January 1974.

⁴ *Ibid.*, 25 March 1976.

⁵ *Ibid.*, 25 February 1976.

⁶ *Ibid.*, 24 August 1976. (This Act entered into force on 1 January 1977.)

⁷ *Ibid.*, 8 February 1975.

A Royal Order of 30 December 1975⁸ places, as from 23 July 1971 (in order to regularize an existing situation), built-up areas and federations of communes, the public establishment for which they are responsible, as well as the French and Dutch Cultural Commissions and the Joint Cultural Commissions of the Brussels metropolitan area, under the social security scheme applicable to communes in respect of the personnel employed or paid by them.

The Act of 28 March 1975 incorporating the fourth week of holidays into the wage-earners' holiday scheme⁹ established, effective 1 January 1975, the total contribution payable in respect of annual holidays for workers at 14.4 per cent of wages.

2. SICKNESS AND DISABILITY INSURANCE

Insurance schemes

Article 225 of the Royal Order of 4 November 1963,¹⁰ giving effect to the Act of 9 August 1963¹¹ on the establishment and structure of a compulsory sickness and disability insurance scheme has been amended by the Royal Orders of 19 July 1971 (art. 2)¹² and 1 July 1975 (art. 1).¹³ The primary disability allowance is 60 per cent of the remuneration lost.

The Royal Order of 13 January 1976¹⁴ freezes the salary level used as a basis in calculating compensation for primary disablement and for invalidity; on 1 January 1976 this salary level reached a ceiling of BF 1,083.33 per day and was tied to the price index. It may be noted in this connexion that the Order establishes a different salary ceiling for the calculation of contributions on the one hand and benefits on the other.

The Royal Order of 17 June 1976¹⁵ makes changes in the methods used to calculate sickness benefits and ordinary, special or supplementary allowances for the handicapped. The total amount that could be drawn had been limited by reducing sickness benefits. In principle, that procedure was incorrect, because the financial burden of a system under which benefits are drawn concurrently should be borne by a scheme financed by contributions, and it was therefore revised by the Order of 17 June 1976. As a result, sickness benefits are no longer being reduced, although their amount is taken into account for purposes of the means test introduced by the Royal Order of 24 December 1974 in connexion with the calculation of allowances for the handicapped.

Members of the clergy were made eligible for insurance benefits payable to self-employed workers under the Royal Order of 22 March 1976.¹⁶

The Royal Order of 12 March 1976 amending the Royal Order of 13 April 1975 governing the payment of State subsidies to voluntary mutual insurance schemes¹⁷ slightly modified the purposes of voluntary insurance and reduced the number of schemes subsidized. Subsidies are paid to schemes providing primary disablement as well as life insurance benefits only if similar benefits are not received under a compulsory insurance scheme or a statutory provision.

As in the general compulsory sickness and disability insurance scheme, a fixed and uniform amount (bonus), reflecting the increase in the level of living, was granted to seamen in 1976 under the special sickness insurance scheme for merchant seamen, in accor-

⁸ *Ibid.*, 7 January 1976.

⁹ *Ibid.*, 8 April 1975.

¹⁰ *Ibid.*, 8 November 1963.

¹¹ *Recueil des lois et arrêtés royaux*, 1963, p. 3730.

¹² *Moniteur belge*, 29 July 1971.

¹³ *Ibid.*, 8 July 1975.

¹⁴ *Ibid.*, 20 January 1976.

¹⁵ *Ibid.*, 23 June 1976.

¹⁶ *Ibid.*, 26 March 1976.

¹⁷ *Ibid.*, 17 March 1976.

dance with the Royal Order of 22 December 1975;¹⁸ the amount granted was BF 4,500 for seamen with dependants or BF 3,600 for seamen without dependants. This was done so as not to favour the better paid more than the less privileged by a *pro rata* increase of benefits, as well as for reasons of economy.

Fees of doctors, dentists and pharmacists

The Royal Orders of 13 and 14 March 1975¹⁹ specified the benefits payable by the health care service of the National Sickness and Disability Insurance Institute for 1974 and 1975 under the social welfare scheme for doctors, dentists and pharmacists, which are in keeping with the terms of the agreement concerning their fees and costs.

The Royal Order of 24 October 1975²⁰ introduced a special charge for emergency prescriptions on Sundays and legal holidays; prescriptions presented and filled between 7 p.m. and 8 a.m. are also regarded as emergency prescriptions.

The Act of 30 March 1976 on economic recovery measures introduced a general freeze of professional fees in 1976. An exception was made with a view to authorizing fee increases resulting from agreements concluded under compulsory sickness insurance schemes and is set out in the Royal Order of 19 July 1976 in respect of male and female nurses and medical attendants;²¹ this Order gave effect to article 37, paragraph 2, of the Act of 30 March 1976. The increase in question amounts to 4.13 per cent.

Schedule of medical benefits; prices of proprietary pharmaceutical products

The schedule of medical benefits was revised. Among the changes made were the following:

(a) Extension of insurance benefits to cover dialysis at home (Regulations of 10 December 1973,²² as amended by the Regulations of 30 June 1975²³);

(b) Prohibition of the payment of insurance benefits in respect of health care when the person providing such care or the person responsible or jointly responsible for the management of the health care establishment has advertised, either directly or through third parties, to attract patients (Regulations of 28 July 1975²⁴).

The Act of 9 July 1975²⁵ repealed the previously applicable provisions (article 62 of the Single Act) and authorized the Minister of Economic Affairs to fix maximum prices for all or certain proprietary pharmaceutical products. Following the revocation by the Council of State (Decree No. 17470 of 27 February 1976)²⁶ of the Royal Order of 28 February 1974 fixing the prices of proprietary pharmaceutical products, a new price system for pharmaceutical products and other medicaments was introduced by the Act of 9 July 1975.

Under the Ministerial Decree of 10 February 1976 regulating the prices of proprietary pharmaceutical products and other medicaments,²⁷ such products may not be sold at prices above those charged on 11 August 1975; the prices of new products marketed after that date may not be higher than those charged when the medicaments were initially introduced.

¹⁸ *Ibid.*, 30 December 1975.

¹⁹ *Ibid.*, 19 and 21 March 1975.

²⁰ *Ibid.*, 1 November 1975.

²¹ *Ibid.*, 27 July 1976.

²² *Ibid.*, 12 January 1974.

²³ *Ibid.*, 27 September 1975.

²⁴ *Ibid.*, 23 September 1975.

²⁵ *Ibid.*, 30 July 1975.

²⁶ *Ibid.*, 6 July 1976.

²⁷ *Ibid.*, 12 February 1976.

3. PENSIONS

Early-retirement pension (pension de retraite anticipée)

The Act of 27 February 1976²⁸ giving effect to the National Interoccupational Agreement of 10 February 1975 makes provision for the granting of a full retirement pension at the age of 64 to wage-earners who furnish proof of regular employment in their principal occupation for not less than 45 years. The Royal Order of 10 March 1976²⁹ amending the Royal Order of 21 December 1967 establishing the general regulations for the wage-earners' retirement and survivors' pensions scheme specifies the procedure to be followed in furnishing proof of such employment.

A Royal Order of 28 May 1976³⁰ establishing the conditions entitling certain persons to whom the nation has publicly expressed its gratitude to the early-retirement pension awarded to workers, employees or wage-earners grants to a third category of persons to whom the nation has publicly expressed its gratitude, namely, those who do not qualify for the early-retirement pension and who cannot claim, either, a sufficiently long period of detention as a prisoner of war or political prisoner, the right to a full early-retirement pension in proportion to the length of their recognized period of active service, deportation for refusal to perform factory work during the occupation, or naval service.

Pre-retirement pension (prépension)

A recommendation was made on 3 April 1973 at the National Employment Conference that the social partners should introduce a system of supplementary benefits for certain elderly workers in the event of their being discharged. The purpose of this recommendation was to take measures to deal with underemployment and in particular to promote the employment of the youngest segments of the working population.

Corresponding collective labour agreements were concluded under the auspices of the National Labour Council (Conseil national du Travail) on 19 December 1974 (agreement rendered mandatory by Royal Order of 16 January 1975),³¹ 29 January 1976 (agreement rendered mandatory by Royal Order of 10 May 1976)³² and 3 March 1977. Under these agreements, workers aged 60 and over who are discharged for reasons other than those defined as serious in legislation on contracts of service and employment are entitled to an allowance over and above their unemployment benefits. This supplementary allowance is payable by the most recent employer, unless a collective labour agreement rendered mandatory by Royal Order has transferred this obligation to a social security fund or another body. The supplementary allowance is equal to one half the difference between the reference net remuneration and the unemployment benefit. The reference net remuneration is the monthly gross remuneration (with ceiling and indexation) minus personal social security contributions and taxes. These allowances have been adjusted in subsequent collective labour agreements. This system of supplementary compensation, or "pre-retirement pension", entered into force on 1 January 1975.

Under the Act of 30 March 1976 concerning measures for economic recovery,³³ the following are eligible for pre-retirement pensions: male workers aged 62 and over and female workers aged 58 and over; and workers in private enterprises employing not less than 50 persons (this system is not compulsory for smaller enterprises). In order to receive a pre-retirement pension, the worker must apply to his employer. In such cases the employer is required to replace the worker concerned in his enterprise by a worker at least 30 years younger who is recruited from outside the enterprise and is unemployed.

²⁸ *Ibid.*, 9 March 1976.

²⁹ *Ibid.*, 13 March 1976.

³⁰ *Ibid.*, 3 June 1976.

³¹ *Ibid.*, 31 January 1975.

³² *Ibid.*, 3 June 1976.

³³ *Ibid.*, 1 April 1976.

Position of separated or divorced wives

The Royal Order of 11 December 1974³⁴ entitles a miner's wife who is separated judicially or lives apart from her husband to be paid part of his disability pension subject to certain conditions, such as that she must not be receiving a Belgian or foreign retirement or survivor's pension or an allowance for the handicapped. The wife was given the option of renouncing these benefits if they are less than one third of a married man's pension—namely, the amount to which she is now entitled.

Under the Act of 1 July 1974,³⁵ either of the spouses may seek a divorce on the grounds that they have lived apart for more than 10 years if their separation is clearly irreversible and if the granting of the divorce on these grounds will not significantly aggravate the material circumstances of minor children born of the marriage or adopted by the spouses. Thus, it could happen that a wife who is separated judicially or lives apart from her pensioned, wage-earner husband, and who is therefore entitled to one half of the couple's retirement pension, may forfeit this entitlement following a divorce which is imposed upon her and for which she bears no blame.

For this reason, the provisions governing the entitlement of separated and divorced spouses to retirement and survivors' pensions were completely revised by the Royal Order of 12 May 1975³⁶ amending chapter XIII of the general regulations. The exclusion from any entitlement to a survivor's pension was maintained, but the situation of the divorced wife was improved by relaxing the rules which confer on her a personal entitlement to a retirement pension at the age of 60 on account of her husband's work. A wage-earner's divorced wife is treated exactly as if she had been a wage-earner herself during the period of her marriage with her ex-spouse, without regard to considerations of blame.

Miners

In 1975, the number of years of underground work entitling a coal-miner to a full retirement pension was reduced to 25. This provision was applied automatically in cases where no decision had been taken by 1 April 1975. Applications submitted before 1 January 1976 took effect on 1 April 1975.

The Act of 2 July 1976 reducing the number of years of underground service in mines and quarries³⁷ extended the scope of the above-mentioned provision to persons with 25 years of service underground in other mines or in quarries.

Conscientious objectors

Since the Act of 3 June 1964³⁸ concerning the status of conscientious objectors also provides for the possibility of assignment to duties in the public interest in public or private institutions, the Order of 10 May 1976³⁹ specifies that such periods shall be assimilated to periods of employment for purposes of calculating the retirement or survivor's pension.

4. FAMILY ALLOWANCES

The Act of 23 December 1974⁴⁰ concerning the 1974-1975 budget estimates also deals with the payment of family allowances in respect of children placed in care. It makes a distinction between children placed in care at the expense of the Ministry of Justice and those placed by or at the expense of a public authority in an institution or in the home of a private individual. In the case of the latter, two thirds of the family allowance is paid to the institution or to the private individual, but this proportion may not exceed an amount which the Crown may establish for certain categories of children. The balance is payable

³⁴ *Ibid.*, 17 December 1974.

³⁵ *Ibid.*, 1 August 1974.

³⁶ *Ibid.*, 21 May 1975.

³⁷ *Ibid.*, 15 July 1976.

³⁸ *Ibid.*, 19 June 1964.

³⁹ *Ibid.*, 15 May 1976.

⁴⁰ *Ibid.*, 30 December 1974 and 3 January 1975.

to the natural person referred to in article 69 of the Act. In the case of the former, the family allowance is paid in full to the Ministry of Justice.

Under the Royal Order of 13 January 1975,⁴¹ family allowances are now granted up to the age of 21 for children who have entered into articles of apprenticeship approved and verified by the National Fund for the Social Rehabilitation of Handicapped Persons (Fonds national de reclassement social des handicapés).

The Act of 28 March 1974⁴² established a legal basis for the "education allowance" paid in 1974, and specified that it was to be equivalent to the family allowances paid for the month of July 1974.

The Royal Order of 22 December 1975⁴³ increases the supplementary allowance for handicapped children under the age of 25 by BF 1,000 a month.

The Royal Order of 30 December 1975⁴⁴ defines entitlement to family allowances in the light of a more accurate definition of children receiving education or taking training courses. This order was amended by the Royal Order of 17 August 1976⁴⁵ in order to take into account the training courses organized under the Act of 30 March 1976 on economic recovery measures. Thus, a child who fails to return to class after the summer holidays will be entitled to family allowances for 90 days, with effect from the first day of August of the last school or academic year, if he is registered as a job applicant, has applied for a training course and has not refused suitable employment. If the job applicant dropped out during the academic year, this period begins on the actual date on which he dropped out.

Those sections of the Act of 5 January 1976 on the 1975-1976 budget estimates⁴⁶ dealing with social matters contained a number of provisions relating to family allowances: contributions to the family allowances scheme were fixed, with effect from 1 January 1976, at 7.75 per cent of the wage on which social insurance contributions are compulsory; the fourteenth month of family allowances granted in 1975 (the so-called education allowance) was given legal recognition; a decision of principle was taken to grant a socio-pedagogical allowance; and the Advisory Committee on legal matters was done away with.

5. SOCIAL ASSISTANCE

Right to minimum means of subsistence

The Act of 7 August 1974,⁴⁷ which entered into force on 1 January 1975, established the right to minimum means of subsistence for Belgians who have attained their majority (21 years of age), are effectively resident in Belgium, are without adequate means and are unable to procure them by their own efforts or in any other way. Minors emancipated through marriage and unmarried persons with one or more dependent children are granted the same right.

The Royal Order of 8 January 1976⁴⁸ establishes, as from 1 January 1976, the benefit of the right to minimum means of subsistence for nationals of countries of the European Economic Community, for stateless persons and for refugees who meet the same requirements as Belgians of full age, provided they have been effectively resident in Belgium for not less than five years preceding the grant of the minimum means of subsistence.

The amounts of the minimum means of subsistence specified for the three categories of beneficiaries have been adjusted on several occasions, in terms not only of the rise in the consumer price index but also of the general level of living.

⁴¹ *Ibid.*, 22 February 1975.

⁴² *Ibid.*, 8 April 1975.

⁴³ *Ibid.*, 30 December 1975.

⁴⁴ *Ibid.*, 6 February 1976; *errata, ibid.*, 10 February 1976.

⁴⁵ *Ibid.*, 25 August 1976.

⁴⁶ *Ibid.*, 6 January 1976.

⁴⁷ *Ibid.*, 18 September 1974.

⁴⁸ *Ibid.*, 13 January 1976.

Merchant seamen

The Royal Order of 20 May 1976⁴⁹ established a social service under the Aid and Welfare Fund for Merchant Seamen to which they and needy members of their family could turn, after 25 May 1976, for financial assistance in the event of heavy expenditures due to inability to work, disablement, death or other situations of distress.

Public social-assistance centres

The Organizational Act of 8 July 1976⁵⁰ on public social-assistance centres replaces the Organizational Act of 10 March 1925 on public assistance.

Whereas the previous legislation placed considerable emphasis on the concept of indigence, which was identified with material want—a concept that has now become outdated—the new Act defines social assistance in very broad terms. Such assistance may be preventive or curative, financial, social, medical, medico-social or psychological, and is intended to enable everybody to live his life in human dignity.

Moreover, the Act of 8 July 1976 is an extension of the Act of 7 August 1974, which established the right to minimum means of subsistence (see above), in that it confers the right to social assistance, as defined above, on any person who is living in Belgium, even if he is of foreign nationality.

The handicapped

Since 1973, 25 orders have been issued for the purpose of gradually refining the system of State financing for approved institutions for the handicapped, and of supplying these institutions with increasing resources to carry out the tasks that the community expects of them. The authorities have thus given tangible evidence of their desire to pay more heed to the real needs of handicapped persons placed in special institutions, while at the same time keeping a careful check on the management of such institutions.

Under the Royal Order of 24 December 1974, the disability allowance was made equal to the minimum income laid down in the Act of 7 August 1974 (minimum means of subsistence); it rises in proportion to the severity of the handicap.

This implied a very large increase in allowances, which may total some BF 140,000 per year in the case of handicapped persons in dire need. The means test applied was therefore made more rigorous so that all efforts could be concentrated on handicapped persons who were genuinely without means of support. Nevertheless, rights acquired prior to 1 January 1975 were not affected.

As in the case of the minimum means of subsistence and the guaranteed income for the elderly, exempt income amounted to only BF 12,500. Accordingly, handicapped persons with an income of about BF 150,000 no longer received any assistance.

The Royal Order of 24 December 1975 has made the system established one year earlier more flexible. As regards the basic allowance, the level of exempt income is fixed at BF 12,500 for handicapped persons who are married, BF 10,000 for those living alone and BF 6,250 for those who cohabit; with regard to the increase proportional to the severity of the handicap, the level of exempt income (for work actually performed) rises from BF 12,500 to BF 150,000 per year.

Basic allowances for the handicapped were increased as from 1 October 1976 by the Royal Order of 21 September 1976.

Special assistance for mothers and children

The positive policy of social assistance pursued by the Government in relation to mother-and-child welfare had been reflected since 1973 in various measures that are

⁴⁹ *Ibid.*, 25 May 1976.

⁵⁰ *Ibid.*, 5 August 1976 and 26 November 1976.

designed to offer parents a number of possibilities concerning care of their young children and to ensure that all children are cared for properly.

Those measures include:

(a) Improvement of the facilities offered by institutions in Belgium for children up to three years of age through action to encourage the establishment of crèches, day nurseries and kindergartens (Royal Order of 7 March 1974⁵¹ amending the Royal Order of 3 March 1965; Ministerial Orders of 15 February 1974 and 12 March 1976; Circulars of 2 January 1975 and 5 April 1976);

(b) The organization of baby-sitting services (Royal Orders of 18 February 1974,⁵² 18 August 1975 and 14 May 1976;⁵³ Ministerial Orders of 26 August 1974, 25 November 1974, 21 August 1975, 15 December 1975 and 21 July 1976);

(c) A substantial increase in working grants for institutions approved by the National Children's Foundation (Euvre nationale de l'enfance) (Royal Orders of 25 February 1975⁵⁴ and 14 May 1976⁵⁵ amending the Royal Order of 13 February 1970 as previously amended by the Royal Orders of 5 May 1971, 1 July 1971 and 14 October 1971; Royal Orders of 4 April 1974,⁵⁶ 30 July 1974,⁵⁷ 15 May 1975,⁵⁸ 11 December 1975,⁵⁹ 27 April 1976⁶⁰ and 19 November 1976;⁶¹ Ministerial Orders of 1 August 1973, 1 August 1974, 15 December 1975, 21 July 1976 and 24 December 1976).

Mental-health service

The Royal Order of 20 March 1975⁶² provides for the establishment of mental-health services. The establishment and organization of such services in effect means forming and equipping one or more multidisciplinary teams for the diagnosis and treatment of psychological disturbances without hospitalization, and for the prevention of such disturbances.

6. INDUSTRIAL ACCIDENTS

In order to meet the growing cost of the Industrial Accidents Fund (Fonds des accidents du travail) set up under the Act of 10 April 1971,⁶³ the percentage deducted from premiums paid to authorized insurers was raised from 12.5 per cent to 20 per cent by the Royal Order of 13 May 1976,⁶⁴ which increased the rate of contribution provided for in article 59, paragraph 1, of the Act.

The Royal Order of 17 November 1976,⁶⁵ which amended the Royal Order of 30 March 1973 establishing the rate and conditions of payment of the contribution provided for in article 59, paragraph 7, of the Act, increased as from 1 January 1976 the annual contribution to be paid to the Industrial Accidents Fund by the bodies responsible for the payment of annuities from 0.4 per cent to 1 per cent of their mathematical reserves.

⁵¹ *Ibid.*, 2 April 1974.

⁵² *Ibid.*, 12 March 1974.

⁵³ *Ibid.*, 23 June 1976.

⁵⁴ *Ibid.*, 14 March 1975.

⁵⁵ *Ibid.*, 23 June 1976.

⁵⁶ *Ibid.*, 15 May 1974.

⁵⁷ *Ibid.*, 30 August 1974.

⁵⁸ *Ibid.*, 14 June 1975.

⁵⁹ *Ibid.*, 20 December 1975.

⁶⁰ *Ibid.*, 26 May 1976.

⁶¹ *Ibid.*, 3 December 1976.

⁶² *Ibid.*, 24 May 1975.

⁶³ *Ibid.*, 24 April 1971.

⁶⁴ *Ibid.*, 18 May 1976.

⁶⁵ *Ibid.*, 24 November 1976.

The Act of 24 December 1976 concerning the 1976-1977 budget estimages⁶⁶ and the Orders of 30 December 1976⁶⁷ giving effect to the Act introduced substantial changes, as from 1 January 1977, in the system of financing the Industrial Accidents Fund. This Fund is now financed mainly through contributions of 0.4 per cent of wages (no wage ceiling) to be paid by employers to the National Social Security Office (Office national de sécurité sociale), the Miners' National Pension Fund (Fonds national de retraite des ouvriers mineurs) and the Merchant Seamen's Social Security Office (Office de sécurité sociale des marins de la marine marchande).

**G. Right to work, to just and favourable conditions of work
and to protection against unemployment**

(article 23 of the Universal Declaration)

Protection of workers on closure of enterprises

Section 1, chapter 1, of the Act of 30 March 1976 concerning measures for economic recovery⁶⁸ made a number of amendments to legislation on the closure of enterprises, in order to resolve various problems that had arisen in practice in a manner favourable to the workers.

The benefits provided for under this legislation were extended, subject to certain conditions, to workers discharged as a result of a large reduction in the work force following an internal reorganization of the enterprise.

Moreover, the scope of action of the Closure Fund (Fonds de fermeture) was extended to include cases where an employer is replaced by a new employer who does not assume the former employer's financial obligations towards the workers.

This matter has also been dealt with in a number of collective labour agreements concluded under the auspices of the National Labour Council and rendered mandatory by Royal Order: the Agreement of 8 May 1973 (Royal Order of 6 August 1973)⁶⁹ and the Agreement amending it of 2 October 1975 (Royal Order of 1 December 1975),⁷⁰ the Agreement concerning its implementation of 24 March 1976 (Royal Order of 30 August 1976)⁷¹ and the Agreement of 27 November 1975 (Royal Order of 17 February 1976) concerning the notification by employers of certain delays in payment.

Unemployment

The differences that persisted to the detriment of women in methods of calculating unemployment benefits for persons who were out of work (guaranteed fixed minimum) were eliminated by the Royal Order of 20 December 1974.⁷² Without prejudice to the guaranteed fixed minimum rates, which are based solely on responsibilities deriving from composition of household and age, the percentage used in calculating the rate is 60 per cent for the first year (year of adjustment), and 60 per cent for heads of household and 40 per cent for persons not heads of household when the period of unemployment continues without interruption.

Under the terms of the Royal Order of 19 February 1975⁷³ concerning the right of elderly unemployed workers to unemployment benefits, such workers are no longer obliged to register as job-seekers and no longer have to report daily; the 60 per cent rate is applied until they return to work.

⁶⁶ *Ibid.*, 20 December 1976.

⁶⁷ *Ibid.*, 15 January 1977.

⁶⁸ *Ibid.*, 1 April 1976.

⁶⁹ *Ibid.*, 17 August 1973.

⁷⁰ *Ibid.*, 31 January 1976.

⁷¹ *Ibid.*, 8 October 1976.

⁷² *Ibid.*, 9 January 1975.

⁷³ *Ibid.*, 21 March 1975.

It is also applied to elderly workers approaching retirement age who are covered by the Royal Order of 30 April 1976⁷⁴ concerning the right to the pre-retirement pension referred to in the Act of 30 March 1976 on economic recovery measures (see sect. F.3 above).

Under the Royal Order of 22 November 1976, the periods of service of conscientious objectors, like those of workers called up for military service, are discounted for the purposes of acquiring and maintaining the right to unemployment benefits.

The same applies, under the Royal Order of 14 March 1975, to working mothers who quit gainful employment to devote themselves to the care and education of their young children (a maximum of three years beginning from each birth).

Regulation of temporary employment

The increasing use of temporary labour had led to the emergence of companies that specialize in finding positions for people as replacements or temporary help. Because of the abuses that came to light in this field, it became necessary to provide a specific legal framework for such activities; this was the purpose of the Act of 28 June 1976,⁷⁵ which contains provisional regulations governing temporary and interim work and the procedure to be followed in making labour available to employers.

The objectives of the Act, which entered into force on 1 December 1976 for a period of four years (renewable for one year), are as follows:

(a) To promote the conclusion of temporary-work contracts between employers in temporary need of personnel and the temporary workers. To this end, the legislation concerning labour contracts was amended in order to enable the National Employment Office (Office national de l'emploi) to find positions for temporary workers with employers under conditions similar to those that apply to the hiring of replacements;

(b) To regulate the various aspects of temporary employment, which gives rise to a three-way labour relationship between the temporary employment agency, the employer and the temporary worker. The purpose of such regulation is:

- (i) To protect the temporary worker in matters connected with the labour contract, labour regulations and labour protection, and freedom of employment;
- (ii) To rationalize procedures in the temporary employment sector by requiring that temporary employment agencies be approved and supervised by the ministry responsible for employment;
- (iii) To protect permanent workers by establishing an exhaustive list of instances in which the use of temporary workers is authorized (replacement of a permanent worker whose contract has been suspended or terminated, an extraordinary increase in the workload, work of an exceptional character, temporary work), and by authorizing the Crown to limit the number of temporary workers who may be taken on by an employer and, if need be, to prohibit the use of temporaries in certain occupations or branches of activities;

(c) To curb the activities of labour contractors and to prevent evasion of the law through manpower loans by making it illegal to provide employers with workers in a manner that is not in accordance with the regulations governing temporary employment or does not satisfy the conditions governing manpower loans made under exceptional circumstances.

Part-time work

In the public sector, officials holding posts at levels 2, 3 or 4 who wish to work part-time for social or family reasons may, under the Royal Order of 26 May 1975,⁷⁶ be authorized to do so by the minister concerned. Officials who are granted this privilege are required to

⁷⁴ *Ibid.*, 21 May 1976.

⁷⁵ *Ibid.*, 7 August 1976.

⁷⁶ *Ibid.*, 29 May 1975.

work half the normal number of hours for their posts, by working either half-days or one day in two. They may not exercise any gainful activity during their absence from their usual posts.

Participation: works councils and safety and health committees

The Act of 20 September 1948 concerning the organization of the economy and the Act of 10 June 1952⁷⁷ concerning the health and safety of workers and the salubrity of their work and place of work play a central role in collective labour relations, since works councils (*conseils d'entreprise*) were established under the former and the safety and health committees (*comités de sécurité et d'hygiène*) under the latter. As the Government is very anxious to ensure that these Acts are properly applied, they are amended regularly in the light of events and of the difficulties experienced in their application, particularly during the four-year period between elections of workers' representatives to the above-mentioned bodies.

Prior to the elections held in 1975, a thorough analysis of the various problems was undertaken by working groups established within the department and the National Labour Council.

The Act of 23 January 1975⁷⁸ amending the Acts of 1948 and 1952 was based on the views submitted by those two bodies. It seeks to resolve certain questions that have been the subject of controversy for more than 20 years, such as those relating to production units and management personnel. It also provides for greater participation by workers in these joint bodies by increasing the representation of young workers, by making it easier to decentralize works councils through the establishment of factory units, and by allowing trade-union delegations to act as safety committees in enterprises with fewer than 50 workers.

Workers' organizations in collective bargaining units and groupings have been more representative and their right to institute legal proceedings has been extended.

In addition, existing general implementation procedures were amended by two Royal Orders of 24 January 1975. The Order concerning works councils provides for, among other things, the procedure to be used in identifying production units, extension of the scope of the Act to enterprises not of an industrial or commercial nature, a new definition of the concept of management personnel, more favourable conditions as to eligibility and franchise, and a number of amendments to the electoral procedure. The second Royal Order, on the safety and health committees, contains similar provisions.

Collective labour agreements

Collective labour agreements on the following subjects, among others, were concluded under the auspices of the National Labour Council and rendered mandatory by Royal Order:

(a) Level of remuneration of handicapped persons employed in a normal job (Agreement of 15 October 1975, Royal Order of 11 March 1977⁷⁹);

(b) Reduction of the working week (Agreement of 26 March 1975, Royal Order of 22 July 1975⁸⁰). As provided for in the National Interoccupational Agreement of 1973-1974 and confirmed in that of 1975-1976, the length of the maximum authorized working week was progressively reduced to 42 hours in 1973, 41 hours in 1974 and 40 hours in 1975; postponement of the introduction of the 40-hour week until 1 January 1976 at the latest was permitted in certain exceptional cases; in addition, collective labour agreements reducing the length of the working week to 39 hours, and even 38 hours, have already been concluded in certain sectors;

⁷⁷ *Recueil des lois et arrêtés royaux*, 1952, p. 1440.

⁷⁸ *Moniteur belge*, 31 January 1975.

⁷⁹ *Ibid.*, 23 April 1977.

⁸⁰ *Ibid.*, 15 August 1975.

(c) Overtime (Agreement of 29 November 1976; Royal Order of 6 January 1977⁸¹). Employers who require their employees to work overtime are obliged to notify the Inspectorate of Social Legislation (Inspection des lois sociales) or the regional branch of the National Employment Office within the specified time-limit;

(d) Minimum average monthly income (Agreement of 25 July 1975, Royal Order of 9 September 1975⁸²). Workers who are 21 years of age or over and who perform normal full-time work under a contract of employment have the right to a minimum average monthly income. This income is tied to the movement of the consumer price index and amounted on 1 January 1975 to BF 15,500. Joint commissions may authorize derogations from this system in the workers' interests;

(e) Reception of workers in and their adjustment to the enterprise (Agreement of 26 June 1975, Royal Order of 9 September 1975⁸³);

(f) Exceptional one-time supplementary holiday allowance for manual workers in 1975 (Agreement of 26 March 1975, Royal Order of 7 May 1975⁸⁴);

(g) Double holiday pay for part of the fourth week of holidays (Agreements of 10 April 1975 and 29 January 1976, Royal Orders of 22 July 1975⁸⁵ and 10 May 1976⁸⁶).

Employment of women

The Royal Order of 2 December 1974⁸⁷ established the Committee on the Employment of Women. The Committee's task is to give advice, undertake studies or propose legal or regulatory measures, on its own initiative or at the request of the Minister of Employment and Labour, concerning all matters that have a direct or indirect bearing on the employment of women.

Leave of absence can be granted to look after a child. In the private sector, working mothers may interrupt their employment to look after their children up to the age of three (up to six if the child is handicapped or has a prolonged illness). They are not guaranteed the right of reinstatement in their former job.

In the public sector, the Royal Order of 26 May 1975⁸⁸ concerning extended absences that are justified for family reasons authorizes female civil servants to interrupt their employment to care for their children. The maximum period for which employment may be interrupted is two years, and in no case may the absence extend beyond the date on which the child reaches the age of three. If the child is handicapped, the maximum period of absence is four years, ending at the latest when the child reaches the age of six. During the period of absence, the official is considered to be on the inactive list and may not exercise any gainful activity. At the request of the official, and subject to one month's notice, a period of absence may be terminated before its normal expiry date.

The Royal Orders of 25 November 1976⁸⁹ and 20 December 1976⁹⁰ provide, respectively, for the extension of the benefits mentioned in the Royal Order of 26 May 1975 to female members of the permanent teaching staff of State educational establishments governed by the Statute of 22 March 1969 or that of 25 October 1971, and to female members of the permanent administrative, supervisory, technical and service staff of State educational establishments.

⁸¹ *Ibid.*, 8 March 1977.

⁸² *Ibid.*, 8 October 1975.

⁸³ *Ibid.*, 10 October 1975.

⁸⁴ *Ibid.*, 3 June 1975.

⁸⁵ *Ibid.*, 14 August 1975.

⁸⁶ *Ibid.*, 5 June 1976.

⁸⁷ *Ibid.*, 12 December 1974.

⁸⁸ *Ibid.*, 29 May 1975.

⁸⁹ *Ibid.*, 21 January and 3 February 1977.

⁹⁰ *Ibid.*, 20 April 1977.

Equal pay for equal work

The Royal Order of 9 December 1975⁹¹ rendered mandatory Collective Labour Agreement No. 25, concerning equality of remuneration for male and female workers, which was concluded under the auspices of the National Labour Council on 15 October 1975.

This agreement applies to employers and workers in the private sector. Application of the principle of equal remuneration entails the elimination of all discrimination on grounds of sex with regard to the performance by men and women of the same work or of work of equal value.

The term "remuneration" is to be interpreted in its broad sense, as including cash wages, tips, privileges quantifiable in financial terms, and the customary additional holiday bonus over and above the legal holiday pay (provisionally excepted: benefits under social-security schemes supplementing those for which provision is made by law).

There must be equality in all the elements and conditions of remuneration; this requirement also applies to job-evaluation systems, which, when they are employed, must not be tainted by any discrimination either in the choice or weighting of the criteria used or in the system for translating findings into elements of remuneration.

Workers who consider that they are the victims of discrimination (or their trade unions) may institute proceedings before the competent court with a view to obtaining application of the principle of equal remuneration.

A joint committee of specialists has been established to provide courts, at their request, with advice in disputes relating to the application of the principle of equal remuneration.

Workers may also lodge their complaints with their enterprises or with the Social Affairs Inspectorate (Inspection des lois sociales).

Workers who take such action are protected. If they are dismissed or if the employer unilaterally alters the terms of employment because of the complaint, the worker (or the trade union concerned) may apply for the worker's reinstatement or for the resumption of employment in accordance with the terms of contract. If the employer refuses to take such action, and if it is found that the worker's dismissal or the unilateral alteration of the terms of employment was effected for the reasons alleged in the complaint, the employer must pay the worker, at the latter's option, compensation equal either to six months' remuneration or to the loss or damage actually suffered.

An employer is also obliged to pay such compensation, without the worker concerned having to request reinstatement or the resumption of employment in accordance with the terms of the contract, if a worker breaks the contract because the conduct of the employer is contrary to the provisions of Collective Agreement No. 25 and is considered by the worker to constitute valid grounds for action, or if the employer dismisses a worker and the court having jurisdiction in the matter finds that the dismissal is unjustified and contrary to the provisions of Collective Agreement No. 25.

Each enterprise is required to incorporate the text of Collective Agreement No. 25 in an annex to its work rules.

Absence from work without discontinuance of pay

In the private sector, article 1 of the Royal Order of 18 November 1975⁹² supplements article 2 of the Royal Order of 28 August 1963⁹³ concerning the continued payment of the normal remuneration of manual or domestic workers, office workers and workers employed in the operation of inland-waterway vessels during days of absence occasioned by family events or the discharge of civic duties and the like. For example, if workers adopt children, they will be granted the time off they require to complete the relevant administrative and legal formalities and will receive their normal pay.

⁹¹ *Ibid.*, 25 December 1975.

⁹² *Ibid.*, 15 January 1976.

⁹³ *Recueil des lois et arrêtés royaux*, 1963, p. 3070.

In the public sector, under article 1 of the Royal Order of 26 May 1975⁹⁴ supplementing the Royal Decree of 1 June 1964, officials may, for example, on the basis of a medical certificate, be granted leave in cases of *force majeure* resulting from the illness of or injury to their spouses or relatives by blood or marriage who reside with them. The duration of such leave may not exceed four days per year.

Permitted number of days of unpaid leave

Under the Royal Order of 12 July 1976,⁹⁵ a maximum of 10 days' unpaid leave a year may be taken for compelling family reasons without detriment to the worker's social-security entitlements.

H. Right to participate in cultural life; protection of copyright (*article 27 of the Universal Declaration*)

1. ADULT EDUCATION

The increasing democratization of culture and the development of the notion of "continuing education" has been a feature of adult-education policy in recent years.

For example, the Decree of 28 January 1974⁹⁶ relating to the Cultural Agreement guarantees (in cultural matters) the rights and freedoms of ideological and philosophical minorities. Greater opportunities are offered for participation at the national level, by the Royal Order of 2 January 1976⁹⁷ on the approval of, and provision of grants for, Dutch-language bodies responsible for the promotion of socio-cultural activities for adults, and for participation at the local level, which is encouraged by the Decree of 12 December 1974⁹⁸ concerning the approval of communal cultural councils and by grants for projects to promote social activities (at the urban district and local community levels).

Democratization is being carried forward by various means. To begin with, there is the broad sector of promotion of socio-cultural activities and adult education, aimed at fostering the freedom and creativity of man in the basic process of democratization and humanization that is taking place in society. The authorities have sought to give these organizations legal standing and to make additional resources available to them on the basis of various decrees relating to specific activities.

One decree has already entered into force, namely, the Decree of 4 July 1975⁹⁹ governing the provision of grants for societies engaged in socio-cultural educational work among Dutch-speaking adults. In the near future, further decrees will be issued concerning institutional socio-cultural education, amateur art and adult education.

It should be noted, in the context of the democratization process, that the system of time off from work for young workers has been extended to general training.

Finally, an important matter, but one which is still a project for the future, is the establishment of an Adult Education Fund (Fonds d'éducation populaire). Basically, this project is intended to offer training opportunities to the less qualified and the poorer members of all segments of the population.

2. LIBRARIES

On the basis of the UNESCO public libraries charter and the recommendations of the International Federation of Library Associations, the Ministry for Netherlands Culture is making a sustained effort to enable all persons to take part freely, through access to

⁹⁴ *Moniteur belge*, 29 May 1975.

⁹⁵ *Ibid.*, 17 July 1976.

⁹⁶ *Ibid.*, 31 May 1974.

⁹⁷ *Ibid.*, 11 January 1976.

⁹⁸ *Ibid.*, 22 March 1975.

⁹⁹ *Ibid.*, 16 December 1975.

wholesome reading material, in the cultural life of the community, to enjoy the arts and to participate in scientific progress and the benefits it offers.

As regards infrastructure, financial support will be provided for the modernization of existing libraries and the building of new ones, whether as separate buildings or as part of the complex of a cultural centre.

With respect to reading material, efforts will be made to ensure the rational distribution of a diversified collection intended for the community as a whole.

A special effort (both financial and organizational) will be made on behalf of the visually-handicapped. The production and distribution of books in Braille and recordings of books are specially subsidized through a standing commission to promote the supply of reading materials for the handicapped.

3. COPYRIGHT

As in most countries, a great deal of attention has been given in Belgium in recent years to the reproduction of works and to the protection of copyright.

More particularly, a study has been made of certain proposals aimed at reviewing the period of protection of copyright and, possibly, extending it, even by introducing a royalty-paying public domain. It has not yet been possible, however, to prepare or to adopt actual legislative texts.

On the other hand, the "*droit de suite*" is to be extended in the near future under a reciprocal agreement with the Federal Republic of Germany. While this right is severely criticized in commercial circles dealing in works of art, where it is regarded as an additional burden likely to act as an obstacle to international competition, it nevertheless seems to be assuming considerable importance in the plastic arts.

4. VILLAGE REHABILITATION

Society, with its impersonal and mechanical institutions, centred chiefly on urban activities, has tended in recent times to neglect villages. Measures will be taken so that villages do not become museums but remain places where life is pleasant.

The Department for Netherlands Culture, under its policy of subsidizing cultural facilities, will give priority, whether in the construction of new buildings or in the transformation of existing ones, to small-scale projects in rural areas, where the need for proper facilities is greatest. So far as libraries are concerned, reorganization, co-operation or the establishment of new branches will be encouraged, and village libraries will receive special aid and support. The communes have been asked to give special attention, in presenting their programmes, to these small-scale projects, which are primarily designed to develop village cultural facilities.

The Department for Netherlands Culture will endeavour to make communal authorities and young peoples' sports and cultural associations aware of the social value of the village community. In the context of the "Year of the village" and in co-operation with the local authorities, community promotion and development activities will be encouraged and given financial support. Encouragement will be given to measures specially designed to bring out the value of the rural heritage, such as the measures for the beautification of village centres and squares, the restoration of villages and buildings of value, the preservation of sites, etc. The establishment of new official cultural councils in the communes will be encouraged and supported, existing cultural councils will receive aid and support, and arrangements will be made for consultation and participation of every kind.

BULGARIA

A. Prohibition of incitement to racial hatred or hatred based on nationality or religion; prohibition of oppression, discrimination and genocide

(article 2 of the Universal Declaration)

The provisions of article 2 of the Universal Declaration are reflected in the Bulgarian national legislation and in particular in the Law Amending and Supplementing the Criminal Code.¹ Under the new regulations, any person who, with the purpose of establishing or maintaining domination or systematic oppression of one racial group of people over another, causes death or serious bodily harm to one or more persons of this group or imposes living conditions of such a nature as to cause complete or partial physical destruction of this racial group, is considered a criminal. A 10-year to 20-year term of imprisonment is envisaged for these types of crime as well as for racial segregation. A 5-year to 15-year term of imprisonment is envisaged for any individual who: (a) illegally deprives of freedom or subjects to forced labour members of a racial group; (b) enacts measures preventing the participation of a large group of people in the political, social, economic and cultural life of the country and deliberately creates conditions impeding the all-round development of this group of people, and in particular deprives its members of their fundamental rights and freedoms as citizens of the People's Republic of Bulgaria; (c) enacts measures aimed at dividing the population on the basis of race by establishing reservations and ghettos, by prohibiting mixed marriages among members of different racial groups or by expropriating their landed property, and (d) deprives organizations or individuals of their fundamental rights and freedoms simply because they oppose racial segregation.

B. Right to a fair and public hearing

(article 10 of the Universal Declaration)

The Structure of the Courts Law of 1976² contains a number of provisions the aim of which is to guarantee effectively the fundamental rights and freedoms of citizens. One of the basic objectives of the judiciary is to defend the life, freedom, honour, rights and legitimate interests of citizens (art. 2). The constitutional guarantee that all citizens are equal before the law has been elaborated in the provisions of the law obligating the courts to apply the laws equally with respect to all (art. 4). Judges and assessors, who are independent in executing their juridical functions, are obliged to act in accordance with the provisions of the Constitution, the laws and other normative acts and to observe strictly the rules of socialist morality, to be independent and impartial and to display a high degree of civic consciousness.

C. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

The People's Militia Law³ provides for the right of officers and men of the People's Militia, in the performance of their official duties for the purpose of maintaining public order, to enter the homes or other premises of citizens only in the following cases:

- (i) In pursuing, searching for or apprehending a person who has committed a crime or is hiding from the authorities;

¹ *Durzhaven Vestnik* (Official Gazette), No. 95, 12 December 1975.

² *Ibid.*, No. 23, 19 March 1976.

³ *Ibid.*, No. 89, 9 November 1976.

- (ii) In ascertaining the commission of a crime or when there is a grave violation of public order;
- (iii) In rendering assistance in cases of national disaster;
- (iv) In verifying the presence of a person who is on parole and subject to a preventive administrative measure which prohibits him from leaving his home at certain times during the day;
- (v) In routine checks of passport and address regulations when there is reliable information that they have been violated.

The People's Militia may enter homes and other premises of citizens only in the day-time except in cases which admit of no delay. Under subparagraph (v), premises can only be entered in the day-time.

D. Right of asylum

(article 14 of the Universal Declaration)

Decree 520 of the State Council⁴ deals with the question of granting the right to seek asylum in the People's Republic of Bulgaria.

By further elaborating on article 65 of the Constitution, the provisions of the Decree regulate the granting, forfeiting or waiving of the right of asylum as well as the legal status of persons who have been granted the right to seek asylum in the People's Republic of Bulgaria. Under the Decree, the right of asylum is granted to foreigners persecuted for defending the interests of the working people, for participating in a national liberation struggle, for engaging in progressive political, scientific, cultural or artistic activities; for participating in the struggle against racial discrimination or for safeguarding peace. Members of the family of a person having applied for or having been granted asylum are entitled to the same status if they do not have any independent motives in requesting asylum for themselves (art. 2). Asylum is not granted if it represents a violation of commitments under international agreements or contradicts the purposes and principles of the United Nations. Persons who have been granted the right of asylum enjoy the rights and duties of aliens with permanent residence in the country (art. 4).

A foreigner who has been granted the right of asylum cannot be extradited from the People's Republic of Bulgaria to a country where he may be persecuted for the same reasons for which asylum was granted. He cannot be expelled in any way which would result in his being persecuted for those reasons. This is also the case with a person who has requested asylum in the People's Republic of Bulgaria. Any foreigner who has, with the aim of seeking asylum, entered the Republic without the permission of the authorities concerned or through other than the designated check-points shall not be prosecuted or punished for those acts.

The right of asylum is forfeited when the foreigner acquires of his own free will the citizenship which he had lost, or the citizenship of another State; when he returns voluntarily to the country in which he was persecuted or wishes to go to another country and disclaims voluntarily the right of asylum granted to him; should he return to the State of which he is a citizen, or to the State of his permanent residence if he is without citizenship, then the reasons for which the right of asylum was originally granted to him become null and void (art. 11).

The State Council can waive the right of asylum by a decree if circumstances that were unknown at the time it was granted, but which would have excluded its granting, have subsequently come to light, or if the behaviour of the person granted asylum is inconsistent with the granting of this right.

⁴ *Ibid.*, No. 21, 14 March 1975.

E. Right to social security; right of motherhood and childhood to special care and assistance

(articles 22 and 25 of the Universal Declaration)

1. RIGHT TO SOCIAL INSURANCE IN THE EVENT OF DISABILITY AND OLD AGE

The pensions legislation concerning workers, employees and co-operative farmers was amended and supplemented in 1975. Under Instruction No. 5600 dealing with retirement of co-operative farmers and pensioners doing part-time jobs,⁵ the conditions for retirement of co-operative farmers are rendered equal with those of workers and employees and as of 1 July 1975 all members of co-operative farms and the members of their households, when reaching retirement age or because of disability, may also retire under the provisions of the Pensions Law, should this be more favourable to them.

The Law Amending and Supplementing the Pensions Law and the Law on the Re-adjustment of Certain Kinds of Pensions and for Amending and Supplementing Other Pension Laws⁶ was adopted in 1975. The new amendments and supplements provide for an increase of 2 per cent over the fixed pension for every year of service beyond the total length of service for the respective labour category, not to exceed 12 per cent. The amendments envisage a number of improvements of the terms which allow pensioners doing a part-time job to receive both their salary and their pension.

2. PROTECTION OF MOTHERHOOD AND CHILDHOOD

Over the 1975-1976 period the National Assembly, guided by the principles of socialist humanism and by the growing potential of the Bulgarian society, adopted several laws which constitute a specific legislative development of the principle of protection of motherhood and childhood.

The Law Amending and Supplementing the Labour Code⁷ sets new regulations for the protection of the health of pregnant women workers and employees which exceed the scope of the principles proclaimed in article 25, paragraph 2, of the Universal Declaration of Human Rights. Pregnant women workers and employees doing jobs which are harmful or too heavy for them are assigned to more suitable work or may do the same kind of job with shorter working hours and in better conditions, in accordance with the requirements laid down by the health authorities for each specific case. Assignment of pregnant women to easier jobs is compulsory both for them and for the factory, office or institution. Should the new assignment result in a difference in wages, the amount is covered by the Public Insurance Office.

The Amendment and Supplement to the Rules on applying the Decree on the Enhancement of the Birth Rate⁸ regulates some specific cases relating to the right of women completing their university education to receive financial aid during pregnancy, confinement and infant rearing.

Decree No. 519 amending and supplementing the Decree on the Enhancement of the Birth Rate⁹ also grants the right to financial aid (amounting to 10 months of minimum wages for the first child, 12 for the second, 14 for the third and 10 for each subsequent child), to those women whose labour contracts and insurance have expired within the six months before childbirth. No monthly allowance is paid when children are taken care of in kindergartens and nurseries with the expenses being fully covered by the State.

⁵ *Ibid.*, No. 78, 10 October 1975.

⁶ *Ibid.*, No. 53, 11 July 1975.

⁷ *Ibid.*, No. 27, 4 April 1975.

⁸ *Ibid.*, No. 21, 30 April 1976.

⁹ *Ibid.*, No. 21, 14 March 1975.

Ordinance No. 473 on payment of children's allowances by the District People's Councils¹⁰ provides that if a parent who has been ordered by a court to pay a children's allowance is not doing so regularly, the payments can be made by the Executive Committee of the District People's Councils, after a decision of the court. On written request, children's allowances can also be paid to the lawful tutor, in the case of children under age, or directly to the child, in the case of children over 16 and not yet of age.

¹⁰ *Ibid.*, No. 55, 18 July 1975.

BURMA

Equal protection of the law; right to an effective remedy

(articles 7 and 8 of the Universal Declaration)

The Pyithu Hluttaw (National Assembly) passed the Law for the Protection of the Rights of Citizens¹ in 1975 in order that citizens may enjoy fully the rights conferred on them by the Constitution and by the existing laws of the Socialist Republic of the Union of Burma and also for protection against the loss of such rights.

The Law makes ample provision in part III for complaints concerning grievances and also for the procedure to be followed.

Part IV deals with the protection of citizens' rights by the central and local organs of the State and the manner in which necessary action may be taken in case of loss of such rights.

In part V, provision is made for the right of a citizen to take legal proceedings against persons or organs responsible for the loss of his rights or benefits through an abuse of the powers entrusted to them by the people:

¹ *Pyithu Hluttaw Law, No. 2, 1975.*

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Introduction

During the years 1975 and 1976 the historic Twenty-fifth Congress of the Communist Party of the Soviet Union and the Twenty-eighth Congress of the Communist Party of Byelorussia were held. Substantial progress was made in implementing the programme for peace presented at the Twenty-fourth Congress of the Communist Party of the Soviet Union, and in developing all branches of the economy to mark the important occasion of the sixtieth anniversary of the Great October Socialist Revolution.

A noticeable advance was achieved in the well-being of the people. Further progress was made in developing national education and culture; and medical services, social security and the organization of the workers' leisure time were considerably improved. There was a further improvement in living conditions and a rise in wages as well as in grants and benefits under the social consumption funds.

A. Right to security of person

(article 3 of the Universal Declaration)

By decree of 30 August 1976, the Presidium of the Supreme Soviet of the Byelorussian SSR decided, for the purpose of extending liability for infringement of the regulations governing the acquisition, possession, use and registration of firearms, that a fine of up to 20 roubles should be imposed for failure to observe the regulations relating to smooth-bore sporting guns, and a fine of up to 30 roubles for failure on the part of workers in the trade for failure to comply with the established procedure for the sale of firearms and ammunition. Unless the offences involve criminal liability, similar fines will also be imposed for transferring rifle-barrelled firearms to persons without a permit from the local authorities, failing to register or reregister such a firearm, infringing the regulations governing the acquisition or possession of a government-owned firearm and ammunition or improperly issuing or using such a firearm, and discharging a firearm in populated areas or in places not designated for that purpose. The firearms may be confiscated without compensation. Firearms and ammunition owned by persons disturbing the public order, abusing alcoholic liquor or suffering from mental illness may be confiscated in accordance with the administrative procedure.

Evidence regarding persons accused of infringements of the decree is considered by the rural and settlement soviets of workers' deputies and their executive committees, or by the administrative commissions attached to the executive committees of district, urban, rural and settlement soviets of workers' deputies.

B. Equitable judicial system

(articles 6-11 of the Universal Declaration)

In the period under review, the improvement of legislation on the judicial system continued. The Act on the Judicial System of the Byelorussian SSR was amended by a decree of 30 May 1975 of the Presidium of the Supreme Soviet of the Byelorussian SSR in such a way that, in the case of people's courts like the district (urban) court in which a number of judges are elected, the presiding judge is to be appointed at a session of the corresponding soviet of workers' deputies.

Structural improvements helped to bring about a corresponding improvement in the quality of the work of the people's courts. The extension, under the new Act, of the term of office of judges from three to five years served a similar purpose. The system of electing people's judges remained the same as before, but there was a change in the procedure

governing the election of lay judges, who are now elected on a basis of their place of work, training or military service for a period of two, instead of three, years.

In accordance with article 26 of the Act concerning the judicial system of the Byelorussian SSR, the Presidium of the Supreme Soviet of the Byelorussian SSR decided, by decree of 23 August 1976, to approve the Provisions on the disciplinary liability of judges in the Byelorussian courts. These Provisions specify the tasks of Soviet courts as follows: the administration of justice and the strengthening of the socialist legal order, the education of citizens in the spirit of devotion to their country and to the communist cause, the precise and strict implementation of Soviet laws, the exercise of care in dealing with socialist property, the observance of labour discipline, honesty in State and public service and respect for the rights, honour and dignity of citizens. In their administration of justice, judges are to be independent and subject solely to the law.

The Provisions further specify that judges in Byelorussian courts may be subject to disciplinary proceedings for acts of omission as a result of negligence or indiscipline, the violation of labour discipline, and the commission of acts unworthy of a Soviet judge. A disciplinary board may impose the following penalties: reproof, reprimand and severe reprimand. There is provision for appeal against the disciplinary board's decision to the disciplinary board attached to the Supreme Court of the Byelorussian SSR, whose decision is final. If in the course of one year from the date of imposition of the disciplinary penalty no further penalty is imposed on a judge, he shall be regarded as not having been disciplined. At the request of the person bringing the disciplinary action, of the President of the Supreme Court of the Byelorussian SSR or of the Minister for Justice of the Byelorussian SSR, the disciplinary board imposing the disciplinary penalty may set it aside before the established term if, through his good behaviour, the judge gives evidence of irreproachable conduct and conscientiousness in the performance of his duties.

Useful progress was made in civil procedural law. On 4 February 1975, in connexion with the adoption of the Act on the State Notarial System, the Presidium of the Supreme Soviet of the Byelorussian SSR made certain additions to and changes in the Republic's Code of Civil Procedure. In particular, the provisions on the judicial examination of complaints concerning notarial acts or refusal to perform such acts were drafted more precisely.

The protection of the political, labour, property and other rights of citizens under the criminal law is dealt with in the Criminal Code of the Byelorussian SSR, which provides for the possibility of relieving a person of criminal responsibility if it is established that, at the time the case is investigated or examined by a court, the act committed by him no longer constitutes a danger to society or that he himself has ceased to be a danger to society. Punishment may also be waived if, at the time his case is examined, the accused can no longer be regarded as a danger to society by reason of his irreproachable conduct and honourable attitude to work.

The Code lays down appropriate procedures for relief from criminal responsibility and the transfer of cases to the comrades' courts, and for the granting of bail. There are also clauses setting time-limits for prosecution and sentencing, and clauses providing for conditional release and amnesty or pardon.

C. Marriage and the family

(article 16 of the Universal Declaration)

The main rules of family law were developed and improved in harmony with the legislation of the Republic. The regulations in force governing marriage and family relations are aimed at strengthening the Soviet family and ensuring the proper education of the rising generation.

The Code on Marriage and the Family of the Byelorussian SSR was amended by the Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR of 15 December 1975, to the effect that the executive committees of district (urban) soviets of workers'

deputies were authorized, in exceptional circumstances, to reduce the established age for marriage (18) by no more than two years, instead of one.

The civil registry offices of the executive committees of the district soviets of workers' deputies are established by the district soviets of workers' deputies in conformity with the legislation of the Republic. Their main functions are the following: to register civil-status certificates in strict conformity with the legislation in force on marriage and the family, in the interests of the State and society, and with a view to protecting the personal and property rights of citizens; and to introduce new civil ceremonies for the solemn registration of marriages and births.

D. Right to own property

(article 17 of the Universal Declaration)

Amendments and additions to the Model Rules on Housing Co-operatives were approved by Decision No. 69 of the Council of Ministers of the Byelorussian SSR on 7 March 1975. Under this decision, the resources of the co-operative comprise membership fees, share contributions, contributions for the maintenance and running of the building or buildings, annual assessments for capital repairs to the building or buildings and other receipts. By decision of the general meeting of the members of the co-operative, special funds may be constituted for purposes corresponding to the functions of the co-operative as provided for in its statutes; and each member of the co-operative is required to contribute to the cost of maintaining and running the building or buildings in an amount to be determined at a general meeting of members of the co-operative, and to make annual contributions towards the cost of capital repairs.

In the period under review, the legal regulation of State accounting practices and the registration and reform of land use were systematized and the arrangements for drawing up and issuing land-use title deeds revised. On 6 March 1975, the Council of Ministers of the USSR adopted a resolution concerning the issue to all land-users of State land-use title deeds, and approved a unified deed form for the USSR.

A series of rules issued after the adoption of the Civil Code extended the rights and legal interests of citizens, and in particular the rights of citizens when a house that is legally their personal property has to be demolished in the interests of the State or society.

E. Right to take part in government

(article 21 of the Universal Declaration)

As in previous years, citizens of the Byelorussian SSR took an active part in the conduct of national affairs, both directly and through freely elected representatives. The scale of their participation in the management of public and national affairs is reflected in the results of the regular elections to the Supreme Soviet of the Byelorussian SSR, held on 15 June 1975, in which 6,213,806 persons, or 99.99 per cent of registered voters, took part. Votes for candidates from the people's Communist bloc and for non-party candidates were cast by 99.96 per cent of the electors taking part in the elections. All 430 candidates registered by the electoral commissions were elected.

The population is fully represented in the Supreme Soviet, and 216 deputies (50.3 per cent), including 113 workers and 103 collective-farm members, are directly employed in production. The deputies include 30 workers in the fields of science and culture, literature and the arts, education and public health, 142 Party, trade-union and Komsomol workers and workers for soviets, and 24 representatives of the Soviet Army. Among the deputies are 159 women (37 per cent), 328 Byelorussians, 87 Russians, 7 Ukrainians and 8 members of other nationalities. Compared with its previous composition, 76 per cent of the deputies of the Supreme Soviet of the Byelorussian SSR are new members.

In conditions of advanced socialism, the democratic nature of Soviet political organization has become increasingly apparent, and participation by the broad masses of workers

in the management of the State, production and public affairs in general is steadily increasing.

Considerable importance continues to be attached, in the development of the Soviet political system, to improving the work of organs of the people's power—the soviets of workers' deputies—which are the political basis of the socialist State and the most complete embodiment of its democratic character. Through the soviets, the population is linked to the highest organization of the Soviet political system—the common socialist State, which manages all public property and embodies the general will and interests of all workers.

In the elections to the local soviets of workers' deputies held on 15 June 1975, 79,447 deputies were elected to six regional, 117 district, 96 urban, 16 urban-district, 1,516 rural and 109 settlement soviets. Of these deputies, 34 per cent were workers and 30.7 per cent collective-farm members; 46.7 per cent were women.

The main characteristics of the soviets in this period of advanced socialism are their close link to the people and the direct participation of the masses in the constitution and day-to-day work of these representative organs of power.

One of the most important organizational and legal forms of work of the soviets are the sessions, which are held in public and open to anyone wishing to attend. The entire population is fully informed of the decisions taken, and this is an essential condition of the soviets' work. Members of the soviets report regularly to the electorate on their work, and this, too, accords with the genuinely democratic character of the popularly elected organs of power.

On 13 May 1976, the Presidium of the Supreme Soviet of the Byelorussian SSR decided that the local soviets of workers' deputies should endeavour to bring about a further improvement in the organization of the work of the executive committees, permanent commissions and deputies by making greater use of the electors' mandates in promoting economic development and ensuring maximum satisfaction of the people's cultural and daily needs. It further decided that the local soviets of workers' deputies and their executive committees should give more attention to the preparation and holding of pre-election meetings of electors and to the careful and thorough examination of the electors' mandates from the point of view of their justification and feasibility.

F. Right to social security; realization of economic, social and cultural rights

(articles 22 and 25 of the Universal Declaration)

Under the Act concerning the State budget of the Byelorussian SSR for 1976, a sum of 1,848,472,000 roubles was allocated, out of a total anticipated revenue of 4,085,428,000 roubles, for social and cultural purposes, including general education schools, vocational and technical establishments, specialized secondary and higher educational establishments, scientific research institutions, libraries, clubs, theatres, the press, television, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; and pensions and allowances.

The Council of Ministers of the Byelorussian SSR approved, by Decision No. 134 of 30 April 1975, the Statutes of the social security departments of the executive committees of the regional soviets of workers' deputies. The main functions of the social security departments as provided for under the Statutes are as follows: to ensure the general extension of social security coverage, with a view to the maximum satisfaction of the social needs of elderly citizens and citizens who are unfit for work; to direct the work of establishing eligibility for and paying out pensions and benefits in conformity with the legislation in force; to organize and conduct periodic medical examinations at the place of work; to make arrangements for the vocational training of disabled persons and for setting them up in suitable work, and to provide various kinds of material services to pensioners and persons in receipt of benefits; to provide disabled persons with means of transport; to provide persons in homes for the aged and disabled with various kinds of material, medical and cultural services; and to supervise and exercise control over the activities of local organ-

izations and educational/production enterprises of the Byelorussian Society for the Blind and the Byelorussian Society for the Deaf.

By Decision No. 148 of 8 May 1975, the Council of Ministers of the Byelorussian SSR approved the Provisions governing the procedure for granting rebates on rents and public utility charges to persons disabled in the Second World War (categories I and II) and the families of servicemen killed in action, and entitling persons disabled in the Second World War to use passenger transport vehicles free of charge. This was done in implementation of Decision No. 304 of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR of 18 April 1975 on further privileges for persons disabled in the Second World War and for the families of servicemen killed in action.

The 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed on behalf of the Government of the Byelorussian SSR at Moscow on 29 December 1972, was ratified on 30 December 1975 by a decree of the Presidium of the Supreme Soviet of the Byelorussian SSR.

In accordance with the Water Code of the Byelorussian SSR and pursuant to Decision No. 452 of the Council of Ministers of the USSR of 11 June 1976, the Council of Ministers of the Byelorussian SSR decided to provide that the use of bodies of water of particular national importance or of special scientific or cultural value should be partly or completely prohibited with a view to protecting them from pollution, obstruction or depletion, maintaining their hydrological, hydrobiological, hydrochemical and hydrogeological régimes in cases where any change in those régimes might have an adverse effect on mineral-water resources and their medicinal properties and the natural conditions of spas, on the development of plant and animal life and on the preservation of well-known beauty spots, historical sites and reserves; and also for the purpose of ensuring the protection of State boundaries and meeting other national requirements.

G. Right to work; right to just and favourable remuneration

(article 23 of the Universal Declaration)

Decisions were taken at the Congresses of the Communist Party of the USSR and the Communist Party of the Byelorussian SSR, held during this period, with a view to improving the working and living conditions and the material well-being and cultural level of the workers, and strengthening their legal safeguards.

In February 1976, the Council of Ministers of the Byelorussian SSR adopted recommendations on remuneration for work done on collective farms in the Byelorussian SSR. The object of these recommendations was to provide collective farms with practical assistance in further improving the remuneration of collective-farm workers, identifying and taking advantage of possibilities of increasing production efficiency, improving on-farm accounting methods and achieving a further improvement in the well-being of collective-farm workers.

The following recommendations were drawn up with a view to providing practical assistance to collective farms in further improving the system of remuneration of collective-farm members;

(a) Remuneration for work on collective farms should be based on the amount and quality of the work done on collective land by each member of the farm;

(b) Regulations governing remuneration, and covering rates and conditions of remuneration and the award of bonuses to collective-farm members, should be drawn up by the management of each collective farm on the basis of the farm's Statute and these recommendations and in the light of specific local conditions, and approved at the general meeting of collective-farm members;

(c) Production norms and piece-rates for agricultural and other work should be decided upon and, where necessary, revised with the broad participation of collective-farm workers and specialists, on the basis of standard production norms, having regard to the specific conditions prevailing on the farm, and approved by the farm management;

(d) Improvement of the system of remuneration of work done on collective farms should promote the identification and utilization of unexplored possibilities of increasing the efficiency of social production, strengthen the on-farm profit-and-loss accounting system, and help to ensure that labour productivity increases more rapidly than wages and that the personal interests of farm members are suitably linked with the development of social production on an expanded basis as the main condition for a further improvement in the well-being of the collective-farm worker.

H. International instruments

(article 28 of the Universal Declaration)

Among the international instruments ratified by the Presidium of the Supreme Soviet of the Byelorussian SSR during the period under review were the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (by decree of 16 October 1975) and the Convention on the Prohibition of the Development, Production and Stock-piling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (by decree of 13 February 1975).

CANADA

Introduction

During the period under review, Canada abolished capital punishment, passed a new Citizenship Act and brought forward a new immigration bill and a new federal human rights bill. The Province of Quebec passed a Charter of Human Rights and Freedoms, and the Province of Prince Edward Island adopted a new Human Rights Act. Many other provinces amended their human rights legislation. Ontario and Newfoundland established the office of Ombudsman.

On 19 May 1976 Canada acceded to the International Covenant on Economic, Social and Cultural Rights, to the International Covenant on Civil and Political Rights, and to the Optional Protocol to the International Covenant on Civil and Political Rights. Canada's accession to these instruments had been facilitated by a Federal-Provincial Conference on Human Rights held in December 1975. At the Conference, the federal and provincial governments reached an agreement on procedures and mechanisms for implementing the Covenants and the Protocol and established a continuing Federal Provincial Committee of officials responsible for human rights. As a result of the Conference, a second Committee was established to study possible harmonization of federal and provincial laws on equality of employee benefits as they relate to age, sex and marital status.

Consultations have continued with the native peoples with a view to finding solutions to their land claims and to obtaining their views on amendments to be brought to the Indian Act.

Canada observed International Women's Year and took steps to lessen discrimination against women. During this period, awareness has increased of the difficulty of promoting complete equality for women while the terminology being used is very often related to men only. The problem exists in both official languages of Canada. In new human rights laws and in other areas, efforts have been made to overcome this difficulty.

The Law Reform Commission of Canada, which is an independent body created by an act of Parliament to study and make recommendations to Parliament respecting the laws of Canada, submitted several reports during the period under review, which are referred to below under the appropriate headings.

Some measures of a general nature taken by the Federal Government and by provincial governments are referred to briefly here.

Canadian Human Rights Act

On 29 November 1976, the Federal Government introduced a bill in the House of Commons, the Canadian Human Rights Act, Bill C-25.¹ This bill, which is a modification of the bill submitted to the House of Commons in 1975 (Bill C-72), is designed to expand present federal legislation in the area of discrimination and privacy. (See sects. A and G below.)

Immigration Act, 1976

The policy of equal treatment for all prospective immigrants is guaranteed by the Immigration Act, 1976;² section 3 (*f*), which states one of the objectives of the Act, reads as follows:

¹ In Canadian practice the term "bill" refers to pending legislation, while "Act" refers to legislation which has been passed by Parliament. (Bill C-25 was passed in July 1977, and came into force on 1 March 1978. Canadian Human Rights Act, *Statutes of Canada* (hereinafter *S.C.*), chap. 33.)

² The Immigration Act, 1976 (*S.C.*, chap. 52), was assented to on 5 August 1977 and entered into force on 10 April 1978.

"to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex".

In the case of immigrant selection, section 8(1) of the Immigration Regulations, 1978, reflects the non-discriminatory nature of that objective of the Act. That is, when a married couple, with or without dependents, apply, "... the visa officer shall assess that immigrant or, at the option of the immigrant, the spouse of that immigrant, ..." to see if he or she is able to become successfully established in Canada. This section, therefore, has done away with the concept that invariably assumed that the husband was the "head of the family" and he alone was to be assessed for meeting selection criteria.

In order to avoid undue hardship to immigrants the Department of Manpower and Immigration maintained the Adjustment Assistance Program, which provides emergency financial assistance to indigent immigrants, and the Immigrant Settlement and Adaptation Program, which provides essential services to immigrants, regardless of age, sex, race, religion or nationality.

Review of the Ontario Human Rights Code

The Ontario Human Rights Commission undertook a major review of the Ontario Human Rights Code, receiving over 300 written briefs and conducting a number of public meetings to that effect in 1975 and 1976.

Manitoba: proposal for a provincial bill of rights

In May 1976, the Law Reform Commission of Manitoba published a report³ recommending the adoption of a provincial bill of rights and containing a proposal for such a bill.

Ombudsman

In 1975 Ontario passed the Ombudsman Act,⁴ and an ombudsman was subsequently appointed for a term of 10 years. It is the function of the Ombudsman to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or group. The Act does not apply, however, to judges or the functions of any court or to deliberations and proceedings of the Executive Council or any committee thereof. Certain types of matters are not reviewable by the Ombudsman. These are any decision, recommendation, act or omission in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review on the merit of the case to any court, or to any tribunal constituted by or under any Act until that right of appeal or objection has been exercised in the particular case, or until after the time for the exercise of that right has expired; or any decision, recommendation, act or omission of any person acting as legal advisor to the Crown or acting as counsel to the Crown in relation to any proceedings.

Under the Ontario Ombudsman Act, application may be made to the Supreme Court for a declaratory order determining a question of the Ombudsman's right to investigate any case or class of cases.

Complaints to the Ombudsman must be made in writing, and any complaint written by an inmate of a provincial correctional institution or training school, or a patient in a provincial psychiatric facility, must be immediately forwarded, unopened, to the Ombudsman by the person in charge of the institution, training school or facility. The Ombudsman may make such inquiries as he deems fit in order to obtain information, and may hold hearings. If it appears to the Ombudsman that during an investigation a report or recommendation adversely affecting any governmental organization or person might

³ Law Reform Commission of Manitoba, *The Case for a Provincial Bill of Rights* (Manitoba, Queen's Printer, 1976).

⁴ An Act to provide for an Ombudsman to investigate Administrative Decisions and Acts of Officials of the Government of Ontario and its Agencies (The Ombudsman Act, 1975).

result, the Ombudsman must give that organization or person an opportunity to make representation respecting the adverse report or recommendation, either personally or through counsel. The Ombudsman has the power to require any member of any governmental organization to furnish information and documents pertinent to an investigation, and may summon before him and examine under oath any complainant, member of a governmental organization or any other person.

The Ombudsman can initiate remedial action where he finds a decision, recommendation, act or omission which has been—or appears to have been—contrary to the law, unreasonably harsh, oppressive, discriminatory, based in whole or in part on a mistake of law or fact, wrong, or where discretionary powers have been improperly used. Where the Ombudsman deems that no appropriate action is being taken, he may send a copy of his report and recommendations to the Premier and thereafter to the Assembly.

In 1976 *New Brunswick* amended its Ombudsman Act to extend the jurisdiction of the Ombudsman to municipalities. Also, the Ombudsman is protected against being prosecuted or being compelled to testify in any matter coming to his knowledge in the exercise of his functions, whether or not he was acting within his jurisdiction, unless it can be shown that the Ombudsman acted in bad faith.

Newfoundland appointed its first Ombudsman in 1975.

Native populations

In the James Bay area of Quebec, where a large hydroelectric power development project is being built, a final agreement was signed on 11 November 1975, which provides to the Cree and Inuit over 5,000 square miles for community use, and exclusive rights of fishing, hunting and trapping over a territory of some 60,000 square miles. The agreement also provides among other benefits an amount of \$225 million to be paid to them over a 20-year period in compensation for extinguishing their territorial rights in the area. The agreement was ratified by the Cree and Inuit by secret ballots within four months of the signature.

In November 1975, the appeals division of the *Nova Scotia* Supreme Court, basing its ruling on a 200-year-old British royal edict, has ruled that Indians in Nova Scotia do not have to obey provincial hunting laws on reserves. The precedent-setting judgement ruled that the royal proclamation of 1763, giving Indians the right to use reserve lands for whatever purpose they chose, superseded the *Nova Scotia Lands and Forests Act*.

A. Non-discrimination

(article 2 of the Universal Declaration)

1. STATUS OF WOMEN

The Office of the Co-ordinator, Status of Women, established by the Federal Government, became an independent office in April 1976 reporting directly to the Minister Responsible for the Status of Women. This Office has the mandate to advise the Minister and to ensure that all programmes and policies of the Federal Government take into account the concerns of women. The Office also has a public information component to inform people of new federal initiatives for women.

During 1975 and 1976, the Canadian Advisory Council on the Status of Women published reports and recommendations on birth planning; family, marriage and the law; fringe benefits and pensions; Indian women and the Indian Act; maternity leave benefits; rape and sexual assault; taxation; occupational health hazards.

By December 1975, of the 122 recommendations pertaining to the Federal Government contained in the 1970 report of the Royal Commission on the Status of Women, 50 had been implemented and 46 had been partially implemented.

A booklet, *Status of Women in Canada—1975*, was prepared by the Federal Government for public use and information.

In preparation for International Women's Year, the Federal Government had established an Interdepartmental Committee on International Women's Year composed of representatives of 15 departments and agencies of government. It continued throughout 1975. A total of \$5 million in new funds was allocated by the Government for the Year, one half administered by the IWY Secretariat and one half by the Department of the Secretary of State.

Numerous conferences and seminars were held during the Year on important questions related to the status of women; the sponsors of these meetings included the Department of the Secretary of State, the Department of Justice, the Ministry of State for Urban Affairs, the National Capital Commission and the IWY Secretariat. The IWY Secretariat also conducted a media campaign and organized mobile information services and local community meetings in order to convey information and stimulate public interest in questions relating to the status of women.

In 1975, Information Canada published a booklet entitled *Federal Services for Women* as its contribution to International Women's Year.

International Women's Year has been observed by various activities in all the provinces. Many provincial governments had special funds available for the Year and some created special positions for the purpose. The educational programmes were directed towards the promotion of equality, dealing with such issues as employment opportunity and unemployment insurance, day care, maternity leave, equitable division of matrimonial property, legal rights, credit status, sex role stereotyping, birth control, abortion, rape, attitudinal change, women's group funding, the family, salaries for housewives, rights of native women under the Indian Act, and programmes for provincial Status of Women Councils.

The government of *Saskatchewan* established a Women's Division in the Department of Labour in April 1976 to replace the Women's Bureau of the Department of Labour and the Office of the Provincial Co-ordinator, Status of Women. The Division has a mandate to work towards eliminating discriminatory practices against women. The main functions of the Division are: to administer equal pay for similar work and maternity leave provisions of the Labour Standards Act, to conduct research on the status of women in Saskatchewan and to carry out education and information programmes.

In 1976, the government of *Saskatchewan* appointed new members to the Advisory Council on the Status of Women and gave them new terms of reference, designed to give priority to concerns and issues related to the status of women.

On 20 June 1975, *British Columbia* passed the Status of Women Amendment Act, which amends various public acts to replace many words denoting gender ("man", "widow", etc.) with "neutral" words such as "person", "surviving spouse", etc.

2. CANADIAN HUMAN RIGHTS ACT

Bill C-25 (Canadian Human Rights Act),⁵ introduced in the House of Commons on 29 November 1976, is designed to expand present federal legislation in the area of discrimination and privacy (see also sect. G below). It prohibits discrimination in services and employment on the basis of race, national or ethnic origin, colour, religion, age, sex or marital status, or conviction for an offence for which a pardon has been granted, or by discriminatory employment practices based on physical handicap. These provisions apply to all federal departments and bodies and to businesses which are within the federal jurisdiction. The bill provides for equal pay for work of equal value.

The bill provides for a Human Rights Commission to be established, to be responsible for applying the provisions of the bill relating to discrimination.⁶

⁵ S.C., 1976, chap. 33.

⁶ The Commission began its operations on 1 March 1978, date of entry into force of the Act.

3. PROVINCIAL LEGISLATION AND OTHER DEVELOPMENTS

Quebec Charter of Human Rights and Freedoms

In the Province of Quebec, the Charter of Human Rights and Freedoms was assented to on 27 June 1975 and entered into force on 28 June 1976.

In the first chapter of part I, under the heading of general provisions, the fundamental rights and freedoms of the individual are enumerated, namely, the right to life and to personal security, inviolability, freedom and the possession of juridical personality (sect. 1); the right to assistance (sect. 2); the fundamental freedoms, such as the freedom of conscience and the freedom of expression (sect. 3); and the right to the safeguard of one's dignity (sect. 4), to respect for one's private life (sect. 5), to the protection of one's property (sects. 6-8) and to professional secrecy (sect. 9).

Several provisions deal particularly with discrimination based on race, colour, sex, civil status, religion, political convictions, language, ethnic or national origin or social condition (sect. 10). Discriminatory publicity is prohibited (sect. 11), as is discrimination in the making or the carrying out of any juridical act (sects. 12 and 13) excepting the lease of a room situated in a dwelling (sect. 14). Similarly, public places and public transportation are available to everyone without distinction or preference (sect. 15). Finally, all discrimination is prohibited in the entire sector of labour, and the principle of equal salary or wages for equivalent work for the same concern is officially recognized (sects. 16-20).⁷

Following chapter II, where certain political rights are enumerated, such as the right of petition to the National Assembly (sect. 21) and the right to vote or to be a candidate at an election (sect. 22), chapter III deals with judicial rights. Thus, every person has a right to an impartial hearing by an independent tribunal (sect. 23). No one may be deprived of liberty except on grounds recognized and provided by law (sect. 24). Similarly, every person arrested or detained has the right to be treated with human dignity and respect (sect. 25), to receive separate treatment according to sex, age, and mental or physical condition (sect. 26), to be separated from the prisoners serving sentences while awaiting the outcome of a trial (sect. 27) and to be promptly informed of the grounds of arrest (sect. 28), as well as the right to advise the next of kin, to retain the services of an advocate or to be, without delay, brought before a tribunal (sects. 29 and 30). The right to be released on recognizance while awaiting trial (sect. 31) and the right to habeas corpus (sect. 32) as well as to the presumption of innocence (sect. 33) are recognized, as are the services of an interpreter (sect. 36). The non-retroactivity of the law is also a principle recognized in the Charter (sect. 37).

From a different perspective, certain economic and social rights are enumerated and recognized in chapter IV, namely, the right to free public instruction (sect. 40), to the establishment and maintenance of private educational establishments (sect. 42), the right, for minorities, to develop their cultural interests (sect. 43), the right to information (sect. 44), the right, for every person who works, to fair and reasonable conditions of employment (sect. 46), the equality of husband and wife in the marriage and the right of aged persons or of infirm or mentally ill persons to be protected against all forms of exploitation (sect. 48).

Chapter V comprises special provisions on the interpretation and application of the laws with regard to the Charter (sects. 50-52) and concerning the right of every person whose fundamental rights are interfered with to claim an indemnity or to obtain an injunction (sect. 49).

Part II establishes a "Commission des droits de la personne" (the commission) whose members are appointed by the National Assembly (sect. 58), whose employees are not members of the civil service (sect. 60) and whose functions will be, in particular, to promote the Charter (sect. 66), to investigate matters within its competence, analyse existing laws which could be inconsistent with the Charter and establish a programme of research and education in the field of human rights (sect. 67). The commission will receive any

⁷ By amendment to the Charter of Human Rights and Freedoms passed on 19 December 1977, discrimination on the basis of sexual orientation is also prohibited.

complaint relating to a right recognized in sections 10 to 19 or in the first paragraph of section 48, whether the complaint emanates from an individual or from a group of persons (sects. 69 and 70). The commission will then endeavour to bring the parties to an agreement (sect. 81). It may recommend the cessation of the act complained of, the performance of an act or the payment of an indemnity within the delay it fixes (sect. 82). If the author of the discrimination does not comply with the recommendation issued by the commission, the commission itself may proceed before the courts (sect. 83).

Part III of the bill contains final provisions and, in particular, clearly establishes what constitutes an offence in matters of discrimination (sect. 87).

Prince Edward Island: Human Rights Act

On 11 September 1976, Prince Edward Island proclaimed a new Human Rights Act,⁸ which replaces the 1968 legislation called An Act Respecting Human Rights.

The new Act expands the grounds for discrimination and provides for a citizen board of commissioners. The commission is empowered to investigate complaints, attempt reconciliation or recommend a board of inquiry for complaints that cannot be settled by conciliation. The commission is also expected to carry out a vigorous campaign of public education and employer-employee relations training on human rights issues.

The Act prohibits discrimination in public accommodation, services, facilities, pay or employment because of race, religion, creed, colour, sex, marital status, political belief, or ethnic or national origin. In matters of pay or employment, discrimination because of a person's age or physical handicap also constitutes grounds for laying a complaint under the Act.

Three citizens have been appointed by government to carry out the Human Rights Act as members of the commission. These persons were selected from a list of names received by soliciting candidates from various citizen groups across the Province.

Manitoba: Human Rights Act Amendment

The Manitoba Human Rights Act⁹ was altered in several respects by amendment in 1976.

"Family status" was listed among the prohibited grounds for discrimination in the publishing of any notices, signs, symbols or other representation; in the occupancy of any commercial unit or housing accommodation; in employment and in membership in a trade union, employers' organization or occupational association. The Act defines "family status" as including the status of an unmarried person or parent, a widow or widower or that of a person who is divorced or separated, or the status of the children, dependants or members of the family of a person.

The coverage regarding "source of income" and "age" was expanded to apply to the publishing of notices, signs, symbols or other representation. The coverage regarding "marital status" was expanded to apply to accommodation, services and facilities and to the occupancy of commercial units or housing accommodation.

The feature of "reasonable cause" was added as a ground for refusal of access to public accommodation and services or to housing. These facilities must not be denied to anyone unless "reasonable cause" exists: the Act provides that the race, nationality, religion, colour, sex, age, marital status, family status in the case of housing, or ethnic or national origin of a person does not constitute "reasonable cause".

An amendment affected the provisions dealing with discrimination in employment and in contracts available to the public by providing for "guidelines set out in the regulations", which will determine if employee benefit plans or insurance contracts are discriminatory on the basis of age, sex, family status or marital status. A preliminary "Discussion

⁸ Human Rights Act (*Laws of Prince Edward Island*, 1975).

⁹ The Human Rights Act (*Statutes of Manitoba*, 1974, c. 65—Cap. H 175).

paper on guidelines on employee benefits plans" was developed. The discussion paper, together with a series of consultations with the public and special interest groups, will form the basis for finalized regulations.

The powers of the Manitoba Human Rights Commission were altered to provide certain options relative to the processing of complaints through settlement, boards of adjudication, or prosecution.

Until 1976, a board of adjudication had power to order compensation only for "wages lost". Amendments passed in 1976 expanded the powers of the board to permit the making of an order to pay compensation for expenses incurred by reason of the contravention of the Act and to permit the making of an order to pay a penalty or exemplary damages in respect of the feelings or self-respect of the aggrieved person. In the opinion of the Commission, this latter provision enables it to deal more effectively with other than employment complaints and particularly with housing complaints.

New Brunswick: amendment to the Human Rights Code

The New Brunswick Human Rights Code was amended in 1976 to add "physical disability" as one of the grounds upon which discrimination is prohibited.

Nova Scotia: activities of the Human Rights Commission

The investigation of complaints of discrimination has continued to predominate in the work of the Nova Scotia Human Rights Commission. Statistical breakdowns of complaints received for each year indicated that major areas of discrimination continue to be against the visible minorities and in the area of sex. Seven boards of inquiry were ordered during the two-year period.

Human Rights Affirmative Action Committees, active in 10 communities in Nova Scotia, have been instrumental in opening up new areas of employment for minorities and in creating a climate of equal opportunity for all. By direct and indirect referral the Commission has helped fill more than 200 jobs with people from predominantly visible minorities.

Public education has involved the Commission in school and community activity with no less than 12 high-school human rights conferences, on a one-week basis, as well as 500 community workshops or conferences and the distribution of 300,000 items of literature.

Affirmative Action in Employment Programs have been entered into by industrial firms and by public authorities operating in Nova Scotia. The municipality of Glace Bay introduced such a programme in November 1976, a first of its kind in Canada. The Minister in Charge of Administration of the Human Rights Act has made reference to affirmative action in employment as the priority area in which the Commission works.

The Commission continued during both 1975 and 1976 to pursue its policy to encourage student-centred, action-oriented research in the areas of prejudice and discrimination. Two important student publications, *Women and Credit* and *Sexism in Textbooks*, were released during 1976.

Ontario: rights of blind persons

In Ontario, an Act to provide for Certain Rights for Blind Persons was given royal assent on 14 April 1976. The Act prohibits the barring of trained guide dogs accompanying blind persons in any public accommodation, facility or service, or in the occupancy of any self-contained dwelling unit. Identification cards, which are *prima facie* proof, may be issued to the blind person and his guide dog. Cards must be surrendered, upon request of the Attorney General or designated officer, for amendment or cancellation. A person discriminating against a blind person and his guide dog is guilty of an offence and on summary conviction liable to a fine not exceeding \$1,000. A person posing as a blind person is guilty of an offence and on summary conviction liable to a fine not exceeding \$100.

B. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

Abolition of the death penalty

When, on 16 July 1976, the Criminal Law Amendment Act (No. 2), 1976,¹⁰ came into force, the death penalty was abolished for all crimes, except for certain offences under the Code of Service Discipline.

Study on law and the protection of life

The Law Reform Commission of Canada has undertaken a research project called "Law and the protection of life". This project will work towards formulating policy objectives for the interaction of law and medicine on such issues as euthanasia and medical operations involving transplantation of human tissue.

C. Treatment of offenders

(article 5 of the Universal Declaration)

The Law Reform Commission of Canada reported to Parliament in January 1976 with its recommendations on dispositions and sentences in the criminal process. In its report,¹¹ the Commission focuses on sentencing, not as a punishment to the offender, but more realistically as a method by which the victim or the community can best be compensated for the harm done by the offender (para. 2.1 and 2.10). With this in mind, prison sentences, according to the Commission, should be used only as a last resort.

D. Right to recognition as a person before the law

(article 6 of the Universal Declaration)

An Act of 27 April 1976¹² to amend the Vital Statistics Act of *Saskatchewan* enables a person who has for at least 10 years been in the practice of spelling his or her surname differently from the surname as spelled in the registration of birth or marriage to apply to the Director of Vital Statistics to have it changed. If the application is accepted, the spelling that has been consistently used during the previous 10 years may be noted on the registration, and the changed spelling will thereafter be used in documents created from that registration. Another amendment permits a married woman to alter the name on her birth registration to one which she has used consistently prior to her marriage.

An Act of 7 May 1976¹³ to amend the Change of Name Act of *Saskatchewan* makes provision for women who are or become married to retain the use of their maiden names. In addition, a woman who has assumed her husband's surname may revert to her maiden name. Official recognition of these changes is made through the Director of Vital Statistics.

An Act of 11 April 1975¹⁴ to amend the Vital Statistics Act of *Saskatchewan* authorizes a person who has undergone transsexual surgery to apply to the Director of Vital Statistics to have the sex designation on his registration of birth changed so that it will be consistent with the results of the transsexual surgery. The application for a change of the sex designation in the registration of birth is to be accompanied by two medical certificates and by such additional evidence as the Director of Vital Statistics may require.

¹⁰ S.C., 1974-75-76, chap. 105.

¹¹ Law Reform Commission of Canada, *A Report on Dispositions and Sentences in the Criminal Process: Guidelines* (Ottawa, Information Canada, 1976).

¹² *Statutes of Saskatchewan*, 1976, chap. 65.

¹³ *Ibid.*, 1976, chap. 6.

¹⁴ *Ibid.*, 1974-75, chap. 61.

E. Administration of justice

(articles 7, 10 and 11 of the Universal Declaration)

1. CRIMINAL LAW

The Law Reform Commission of Canada spent five years considering the criminal law. The initial result came in March 1976, after numerous study and working papers, with a report to Parliament.¹⁵

The report was based on three fundamental principles—freedom, humanity, and justice. To achieve these ends, the Commission recommended that the criminal law, as a powerful instrument of stigmatization, must be reserved for those offences that contravene society's core values. This would mean that strict liability offences, or those that do not involve real culpability, should be removed from the domain of the criminal law.

In March 1976, the Law Reform Commission of Canada submitted to Parliament a report on mental disorder in the criminal process.¹⁶ The report was made with the view that mentally disordered persons are entitled to the same procedural fairness and should benefit from the same protection of personal liberty as other persons.

The *Northwest Territories* passed on 28 May 1976 the Interprovincial Subpoenas Ordinance, designed to improve the situation of accused persons.

2. LEGAL AID

The Act Respecting a Plan of Legal Aid for the Province of *Newfoundland* was enacted in 1975 and provides for a Legal Aid Commission which may, where an applicant is eligible under the Act, appoint counsel, as prescribed by the regulations, to attend in any court in the province on a daily or on such other basis as may be required, for the purpose of advising or representing any persons in a civil matter, or any person charged with a criminal offence or who is being detained or is under arrest.

The *Yukon Territory* is now participating in the legal aid system under a cost-sharing agreement with the Federal Government.

3. RULES OF EVIDENCE

The rules about evidence or what a judge can allow in the way of testimony and tactics in a Canadian trial have been developed over the years in the common law. As such, they have become too numerous and complex. Because of this, the Law Reform Commission of Canada studied the problem; in December 1976, it made its report to Parliament on evidence.¹⁷ The Commission recommended that these rules be simplified and reformulated or, in some cases, repealed. Over-all, the report, accompanied by a model code, is designed to ensure equality and fairness in Canadian trials.

4. UNIFIED FAMILY COURTS

Saskatchewan has initiated a project to demonstrate the feasibility of a unified family court having as its objectives the unification of the judicial jurisdictions now dealing separately with various matrimonial and familial matters, and secondly, the provision of ancillary familial support services to enable the judicial system to deal with familial disputes more equitably and effectively.

Prince Edward Island launched in 1975 the first unified family court project in Canada. There were also similar projects in *British Columbia* and in *Ontario*.

¹⁵ Law Reform Commission of Canada, *Our Criminal Law* (Ottawa, Information Canada, 1976).

¹⁶ Law Reform Commission of Canada, *A Report to Parliament on Mental Disorder in the Criminal Process* (Ottawa, Information Canada, 1976).

¹⁷ Law Reform Commission of Canada, *Report on Evidence* (Ottawa, Information Canada, 1975).

F. Right to an effective remedy

(articles 8 and 25 of the Universal Declaration)

In 1975 the *Yukon Territory* passed the Compensation for the Victims of Crime Ordinance. The purpose of this ordinance is to establish a programme, cost-shared with the Federal Government, to provide compensation to people who are injured or the dependants of people who are killed as a result of a crime or in assisting a police officer in the execution of his duty. The ordinance enables the Commissioner of the Yukon Territory to sign a cost-sharing agreement with the Government of Canada and in general follows the form which this proposed agreement will take. The ordinance was amended on 18 March 1976.

G. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

A bill introduced by the Federal Government on 29 November 1976¹⁸ provides that personal information furnished by an individual to the Federal Government for one purpose may only be used for another administrative purpose if the individual does not object after having been consulted or if the use is otherwise authorized by law. The bill grants to individuals the right of access to and correction of information concerning them contained in federal data banks to be listed in an index which will be made available to the public. Exemptions from disclosure will only be possible on grounds set out in the bill and reasons must be given to the individual. A Privacy Commissioner will function as an ombudsman to investigate complaints that individuals have not been accorded the rights granted by the bill. The Privacy Commissioner is a member of the Canadian Human Rights Commission and will report annually to Parliament.

H. Right of asylum

(article 14 of the Universal Declaration)

The new Immigration Act, 1976, reaffirms the fundamental principles of Canadian immigration law: family reunification, non-discrimination, and concern for refugees. It also recognizes, in law, the obligations Canada has assumed as a party to the Convention relating to the Status of Refugees of 1951 and to the Protocol relating to the Status of Refugees of 1966. Under the Act, refugees are protected from arbitrary return to countries where they fear persecution except in those circumstances specifically noted in the Convention. The definition of "refugee" given in the Convention is included in the Act, which also outlines the steps by which determinations are made on claims to refugee status from persons in Canada, on appeals for a redetermination of status and on appeals against removal orders.

In addition, the Act gives legislative sanctions to Canada's traditional role as a country of resettlement for displaced and persecuted people by establishing Convention refugees as an immigration class and making provisions for the designation of special classes to permit the resettlement of other groups of displaced and persecuted people. The selection criteria for refugees and designated classes will be considerably more flexible than those applying to ordinary economic migrants.¹⁹

I. Right to a nationality

(article 15 of the Universal Declaration)

A new Citizenship Act received royal assent on 16 July 1976.²⁰ The Act eliminates previous differential requirements and procedures based on sex, age, marital status and country of origin.

¹⁸ Bill C-25 (Canadian Human Rights Act).

¹⁹ A total of 12,000 refugees and displaced persons were admitted to Canada in 1976 and 1977 inclusive.

²⁰ S.C., 1976, chap. 108. The Act came into force on 15 February 1977.

A principal feature of the Act is that citizenship now becomes a right upon satisfaction of certain conditions and cannot be arbitrarily withheld.

Another feature is the reduction of the residency requirement from five to three years.

The Act also implements several recommendations of the Royal Commission on the Status of Women. They include the following:

(a) The residency requirement of three years applies equally to applicants of both sexes;

(b) Either parent may now apply for citizenship on behalf of a minor child. This includes adoptive parents. Under the former Act, in most cases only the father could apply;

(c) A person born outside Canada before the entry into force of the Act of a Canadian mother may be granted Canadian citizenship if, within two years after the entry into force of the Act or within such extended period as the Minister may authorize, an application for citizenship is made by a person authorized to make the application. Such persons are not now Canadian citizens unless their father was a Canadian at the time of their birth and the fact of their birth was registered under the provisions either of the former Act or of the new Act;

(d) Women who did not acquire Canadian citizenship under the 1947 Act because of marriage to foreign nationals may automatically acquire it upon notifying the Minister. Previously these women had to complete the full citizenship application procedure;

(e) The rights of children born abroad, in or out of wedlock, are now protected under section 3 (1) (b) of the Act. The right to citizenship will be automatic in the first generation and will be afforded to the second generation provided that by age 28 the person concerned has retained and registered citizenship in accordance with the provisions of the new Act.

By the new Act the age of application for citizenship has been reduced from 21 to 18 years to correspond with the federal voting age.

The Minister and the Cabinet may waive certain requirements for citizenship in order to reward people for special services to Canada or relieve cases of particular hardship.

J. Equal rights during marriage and at its dissolution

(article 16 of the Universal Declaration)

Marriage dissolution inevitably brings up the question of property rights between the divorced spouses. In its report to Parliament in March 1976 on family law, the Law Reform Commission of Canada said that, in itself, marriage did not create a right to financial provision after marriage dissolution. Instead, a right to financial support from an estranged spouse should be created by reasonable needs as a result of:

(a) The function of each spouse in a marriage;

(b) An understanding between the spouses reached before the divorce;

(c) Arrangements for the custody of the children of the marriage;

(d) The disability of either spouse that affects his or her ability to provide for himself or herself; and

(e) The inability of a spouse to find work.

Once the right has been created, it exists only for as long as the needs of the dependent spouse exist.²¹

In 1976 a Married Women's Property bill was introduced in the Ontario legislature. It would provide for the division of property on dissolution of marriage.

Discussions on legislation dealing with this question have taken place in other provinces as well.

²¹ See Law Reform of Canada, *Report on Family Law* (Ottawa, Information Canada, 1976), pp. 11, 29, 41 and 63.

K. Right to own property; right not to be arbitrarily deprived of one's property
(*article 17 of the Universal Declaration*)

Citizenship Act, 1976

The new Citizenship Act permits provincial governments, within prescribed limits, to prohibit the acquisition of real property in their territories by individuals who are not Canadian citizens or landed immigrants or by associations that are considered not to have an equivalent status.

Expropriation

In March 1976, the Law Reform Commission of Canada made its report to Parliament on expropriation. The Commission's recommendations were made with five guiding principles in mind.

- (a) Equality of rights, laws and procedures for all people facing expropriation;
- (b) Clarity and accessibility of the law relating to expropriation as well as information about available rights, options and procedures;
- (c) Openness by expropriators concerning plans, procedures, appraisal methods, prices and settlements;
- (d) Fairness in notification of and compensation for expropriations, and provision of public hearings where the expropriations are objected to;
- (e) Political responsibility through final approval with reasons by a political authority.²²

L. Right to receive and impart information
(*article 19 of the Universal Declaration*)

A report on measures taken in Canada on freedom of information, 1 July 1970 to 30 June 1975, was submitted to the Secretary-General of the United Nations and issued as document E/CN.4/1214/Add.19.

Development and operation of the information media

The increase in the communications media in Canada in recent years, including the programme of Anik satellites, has brought almost the entire population within range of electronic and printed information. By 1975, the publicly owned radio and television system, the Canadian Broadcasting Corporation, reached 98.8 per cent of the population with radio service, and 97.8 per cent with television service. Of the 6,703,000 households, 6,588,000 had radios, and 6,488,000 had television sets, over half of these colour sets. Seventy-five per cent of Canadian households received at least one daily newspaper, and 6,463,000 households had telephones.

In July 1975 an accelerated coverage plan went into operation for the Canadian Broadcasting Corporation. Over five years, with an additional capital cost of an estimated \$25 million, coverage will be extended to bring reception to about 800,000 people in very remote communities, increasing radio and television coverage to 99 per cent of the total population.

The CBC Northern Service continues to serve the special programming needs of native Indian, Inuit, Metis and non-native residents of the far north. English, French, and 10 native languages and dialects are used.

Canada entered a new phase of its communications satellite programme with the launching, on 17 January 1976, of an experimental new Communications Technology Satellite, in a joint venture with the United States of America. Following the satellite inauguration, on 14 May 1976, a two-year programme of communications experiments began, in the fields of tele-education, telemedicine, community interaction, the technology of broadcasting, data communications, government administration and operations in remote

²² See Law Reform Commission of Canada, *Report on Expropriation* (Ottawa, Information Canada, 1976), pp. 3-4.

areas and radio-wave propagation at the new, higher frequencies provided by the 200-watt transmitting tube of the satellite.

Applications for broadcasting licences are reviewed by the Canadian Radio Television and Telecommunications Commission (formerly the Canadian Radio Television Commission, whose name was changed on 1 April 1976 when its responsibilities were extended by an act of Parliament to cover also telecommunications), which holds public hearings on the applications. Prior to the hearings, opportunities for public examination of application documents are advertised; interventions in written form may be made to the Commission up to 15 days prior to the hearings, and the writers may appear at the hearings to support their interventions. Between 1971 and 1975 the total number of broadcasting stations increased from 1,065 to 1,475.

Community participation in programming has expanded considerably in recent years, and by 1978 this movement had substantially entered the phase of the direct use of the broadcasting media (radio and television) by community groups.

One of the measures in favour of the public participation in broadcasting is the requirement that cable television undertakings must designate one of the channels as a community channel, and that 10 per cent of the gross subscriber revenue must be used to support the community channel. Cable television undertakings are also required to carry programmes produced by recognized educational authorities, and many provincial government departments or agencies have developed educational programming.

Access to government records

With respect to the implementation of the Canadian policy of making available to the public as large a portion of the public records of the government as may be consistent with the national interest, the Standing Joint Committee on Regulations and other Statutory Instruments reported to the House of Commons, in December 1975, in connexion with its study of a bill "respecting the right of the public to information concerning the public business". The Committee reported that "it approves in principle the concept of legislation relating to freedom of information" and sought a renewal and broadening of its mandate to study the problem. The House of Commons concurred by approving the report of the Committee on 12 February 1976.

M. Right of equal access to public service

(article 21 of the Universal Declaration)

Amendment to the Public Service Employment Act

In July 1975, Parliament amended subsection 12 (2) of the Public Service Employment Act to extend the protection against discrimination to the "marital status" and "age" of the person concerned.

Complaints to the Anti-Discrimination Branch

The Anti-Discrimination Branch of the Public Service Commission received 253 complaints in 1975 and 235 in 1976. The breakdown of the complaints is as follows:

<i>Basis of complaint</i>	<i>Number of complaints received in:</i>	
	<i>1975</i>	<i>1976</i>
Sex	33	19
Race, colour, national origin	61	58
Age	23	11
Marital status	6	—
Religion	6	6
Incapacity	10	12
Criminal record	2	—
Indefinite	112	129
TOTAL	253	235

Equal opportunity for women

On 15 October 1975, the Minister Responsible for the Status of Women announced new government policy on equal opportunities for women in the federal public service:

“Within a reasonable period of time, representation of male and female employees in the public service in each department, occupational group and level will approximate the proportion of qualified and interested persons of both sexes available.”

Departments were required to establish action plans and reasonable objectives, including targets, over a six-year period.

Native employment in the public service

The Public Service Commission has for some time been concerned about the lack of participation in the public service by native persons. Positive action by the Commission has resulted in increased recruitment; in 1975 and 1976 the number of native persons in the public service doubled, and several of them received senior appointments in the Department of Indian Affairs and Northern Development.

Saskatchewan: improvement of career opportunities for women

In 1976 Saskatchewan established a Career Development Office attached to the Treasury Board to improve the status of women employed by the provincial government and provincial crown corporations.

**N. Right to social security; realization
of economic, social and cultural rights**

(article 22 of the Universal Declaration)

Programmes of social assistance

A wide range of income security and social service programmes are provided by the federal, provincial and local governments; these are complemented by the activities of voluntary agencies.

Income security programmes provide direct cash payments to eligible recipients. They include: income insurance schemes such as the Canada and Quebec Pension Plans, Workmen's Compensation and Unemployment Insurance; income support measures such as the Old Age Security Pension, the Guaranteed Income Supplement and the Spouse's Allowance, family allowance programmes and social assistance provided by provincial and municipal programmes.

Social service programmes provide some services to anyone who applies (crisis intervention services, information and referral services and family planning services) and other specific services to children; rehabilitation services to disabled persons, social integration services to persons who are, or who are at risk of being, socially isolated from community life; residential services to those needing care in an institutional setting; and supportive services to the elderly. They also include community development services and community-oriented preventive services to specified communities.

Northwest Territories and Yukon Territory: general development

The Federal Government has announced its intention to expand the features of its Regional Economic Expansion Program to the Yukon Territory and the Northwest Territories. The approach in the North would emphasize both economic development and social adjustment.

The main vehicle for this development would be a General Development Agreement between each territorial government and the Federal Government. It is intended that, through consultations with native groups, improvement can be brought about in the economic position and role of the native people in northern society. This is one of the principal achievements to be sought through the General Development Agreement.

Saskatchewan: social and economic programmes

In 1975 Saskatchewan entered into a Saskatchewan Northlands Agreement on a cost-sharing basis with the Federal Government. Under this agreement, the programmes will run for an initial three-year period while planning is undertaken for a longer-term agreement of at least five years. Assistance to the 28,000 residents of the area, primarily of Cree and Chipewan ancestry, will include training and career development, improved communication services, more relevant education materials in schools, a dental programme for children to age 16, innovative correction programmes, community health education and assistance in community planning and municipal services.

Saskatchewan has established the Economic Development Program for Disadvantaged Persons to develop businesses and industries which provide employment opportunities for disadvantaged persons. Disadvantaged persons are defined as persons who through no choice of their own are unable to maintain regular employment and adequate earnings because of lack of marketable and/or life skills, or racial or cultural barriers, particularly as that applies to people of native origin; or social barriers, such as chronic dependency, a criminal record, alcoholism, retardation, or physical and emotional handicaps. The programme encourages and assists some of those people now being supported by government to become economically self-sufficient so that they may make a net positive contribution to society and secure a greater degree of social fulfilment. In pursuit of its objective, the programme assists in the creation of permanent employment opportunities for disadvantaged persons in two ways; through involving those persons in the development and implantation of viable business enterprises and through promoting the employment of disadvantaged persons in established business and industry.

The "Employment Support Service Program" was officially adopted on 1 April 1976 with the objective of expanding employment alternatives for those in need or likely to become in need of financial assistance from the Department of Social Services. The programme strives to actively develop client groups for the purpose of creating independent, co-operative enterprises which would provide stable, satisfactory employment resulting in a secure and adequate level of income for the workers and their families.

O. Right to work

(article 23 of the Universal Declaration)

1. PROTECTION AGAINST UNEMPLOYMENT; NON-DISCRIMINATION IN EMPLOYMENT

Employment programmes

Several programmes have continued and expanded under the federal Department of Manpower and Immigration to subsidize short-term employment for community improvement and particularly to provide jobs for young people. In addition the Department carries on an extensive job-training programme related to job needs: the programme is free and the trainee receives a living allowance. The Department has improved its job placement operations, working more closely with the Unemployment Insurance Commission. Mobility grants are available to assist unemployed workers to seek employment or move to the nearest area where their skills are required.

Under the 1975-1976 Local Initiatives Program, the Department allocated \$135 million toward the creation of approximately 40,600 new jobs for Canadians. The bulk of these jobs were created in areas of high unemployment.

The Community Employment Strategy of the Department of Manpower and Immigration attempts to enhance employment opportunities for Canadians who experience particular and continuing difficulty in finding and keeping employment. Community Employment Strategy has attempted to achieve this by encouraging the development of strategies to which community and government resources can better be applied to reduce or eliminate barriers to employment.

The Outreach Program enlists community-based organizations to provide employment-related services to individuals who do not or cannot benefit from services offered by

their Canada Manpower Centres. Target groups include native people, residents of isolated communities, the physically or mentally handicapped, the chronically unemployed (usually welfare recipients), offenders and ex-offenders and others experiencing special difficulty in labour force entry or re-entry. In addition to placement services, the projects can provide specialized training and counselling uniquely suited to their clientele's needs in overcoming employment barriers, thereby increasing their employment and employability.

Both the *Yukon Territory* and the *Northwest Territories* have revised and updated existing legislation to improve and ensure greater employability of their residents. In 1976 the Northwest Territories replaced the Apprentice Training Ordinance of 1974 with a new Apprentices and Tradesmen Ordinance. The Yukon, in passing a new Occupational Training Ordinance in 1975, repealed an outdated Adult Occupational Training Ordinance.

Affirmative Action strategy

The federal Department of Manpower and Immigration is pursuing the elimination of any discriminatory practice in the labour market that is based on sex, race, age, physical or mental handicap or minority group membership.

Through its Affirmative Action²³ strategy the Department will be taking positive measures to redress the effects of past and present discriminatory conditions that have resulted in economic disadvantages for women and native peoples.

The Department of Labour and the Department of Manpower and Immigration have initiated a programme to promote the voluntary adoption of Affirmative Action with respect to the employment of women by crown corporations and by those industries benefiting from federal government contracts. The programme will help industry to establish Affirmative Action plans which will achieve measurable yearly improvements in the hiring, training, and promotion of women. The Affirmative Action programmes will identify barriers to equal employment that result from either present or past discriminatory practices.

Employment of women

The Department of Manpower and Immigration has developed a one-day training package on services to women which was given to all department employees. This training session concentrated on attitudes to working women, available services and factual background on women and work.

Training programmes for women returning to work in non-traditional occupations were also prepared. These courses combined "hands-on" experience in the trades area with other aspects of job readiness such as assertiveness training, job search techniques, etc.

Films in both French and English were developed on "Creative job search techniques" for women re-entering the work force. In addition, a report detailing active research and development programmes concerning women's employment was prepared. The report dealt with activities in both the private and government sectors.

Employment of the handicapped

The Department of Manpower and Immigration has undertaken a study on employment problems of blind workers and a project on opportunities for all handicapped workers in the federal public service. These reports make recommendations to improve employ-

²³ Section 140 (2) (b) of the unemployment insurance bill (Bill C-27) and section 15 (1) of the new Canadian Human Rights Act will enable the Department to give full effect to Affirmative Action. The latter reads as follows:

"15. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status or physical handicap of members of that group, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group."

ment-related services to these people. A pamphlet emphasizing the abilities of handicapped workers is being prepared and will be distributed to all Canada Manpower Centre counsellors and Public Service Commission staffing officers.

Employment services to native peoples

A Native Employment Division was established in the Department of Manpower and Immigration to further the channelling of employment-related services to all native peoples, i.e., Status Indians, Metis, non-status Indians and Inuit, and to monitor the effectiveness of these services in the alleviation of the high rate of unemployment among natives. The Division is complemented in the regions by Native Employment Co-ordinators charged with a similar function. Also, there are 55 Native Employment counsellors and consultants working in local Canada Manpower Centres to enhance the relations between employers and prospective native employees.

A Native Contributions Program has been established within the Department's Grants and Contributions Program allowing native groups to explore the labour market to identify their employment needs and to develop strategies for their entrance into the labour force.

The Department of Manpower and Immigration co-operated with *Manitoba* and the Department of Regional Economic Expansion in a New Careers Program which provides training and upgrading for disadvantaged groups in that province.

Manpower services to ex-inmates

The National Inter-departmental Committee on the Re-establishment of Inmates of Correctional Institutions was reactivated and similar provincial committees were established to ensure and co-ordinate manpower services to inmates and ex-inmates.

At all of the Canada Manpower Centres a manpower counsellor has been designated as the point of contact for those who identify themselves as ex-inmates and who request services from the Centre. These counsellors have been selected for their understanding of the problems of ex-inmates and their ability to seek out suitable job openings.

Long-term unemployed

Studies were initiated with provincial welfare authorities on ways to improve manpower services to long-term unemployed (welfare recipients). Pilot projects were started to test the more promising suggestions, one of which was co-location of staff—i.e. a manpower counsellor at the local welfare office or alternatively a welfare officer at the Canada Manpower Centre.

2. RIGHT TO EQUAL PAY FOR EQUAL WORK

The *Alberta* Human Rights Commission continues to investigate and deal with violations of equal pay legislation. From January 1974 to March 1976 there were 89 complaints on this issue. Substantial progress has been made in establishing the right to equal pay, and settlements involving the payment of thousands of dollars were made. Specifically, the equal pay case involving parity between nursing aides of both sexes²⁴ led to the payment of \$4 million in retroactive pay to nursing aides throughout the province.

Manitoba modified its "equal pay" provisions and added them to the Employment Standards Act. The new provision prohibits employers or persons acting on their behalf from paying employees of one sex wages on a scale different from that used for employees of the other sex in the same establishment, if the work required and performed by employees of each sex is the same or substantially the same.

New Brunswick repealed its Female Employees Fair Remuneration Act on 24 June 1976. Equal pay, although not mentioned explicitly, is now considered to be included in the general anti-discrimination provisions of the New Brunswick Human Rights Code.

²⁴ *Dominion Law Report*, vol. 67 (3D), p. 635.

In 1976 the *Saskatchewan* Women's Division handled 166 equal pay cases, a substantial increase over previous years.

3. RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

An order-in-council was passed by the *Alberta* government in 1976 governing maternity leave. An employee who is pregnant and who has been employed by her employer for at least 12 months is entitled to leave without pay consisting of: (a) a period not exceeding 12 weeks immediately preceding the estimated date of delivery; (b) the period between the estimated date of delivery and the actual date of delivery; and (c) a period not exceeding six weeks immediately following the actual date of delivery. When an employee wishes to return to employment following maternity leave, then her employer must reinstate her at the position she occupied before, or provide her with work of an alternative nature, at the same rate of pay and with the same benefits that she received previously.

In 1976, the *Saskatchewan* legislature gave first reading to an amendment to the Labour Standards Act which would provide for flexible maternity leave.

Through amendments to its Labour Standards Ordinance, the Northwest Territories created a Labour Standards Board to monitor the employment field and provide an avenue of recourse for grievance.

One further step of note by the *Yukon* government is an amendment to the Mining Safety Ordinance removing the prohibition against women working underground in mines.

4. RIGHT TO JUST AND FAVOURABLE REMUNERATION

Statutory minimum wage rates moved upward throughout the country, as shown by the table below,

	1975	1976
	(Dollars)	
Federal	2.60	2.90
Northwest Territories	2.50	3.00
Yukon Territory	2.70	3.00
Alberta	2.50	2.75
British Columbia	2.75	3.00
Manitoba	2.30	2.95
New Brunswick	2.30	2.80
Newfoundland	2.20	2.50
Nova Scotia	2.25	2.50
Ontario	2.40	2.65
Prince Edward Island	2.30	2.50
Quebec	2.80	2.87
Saskatchewan	2.50	2.80

P. Right to an adequate standard of living

(article 25 of the Universal Declaration)

Pensions

In June 1975 an amendment to the Old Age Security Act introduced a spouse's allowance designed to provide relief in situations where two persons would otherwise have to live on the pension of one. The spouse's allowance programme went into effect on 1 October 1975 and provided that the spouse of a pensioner would be eligible for the allowance if that spouse were between 60 and 64 years of age and met the same residence requirements as those for the receipt of a pension under the Act. This spouse's allowance ceases upon the death of the pensioner.

Amendments to the Canada Pension Plan, effective January 1975, provided for equal treatment for male and female contributors and beneficiaries and removal of the retirement

and earnings test for persons aged 65 and over. It also provided that self-employed members of the labour force who are members of a prescribed religious sect may be exempt from contributions (and benefits) by filing their intentions with the Department of National Revenue and introduced a series of technical changes designed to improve the administration of the Canada Pension Plan and elaborating on the rights and procedures of appeal.

In 1976, *Saskatchewan* established a Pensions Committee to look into the adequacy of pension plans, both private and public, in the province. The Committee was to examine portability, level of benefit, availability, etc. At this time the government is considering the report of the Committee.

Unemployment insurance

Amendments to the Unemployment Insurance Act approved in December 1975 allow the qualifying period for benefits to be extended from 52 weeks to 104 for specified groups of claimants who find themselves out of the active labour force for such periods of time for reasons beyond their control. These groups include inmates of penal institutions, claimants on approved training courses, persons who are incapable of work because of sickness, disability or quarantine and persons receiving temporary workmen's compensation payments.

Workers' compensation

The income ceiling for the purpose of calculating compensation under the *Saskatchewan Workers' Compensation Act* was increased to \$14,000 on 1 January 1976 and to \$16,000 on 1 January 1977.

Whenever 10 per cent or more of the workers injured during the year are earning incomes above the ceiling in effect at that time, the Board is required to review the ceiling and increase it by the appropriate number of \$1,000 increments.

Health insurance programmes and medical services

In 1957, an insurance programme covering hospitalization and diagnostic services was implemented in Canada and in 1968 a programme covering medical care was added. These complementary programmes are also known as "health insurance programmes" and aim at ensuring that all persons residing in Canada have access to medical care and services when needed, regardless of their ability to pay. All Canadians thus benefit from these programmes, since all the provinces and both territories participate in them on a cost-sharing basis with the Federal Government.

Several provinces added services to this programme within their jurisdiction in the fiscal year 1975/76. *Saskatchewan* implemented a programme covering prescribed drugs, without premium payments. *Quebec* now covers the cost of buying, adjusting, replacing and repairing prosthetic and orthopaedic equipment. *New Brunswick* now has a programme covering medication for persons aged 65 and over and for those suffering from cystic fibrosis.

Both the *Yukon Territory* and the *Northwest Territories* passed emergency medical aid ordinances in 1976, allowing emergency medical aid to be administered at the scene of an accident without fear of a civil law suit. In addition, the *Yukon Territory* passed a Travel for Medical Treatment Ordinance in 1975 to ensure the availability of essential medical treatment to all residents of the Territory.

Child welfare and day care services

All provinces have legislation governing the basic child welfare services which include the protection and care of children, adoption services, services to unmarried parents and, in most provinces, services designed to prevent child neglect.

Day care services are offered under a variety of auspices. In 1975 there were approximately 70,000 day care spaces in Canada. Subsidies for day care services for the children

of low-income families are provided by the provincial or municipal authority and are shared by the federal and provincial governments under the Canada Assistance Plan.

In *Newfoundland*, a bill entitled "An Act Respecting Day Care and Homemaker Services" (Bill 67, 1975) provides that qualified persons should be employed and sets minimum standards pertaining to safety and sanitary conditions.

Adoption

In 1975 an Adoption Desk was established in the Department of National Health and Welfare to provide a co-ordinating and facilitating service to the provinces in the areas of international and interprovincial adoption placement. The interprovincial registry has been operational since October 1975 and has been instrumental in arranging a significant number of interprovincial adoption placements. The desk has also co-ordinated a number of international adoption placements.

Services to the disabled

In *Saskatchewan*, the following special services are provided:

- (a) A door-to-door transportation service for the handicapped, using specially equipped buses;
- (b) An economic development programme to assist handicapped persons in establishing businesses and in finding employment;
- (c) A holiday and emergency service for parents of handicapped children.

Social assistance programmes

During 1975, rates of assistance across the country were revised to reflect increases in the cost of living. In *Saskatchewan*, the Saskatchewan Income Plan was introduced to supplement the income of those aged 65 and over who receive the federal Guaranteed Income Supplement. In *Nova Scotia*, the Social Assistance Act was amended to include a section on confidentiality. *British Columbia* introduced a new Guaranteed Available Income for Need Act which replaced the Social Assistance Act, the Guaranteed Minimum Assistance Act and the Handicapped Persons Income Assistance Act. In *Quebec* new regulations were made under the Social Aid Act.

Administrative review mechanism

The Department of Social Services of Saskatchewan has instituted an administrative review mechanism whereby a consumer of social services offered by the Department may request a review board to examine the services being provided him if he feels the services are being unfairly, inadequately or inappropriately provided. Some of the areas subject to such review are removal of a child from a foster home, removal of a child prior to an adoption order being made, and refusal to supply support, custody or educational services available to a child in care under the Family Services Act.

Q. Right to education; strengthening of respect for human rights (*article 26 of the Universal Declaration*)

Alberta

In 1975 the Alberta Human Rights Commission produced a six-week radio series on human rights. A television advertisement lasting one minute was carried by most local television channels. A major media campaign entitled "Do you have the right?" was run throughout the province in 1976, to celebrate 10 years of human rights legislation in Alberta. In 1975, many forums were held to discuss the status of women. A seminar series "Dignity and human rights in Alberta", directed towards adults, was co-sponsored with the Continuing Education Division of the Calgary Board of Education. In 1976, a poster contest was run in elementary schools to further promote the theme of 10 years of human rights

in Alberta. The subject of the contest was "Everybody should be treated fairly", and over 1,800 entries were received. Some were displayed in shopping malls in the small towns of Alberta.

A Grade Ten curriculum unit has been developed by five Alberta school teachers, working with the Alberta Human Rights Commission and is entitled "Human rights: respecting our differences". After being piloted and revised, this unit will be sent to every high school in Alberta.

Citizens' human rights councils were developed in two communities, Lethbridge and Fort McMurray, in order to involve communities with the work of the Commission.

A film on human rights was produced and was to be ready for public viewing by the latter part of 1977.

Staff from the Commission participated in numerous workshops, lectures, seminars and discussions held at schools and institutions of higher learning and for employer-employee and native and other groups throughout the province.

Manitoba

In Manitoba during 1975 and 1976 human rights educational projects included the following: speaking engagements projects to schools and community groups; displays; liaison with government departments and non-government agencies such as ethnic organizations, the Immigration Council and Friendship Centres; review of bias in school textbooks; a consciousness-raising, four-month pilot project in co-operation with Winnipeg School Division No. 1; research; production and distribution of a "school kit" for junior and senior high schools; production of *Out of the Shadows*, a bibliography on the subject of women in Manitoba; production of educational posters; production of guidelines on employment advertising, pre-employment inquiries, housing, employee benefit plans, and Affirmative Action.

Saskatchewan

An interagency committee representing the teachers, the trustees, the Department of Education and the Human Rights Commission has undertaken a co-operative "human rights in education" project. The project provides opportunities for teachers to become more aware of the nature of stereotyped thinking and its relationship to discriminatory behaviour.

The Department of Education has emphasized the importance of multicultural education by employing a consultant to assist school boards and teachers in the development and implementation of multicultural programmes.

To promote more accessible, responsive adult education within a lifelong learning context, the Saskatchewan government passed the Community College Act in 1972. By 1976, 15 regional colleges had been established, covering the entire province. The college model is one of decentralization with the emphasis on the people, through an extensive network of voluntary boards and committees, deciding on what, when, and where activities are to be developed and delivered. Two of the colleges serve the sparsely populated northern part of the province where the problems of native persons receive high priority. The Saskatchewan Indian Community College was established to develop and deliver special programmes for native persons on reserves. As with all the colleges, the developmental and administrative approach is that local people make the decisions.

In addition to the community college network, the Saskatchewan Indian Federated College was established in 1976 at the University of Regina. This new federated college will facilitate the involvement of Indian people in university education and promote the preservation of traditional Indian culture.

CAPE VERDE

Introduction

The Republic of Cape Verde was solemnly proclaimed an independent and sovereign nation on 5 July 1976.

On the same day the Popular National Assembly promulgated the Law of the Political Organization of the State, in which some of the fundamental principles that govern the new independent and sovereign nation were set forth. Among these were the principles that the supreme judicial organ of the State is the National Council of Justice and that all persons charged with a penal offence shall have all the guarantees necessary for their defence.

As a transitional measure, all the legislation in force on the date of independence that was not in contradiction with the national sovereignty, with the Law on the Political Organization of the State, with other laws of the Republic, or with the principles and objectives of the Partido Africano da Independencia da Guiné e Cabo Verde (PAIGC) was maintained in force.

Among the principles of the Party which, transformed into constitutional law, stand as corner-stones of the citizen's fundamental rights are:

(a) Equality of the citizens before the law without distinction as to national or ethnic group, sex, social origin, cultural background, profession, condition, fortune, religious beliefs or philosophical conviction;

(b) Equal rights of men and women in the family, at work and in public activities;

(c) Protection of the rights of workers and guarantee of work to all those able to work; abolition of forced labour in Guinea and of the exploitation of "contratados" in Cape Verde;

(d) Inviolability of the right to personal property, especially to individual consumption goods, to a family house and to savings acquired at the cost of forced labour;

(e) Social assistance to all citizens who need it, through no fault of their own, because of unemployment, incapacity or sickness;

(f) Religious freedom;

(g) Free and compulsory elementary education;

(h) Protection of all foreigners residing in the country who respect the laws in force;

(i) Free general elections, based on direct and secret universal suffrage.

A. Affiliation

(articles 1, 2 and 25 (2) of the Universal Declaration)

The legislation regulating affiliation and paternal-filial relations that had been inherited from colonialism was not consistent with the real interests of the people. Therefore, some provisions of the Civil Code were revoked and replaced by the Law on Affiliation and on Paternal-Filial Relations (Decree-law No. 84/76 of 25 September 1976).

The new law abolishes discrimination against persons born out of wedlock. Maternal affiliation is established by the fact of birth, and paternal affiliation by a declaration of recognition by the father. No disadvantage results from the lack of a maternity or paternity declaration. It is provided that the parents are responsible jointly for the upbringing and education of the child and for its support until it reaches full age or until its complete emancipation, and that parental rights are always to be exercised in the interest of the child.

B. Administration of justice

(articles 7-10 of the Universal Declaration)

Decree-law No. 33/76 of 16 October 1976 has replaced the system of administration of justice inherited from colonialism, which could not serve the real needs of the people of Cape Verde or the true objectives of justice.

Under the law, new courts were created so that the population might have greater facility of access to the organs of the judiciary. The independence and impartiality of the courts is assured, now that the judges are bound only by the law and their own consciences. All positions in the judiciary are open to women.

All court hearings are public, except where this may be detrimental to the public order or to personal dignity.

C. Right to a nationality

(article 15 of the Universal Declaration)

Decree-law No. 71/76 of 24 July 1976 provided the definition of Cape Verdean nationality.

The following categories of persons born in Cape Verde are considered original Cape Verdean citizens:

- (a) Children of a father or mother who was born in Cape Verde;
- (b) Children of parents who were repatriated or of parents of unknown nationality having residence in Cape Verde;
- (c) Persons having an established residence in Cape Verde on the date of the proclamation of independence;
- (d) Persons who establish residence in Cape Verde within one year after the publication of Decree-law No. 71/76:

Persons born in Cape Verde of foreign parents who are not in Cape Verde on mission of their State of nationality and who have not made a declaration, either in person or through their legal representative, that they do not wish to have Cape Verdean nationality, are also considered original Cape Verdean citizens.

In addition, a person born in a foreign country to parents of Cape Verdean nationality is entitled to Cape Verdean nationality in certain conditions.

The law also provides for the acquisition of Cape Verdean nationality by naturalization or by marriage.

D. Right to marry

(article 16 of the Universal Declaration)

Decree-law No. 69/76 of 3 July 1976 replaces some chapters of the Civil Code inherited from the colonial administration. Its aim is to dignify the social function of marriage and to bring matrimonial law into line with the social reality as it exists at the present historic moment.

All individuals of both sexes who are over 18 years of age, of sound mind and not bound by a previous marriage, have the right to contract marriage. Only marriages entered into with the free and full consent of the intending spouses are valid.

The right to divorce is fully provided for. It can be exercised, regardless of the form in which the marriage was celebrated, in all cases where there exist irremediable conjugal conflicts. In such situations, the marriage partners may opt for divorce, eliminating the various forms of separation. This measure, however, is intended to be used only where the marriage has completely broken down and is in no way meant to encourage irresponsibility.

CYPRUS

Introduction

The situation during the period under review was overshadowed by the consequences of the upheavals that were taking place as a result of the occupation by Turkish armed forces of the northern part of Cyprus in 1974, creating abnormal conditions in which the most elementary human rights were violated. The question of these violations of human rights has been raised by the Government of Cyprus in the appropriate organs of the United Nations.¹

Otherwise, developments during the period may be illustrated by the reports, summarized below under subject headings, of court decisions in cases involving human rights, and by the reference, under the heading of articles 22 and 25, to action taken in the social-insurance field.

A. Non-discrimination; equality before the law; equal protection of the law

(articles 2 and 7 of the Universal Declaration)

Supreme Court: revisional jurisdiction

*(a) Tsangarides and three others v. The Republic*²

The applicants, four conscripts who had completed their 24-month period of military service in July 1974 and were still being kept in the National Guard, claimed that they should have been demobilized. They were being prevented from taking their places at Athens University, to which they had been admitted in September and October 1974, and that was illegal, since by its Order No. 13435 of 29 August 1974, the Council of Ministers had released conscripts who were on regular service and had completed a period of service of more than 24 months, provided they satisfied the Minister that they had secured admission to universities abroad. The applicants claimed that their treatment was discriminatory and contrary to article 28 (1) of the Constitution,³ since those who had been admitted to universities before the date of the Order had been released.

The Court dismissed the application. As to the applicants' claim that they should have been discharged on the completion of their 24-month period of service, reference was made to a decision of the Council of Ministers of 19 September 1974 to the effect that the obligation for service in the National Guard of those conscripts who after the completion of their regular service continued to serve in the National Guard was an obligation to serve as reserves, as was the obligation of those reserves who had been called up under the mobilization order of 20 July 1974 and were now in service. In other words, it was not necessary for them to have been discharged before starting their service as reserves. The applicants' claim that they had been discriminated against did not stand, either, since the principle of equality enshrined in article 28 of the Constitution entailed the equal or similar treatment of all those who were found to be in the same situation, and the applicants could not be

¹ See, for instance, the reports of the Commission on Human Rights on its thirty-first and thirty-second sessions (*Official Records of the Economic and Social Council, Fifty-eighth Session, Supplement No. 4 (E/5635)*, chap. VIII and resolution 4 (XXXI); *ibid.*, *Sixtieth Session, Supplement No. 3 (E/5768)*, chap. IX and resolution 4 (XXXII)); and the record of the 306th meeting of the Committee on the Elimination of Racial Discrimination (CERD/C/SR, 293-315, pp. 128-138).

² *Judgements of the Supreme Court of Cyprus (1975)* 1 J.S.C., pp. 2-16.

³ See *Yearbook on Human Rights for 1960*, pp. 74-83. Article 28 (1) reads: "All persons are equal before the law, the administration and justice, and are entitled to equal protection thereof and treatment thereby."

said to be in the same situation as those who had already secured admission to universities before 29 August 1974, when Order No. 13435 of the Council of Ministers was issued.

(b) *Savvides v. The Republic*⁴

Article 28 of the Constitution was also invoked against the rejection by the Minister of Finance of the request of an accountant for recognition of his entitlement to a higher grade than that at which he had been appointed, with retroactive payment of the salary difference to the date of appointment. Counsel for the applicant maintained that the rejection was discriminatory by comparison with the earlier recognition of other accountants' similar entitlements.

Pointing out that in the case of *Nishian Arakian and Others v. The Republic*⁵ it had been judged that article 28 of the Constitution was not intended to convey a notion of exact arithmetical equality of treatment, but was meant as a safeguard against arbitrary discrimination, the Court ruled that the Minister's decision no longer to authorize the granting of salary increments retroactively could not be considered unduly discriminatory. The application was dismissed.

(c) *Commercial Company "Arkozy" v. The Republic*⁶

The rates of customs duty payable under section 2 of the Customs Duties and Excise Duties (Amendment) Law, 1974 (Law No. 36/74) between 3 May and 11 July 1974, when the Law was before the House of Representatives as a bill, were higher than those payable after 11 July 1974, when the bill became law. The applicant, who had been refused a refund on a payment made at the higher rate during the first period, complained that the Law, and particularly section 2, was contrary to the principles of equality enshrined in article 28 of the Constitution.

It was ruled that differences in customs duties imposed at different periods of time did not constitute unlawful discrimination, the rates of duty being based on clear differentials related to the reasonable aims of the legislation as amended, which continued to protect all those subject to it equally at any one time. The application was dismissed.

(d) *Vanezis v. The Republic*⁷

Refusal of payment of an educational allowance, under Regulation 15 of the Foreign Service (Special Provisions) Regulations, 1968, was the subject of an application by a member of the diplomatic service whose children attended private schools in London, where he was posted. The applicant—who had mentioned, *inter alia*, the larger classes, less qualified teachers, fewer university admissions, and the confusion caused by educational reforms as reasons for considering British State-school education, for which the Regulations provided allowances, less beneficial for his children than private schools, for which they did not—questioned the competence of the Minister of Foreign Affairs in the matter inasmuch as it should have been referred to the Ministry of Finance, and claimed that there had been unfair discrimination contrary to article 28 of the Constitution, because allowances had been granted for attendance by some other diplomats' children at private schools.

Rejecting the application, the Court drew attention to the fact that the grounds for refusal of the allowance had formed the subject of an elaborately reasoned memorandum within the Ministry of Foreign Affairs, stating, *inter alia*, that recognition of the superiority of private education in Great Britain—as in Greece—would not alone constitute sufficient justification for the expense of related allowances; in cases in which such allowances had exceptionally been granted, the reasons had been quite different—relating to the language of education, or problems of mid-year transfer. The Court endorsed those arguments. As

⁴ *Judgements of the Supreme Court of Cyprus* (1975) 2 J.S.C., pp. 145-158.

⁵ *Ibid.* (1972) 11 J.S.C., p. 1539.

⁶ *Ibid.* (1975) 10 J.S.C., pp. 1467-1473.

⁷ *Ibid.* (1976) 7 J.S.C., pp. 1028-1037.

to the question of competence, the Director-General of the Ministry of Foreign Affairs, as the controlling officer indicated by the Budget, was responsible for matters relating to expenditure but there was clearly no implication that the Minister himself could have no say in such matters. It was therefore ruled that there had been no unfair discrimination or unconstitutionally unequal treatment, and the application was dismissed.

(e) *Xydias v. The Republic*⁸

A theatre and cinema owner had complained that a new by-law adopted by the local Improvement Board was contrary to article 24 (4) of the Constitution, safeguarding the citizen against taxes "of a destructive or prohibitive nature", and to section 24 (1) of the Villages (Administration and Improvement) Law, 1950, Cap. 243, providing that by-laws adopted under this law should not be inconsistent with it or any other law in force. The by-law required that to each ticket sold for entertainment purposes a stamp imposing a duty of 10 per cent should be affixed. The applicant claimed that such a charge was higher than his profits and therefore "destructive" in the sense of article 24 (4) of the Constitution, and discriminatory because other Improvement Boards imposed, instead of stamp duty, a £10 monthly charge for areas with a much greater population; he requested reversal of the district officer's decision to enforce the by-law.

The Court ruled that the fact that duty exceeded profits did not render the legislative enactment imposing the tax "destructive", that 10 per cent could not be considered so exorbitant as to render the by-law inconsistent with the Villages (Administration and Improvement) Law, 1950, or with any other law. Pointing out that in view of the complexity of fiscal adjustment the judiciary was allowed great latitude when tax laws were attacked on the grounds that they infringed the constitutional principle of equality, and that the power of the State to classify for tax purposes was flexible, and noting that article 28 (1) of the Constitution was not intended to convey a notion of exact arithmetical equality but to safeguard against arbitrary discrimination, the Court ruled that the imposition of a stamp duty of 10 per cent instead of a lump sum was a regulatory difference justified by the different local circumstances, and therefore not unfairly discriminatory or unconstitutional.

The application was dismissed.

Supreme Court: appellate jurisdiction.

*Meletiou and Another v. The District Labour Officer, Nicosia*⁹

Two separate appeals by employers against conviction for failure to pay social-insurance contributions in respect of employees during the latter's service in the National Guard were heard together. The appellants claimed that the relevant section—section 24 (1) of the National Guard Law, 1964 (Law 20/64), as amended by the National Guard (Amendment) Law, 1966 (Law 5/66) and the National Guard (Amendment) (No. 2) Law, 1967 (Law 70/67)—was contrary to article 28 (1) of the Constitution, because employers whose employees were on military service were discriminated against, since employers whose employees were actually working for them did not have to pay the employees' part of the contribution as well as their own. Furthermore, employers whose employees were absent for reasons other than military service did not have to pay social insurance contributions for them at all.

The Court found that while the discrimination was justified so far as concerned the employers' own part of the contribution, it was not justified, but on the contrary was arbitrary and unreasonable, so far as concerned the employees' part, which, under article 10 of Law 2/64, as amended by the Social Insurance (Amendment) Law, 1968 (Law 28/68), the employers also had to pay.

Accordingly, the judgement allowed only that part of the appeal which concerned the employees' part of the contribution.

⁸ *Ibid.* (1976) 10 J.S.C., pp. 1474-1486.

⁹ *Ibid.* (1975) 3 J.S.C., pp. 283-298.

B. Right to a fair trial

(articles 10 and 11 of the Universal Declaration; article 14 (5) of the International Covenant on Civil and Political Rights)

Supreme Court: appellate jurisdiction

*Hadjisavva v. The Republic*¹⁰

On the night of 7/8 September 1974, a group of men drove into the village of Messa Chorio. They were members of the National Guard, not on duty, and in illegal possession of firearms. Some of them began painting over slogans in favour of Archbishop Makarios and the Prime Minister of Greece. In an encounter with the inhabitants, shots were fired and there was a lot of shouting. One man was killed and two people were injured. In the subsequent proceedings before the Assize Court at Paphos, which lasted from 13 January till 24 April 1975, six persons were tried, one for homicide and five for carrying firearms. The trial for homicide resulted in conviction, with a sentence of 10 years' imprisonment.

In his appeal, the appellant denied that he had fired the fatal shot: his conviction was unreasonable, being based on conflicting oral testimony instead of clear circumstantial evidence. According to the ballistics expert and the physician who had conducted the post-mortem, the bullet had entered the victim's neck from behind, but all the evidence went to show that at the time the shot was fired he has been facing the appellant. Moreover, 45 expended cartridges had been found near the scene, and the oral testimony to the effect that only the appellant had been firing at the time was inconclusive.

Two of the three appellate judges upheld the appeal, but all three found that the evidence was sufficient to show that the appellant had wounded another person. He was therefore found guilty of causing grievous bodily harm contrary to section 231 of the Criminal Code. The sentence of 10 years' imprisonment was replaced by a sentence of three years.

C. Right to own property; right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

Supreme Court: revisional jurisdiction

(a) *Georghiou and Another v. The Municipality of Nicosia*¹¹

The applicant's property had been compulsorily acquired in March 1970 for the purpose of widening a street in Nicosia. It was claimed that the acquisition was unconstitutional, since, under article 23 (4) (a) of the Constitution, the purposes for which property could be compulsorily acquired had to be provided for by a general law to be enacted within a year from the date of the coming into operation of the Constitution (18 August 1960), and the law under which the compulsory acquisition had been made had not been enacted till 1 March 1962. Furthermore, no compensation had yet been offered, and that was contrary to article 23 (4) (c) of the Constitution. Lastly, the applicants claimed that, contrary to article 28 of the Constitution, they had been discriminated against, since other property-owners on the street in question had been given comparatively favourable treatment.

The Court ruled that the provision of the Constitution relating to the enactment of a general law within a year was in the nature of a directive and did not preclude the passage of legislation after the year had elapsed. As to compensation, the Constitution did not say that the offer had to be made at the time the compulsory acquisition order was issued. The claim that there had been discrimination could not be upheld, either, since, for the purpose in question, differently situated properties could not be given equal treatment.

The application was dismissed.

¹⁰ *Ibid.* (1976) 2 J.S.C., pp. 302-385.

¹¹ *Ibid.* (1975) 11 J.S.C., pp. 1640-1643.

(b) *Sofroniou and Others v. The Municipality of Nicosia and Others*¹²

Article 146 of the Constitution provides that complaints against decisions of the authorities may be submitted to the Supreme Constitutional Court. In this instance, 14 applications under that article against street-widening schemes in Nicosia, Limassol and Famagusta affecting the applicants' property were heard together, since they all raised the question whether section 12 of the Streets and Buildings Regulation Law, under which the administrative action to initiate the street-widening schemes had been taken, was contrary to article 23 of the Constitution, which allowed such schemes only if they involved no more than a restriction of the right to immovable property, in accordance with paragraph 3. It was argued that, in fact, they involved the deprivation of property, which must be sanctioned by special legislation, as required by article 23 (4).

Three out of the five judges were of the opinion that section 12 entailed only a restriction of the right to property and was therefore not unconstitutional. After a street-widening plan had been made, the property-owners involved could continue to possess and develop their property. They could apply for, and be granted, permits to build on it, except on the part that was affected by the street-widening plan, which might not, in fact, be carried out before a considerable period of time had elapsed.

The two dissenting judges maintained that section 12 of the Streets and Buildings Regulation Law, concerning the establishment of street-widening plans, could not be considered apart from section 13, which provided for the compulsory acquisition of the property affected when a permit to carry out the plan had been obtained. Since section 12 represented only the first stage of a process which thus inevitably ended in depriving people of their property under section 13, the two sections must be taken together, as maintained by the applicants, and section 12, thus ultimately entailing as it did the compulsory acquisition of property, must be considered unconstitutional, since no provision was made for the legislative action required in such cases under article 23 (4) of the Constitution.

The preliminary objection that section 12 of the Streets and Buildings Regulation Law was unconstitutional having thus been rejected, by majority, the cases would be dealt with in the normal way so far as concerned the other issues arising for determination in each of them.

(c) *Nicosia Race Club v. The Republic*¹³

On 28 March 1970, the Committee of the applicant club appointed the Bank of Cyprus Ltd. as its trustee for the purpose of transferring the club's immovable property for registration in the trustee's name, without any transfer of ownership. Application for registration was made to the Director of the Department of Lands and Surveys, who replied that before such registration could be effected a written declaration of transfer must be made, and the appropriate fees and charges paid.

In its recourse, the applicant asked the Court to invalidate these requirements. The Court held that under the existing law there could be no transfer without transfer of ownership. On the point whether the law was unconstitutional in not providing for registration in the name of a trust which was not the owner of the property, since its failure to do so was contrary to the principles of freedom to dispose of one's immovable property and equality of treatment enshrined in articles 23 and 28 of the Constitution, the Court took the view that, as to the former, the question did not arise, for the trust which it was sought to establish was not a trust in the accepted sense of the term; and, as to the latter, that the expression "equal before the law" in article 28 (1) of the Constitution did not convey the notion of exact arithmetical equality but safeguarded only against arbitrary differentiations, while not excluding reasonable distinctions which had to be made in view of the intrinsic nature of things.

The application was dismissed.

¹² *Ibid.* (1976) 6 J.S.C., pp. 874-927.

¹³ *Ibid.* (1975) 2 J.S.C., pp. 194-213.

Supreme Court: appellate jurisdiction

(a) *The Republic v. Telegraphos Publishing Co. Ltd.*¹⁴

Under sections 3 and 4 of the Press Law, anyone wishing to register a newspaper must submit a declaration to, and deposit a bond with, the Administration (Minister of the Interior and Public Information Office), which thereupon issues a receipt. Under section 11 of the Law, the title of the newspaper then becomes the owner's property, "and no person other than the proprietor shall be entitled to use such title or any title so resembling it as to be likely to cause confusion". The point at issue was whether, before making out the receipt, the Administration must ascertain whether the title, or one closely resembling it, had not already been registered for another publication.

On 17 July 1970, *Dimokratia* was registered as a daily paper. After about six months, the owners stopped producing it, but on 2 December 1974 it reappeared as a weekly. Meanwhile, on 28 November 1974, the newspaper *Dimokratiki* was registered, and it came out on 2 December 1974. On 13 December 1974, the owners of *Dimokratia* filed a recourse, claiming cancellation of the registration of *Dimokratiki* and prohibition of its publication. The claim was allowed, the judge maintaining that before it registered a newspaper the Administration must ascertain whether another newspaper with the same or a similar name had not already been registered. In 1975, the Administration appealed against this decision, arguing that it was not empowered under section 11 of the Press Law to inquire whether the title of a newspaper proposed for registration resembled that of another.

The Court dismissed the appeal. It upheld the opinion of the trial judge that a discretionary power existed and must be exercised. A discretionary power of that kind was not contrary to article 19 of the Constitution on freedom of speech and expression, paragraph 3 of which made provision for such restrictions as might be necessary in the public interest.

(b) *Raftopoulos and Others v. Theocharides and Others*¹⁵

In this action before the District Court of Nicosia, five printers who after 10 years had withdrawn from membership of the Provident Fund of the Press and Printing Workers sued the members of the Fund's Committee for reimbursement of the contributions paid into the Fund by themselves and by their employer on their behalf.

The Court found that, in the first place, the Fund was not a registered body and could therefore not sue or be sued unless there was specific legislation under which proceedings could be taken. In the second place, the action should have been against all the members of the Fund, and for that purpose a representation order would have had to be obtained, so that representative proceedings could be instituted. The Committee was not legally entitled to represent the Fund.

While the plaintiffs had been quite within their rights in withdrawing from the Fund, since, under article 21 (2) of the Constitution, "no person shall be compelled to join any association or to continue to be a member of it", they were not entitled to claim from the Fund the reimbursement of more than they had paid in, since benefits, including the employer's contribution and interest, were intended for those who reached retirement age or were separated from employment through no fault or initiative of their own. The plaintiffs, however, had not given up their employment.

The action was therefore dismissed and the plaintiffs were directed to pay the defendants' costs.

¹⁴ *Ibid.* (1975) 9 J.S.C., pp. 1331-1334.

¹⁵ *Ibid.* (1976) 3 J.S.C., pp. 496-509.

D. Freedom of opinion and expression

(article 19 of the Universal Declaration)

Supreme Court: appellate jurisdiction

*Hadji Nicolaou v. The Police*¹⁶

On 9 February 1976 the appellant had been sentenced to three months' imprisonment by the District Court of Nicosia after pleading guilty to the offence of publicly encouraging violence through the publication of an article in the newspaper for which he was responsible.

In his appeal to the Supreme Court, he claimed that in view of his personal circumstances and the circumstances of the case the sentence was excessive. Moreover, the trial court had refused application by the defence for the admission of evidence in mitigation of sentence.

The Court held that the sentence was not excessive, the restriction of the right of freedom of expression which it represented falling well within the scope of the restrictions for which article 19 of the Constitution provided. It should be remembered that the appellant had had three previous convictions, two for publishing false news and one for contempt of court. As to the trial court's refusal to admit evidence in mitigation of sentence, the record showed that the evidence which the appellant had wanted to adduce had, in fact, been covered by counsel. The appeal was dismissed.

E. Right to social security

(articles 22 and 25 of the Universal Declaration)

The financial situation of the social insurance scheme was sound and, under normal conditions, no economic difficulties would have been encountered. The scheme's reserve, which in June 1974 was £8,400,000, would, according to actuarial projections, have increased gradually to £16,000,000 by 1983.

The events of 1974 upset the financial equilibrium between the scheme's income and expenditure and threatened its very existence. Among the many destructive effects of the invasion, 200,000 persons were obliged to leave their houses and lands and 80,000 active contributors to the scheme were made unemployed.

This mass unemployment had a twofold adverse effect on the scheme's finances. On the one hand, its income from contributions was reduced by 40 per cent and, on the other hand, it was called upon to pay unemployment benefit to the thousands of unemployed. In the period from September 1974 to March 1975 the scheme paid unemployment benefit amounting to £1,907,000, which represents 15 times the amount that would have been paid under normal conditions in the same period.

The new situation necessitated the introduction of legislative measures by which benefit expenditure was reduced. Under the Social Insurance Law of 1975 the payment of unemployment benefit, of marriage, maternity and death grants and of maternity allowances (except where the claimant is a bread-winner) was suspended and the rates of the other benefits were reduced by an average of 14 per cent. The above measures did not nullify the adverse effects of the Turkish invasion on the scheme but secured the payment of benefits at the new reduced rates until about the middle of 1978. However, it is expected that by that time the employment situation will improve, the scheme's income will increase, and thus social insurance protection will again be provided at the pre-war standards.

In 1976 the economic and social conditions consequent upon the events of 1974 necessitated certain further legislative measures in order to improve the protection of the insured population and their dependants under the social insurance scheme.

¹⁶ *Ibid.* (1976) 4 J.S.C., pp. 652-657.

These legislative measures, which came into force in July 1976, provide for:

- (a) The deeming of non-paid contributions as paid contributions under certain conditions;
- (b) The extension of the time-limits for the payment of contributions;
- (c) The provision of widower's pension to widowers who are permanently incapable of self-support;
- (d) The liberalization of contribution conditions for the award of invalidity pension.

CZECHOSLOVAKIA

Introduction

During the period under review, several significant measures designed to broaden and improve economic and social rights were adopted and implemented in Czechoslovakia. The most important among them are the Act of 26 March 1975¹ amending and supplementing certain provisions of the Labour Code of 16 June 1965,² the Agricultural Co-operatives Act of 13 November 1975³ and the Social Security Act of 12 November 1975.⁴ These measures do not constitute a fundamental change in the existing legislation governing labour relations and social security—which has proved satisfactory in practice—but they do represent another step forward in those areas.

The Labour Code Amendment Act of 1975 proceeds from the finding that, in the main, the Labour Code fulfils its social and economic functions and that only minor amendments are required, to improve operational systems, to create the conditions for better work discipline and for the proper and timely preparation of production, to ameliorate working conditions through improved welfare arrangements, to enhance the working people's knowledge of the law and to adjust socialist legislation to the development requirements of the State and of society.

The new Agricultural Co-operatives Act provides a comprehensive legal regulation of the social relations involved in the development of the agricultural co-operative movement (organizational relations, co-operative utilization of land, self-management of co-operatives, mutual co-operation of co-operatives, etc.). So far as economic and social rights are concerned, the Agricultural Co-operatives Act has placed co-operative farmers on the same level as other working people, through the legal regulation of working relations based on the general principles of labour law.

The new Social Security Act, too, has improved the already effective and generally appropriate pensions system. The first aim of the new Act is to eliminate unjustifiable differences in benefits between one population group and another, and for this purpose the social-security system is made uniform for all workers, whether wage-earners, salaried employees or co-operative farm workers. The second aim is to determine the basic amount of pension required for meeting fundamental needs. The resulting increase is also available to pensioners under the scheme for individual farmers and other self-employed persons if the pension is their only source of income and it does not reach the required level. The third aim is to allow for length of service, and in this connexion the pensions tax is abolished and the relative minimum for old-age and disability pensions is raised, as are also the absolute maxima for employment categories I to III. The fourth aim is to adapt pensions to present wage levels. For this purpose, all pensions were increased, as from 1 January 1976, by an amount determined by law, being at least equal to the amount of the pensions tax. The fifth aim is to encourage the voluntary continuance of work beyond the age of retirement in selected categories of employment.

The effects of these changes are set out below under headings corresponding to the relevant articles of the Universal Declaration.

¹ *Sbírka Zákonů* (Collection of Laws), 27 March 1975, No. 7, item 20.

² *Ibid.*, 30 June 1965, No. 32, item 65. For a summary of this text, see *Yearbook on Human Rights for 1965*, pp. 64 and 65.

³ *Sbírka Zákonů*, 19 November 1975, No. 29, item 122.

⁴ *Ibid.*, 14 November 1975, No. 28, item 121. Translations of substantial parts of this Act into English and French have been published by the International Labour Office as *Legislative Series*, 1975—Cz.3.

A. Right to social security (article 22 of the Universal Declaration)

The new Social Security Act confirms and further emphasizes and asserts the principles on which security through pensions is based.

Universality

The contingencies covered are old age, loss or reduction of working ability and loss of the family bread-winner. Benefits are secured to all working people on the basis of their work; for this reason the differences in security (insurance) arising from the various systems applied in the past have been removed. The principle of universality is also evident in the provision of disability pensions to people of 26 years of age or over who were disabled in their youth and cannot work for the period required for entitlement to a disability pension dependent on earnings. The principle of universality is also reflected in the provisions concerning social pensions, which may be granted to needy persons who are not entitled to any other pension and have either reached the age of 65 or have become totally disabled; it is to some extent reflected in the provision concerning wives' pensions, which may be granted to pensioned employees' wives who are old or totally disabled, are not earning and are not entitled to any other pension. In accordance with this principle, education allowances are also paid to recipients of old-age, disability and partial disability, retirement, personal or social pensions in respect of all children who satisfy the conditions for payment of such an allowance.

Merit

The pension insurance of workpeople (i.e. the employed or members of co-operatives) is regulated differently from that of individual farmers or other self-employed persons and/or the members of their family working with them, whose claims to a pension are of a more limited nature (whereas the former is financed from the State budget, the latter is financed from funds obtained from premiums paid by the insured). The merit principle gives advantages to certain groups of workpeople who are, for this purpose, included in employment category III. The size of most pensions depends on the length of employment and on the level of earnings. Furthermore, a disabled person's pension can be recalculated in accordance with the merit principle if he has taken up work again and earned more than before, so that a new assessment of his pension is more advantageous to him. The merit principle also underlies the provision for a personal pension for specially meritorious workers in the economic, scientific or cultural fields, or in national defence, administration or other public offices, and for their surviving next of kin. The principle also to some extent underlies the provisions relating to service pensions of active pilots and certain performers.

Social welfare

This principle underlies, in particular, the provisions regarding minimum monthly pension levels, disability pensions for young people and minimum levels for pensions constituting the sole income. The social pensions, the increased education allowances for disabled orphans requiring constant care (unless they are in an institution or are paid a disability pension), and, lastly, the increased pensions and education allowances for the disabled are granted in accordance with this principle.

Pension claims

Legal regulations lay down the precise conditions governing a person's claim to a pension, and the number of cases in which payment is optional is kept as low as possible. As of 1 January 1976, the optional cases (in which pension is granted at the discretion of the competent authority) include only the wife's pension and the partial-disability pension granted on account of a considerable deterioration in general living conditions (i.e. cases where the conditions for a partial-disability pension are not met, as a rule because the income is too high). Working people may defend themselves against incorrect decisions

concerning pensions either through appeal to the higher social-security authorities (in the case of optional pensions) or through legal channels in court (in the case of obligatory pensions). In accordance with the principle of social security, once a claim is granted it must be honoured (Social Security Act, sect. 71 (1)).

B. Right to work

(article 23 of the Universal Declaration)

1. RIGHT TO WORK, TO FAVOURABLE CONDITIONS OF WORK AND TO PROTECTION AGAINST UNEMPLOYMENT.

The right to work is safeguarded by the fact that the local organs of the State (the National Committees) are obliged to secure employment to citizens who apply for it. Provision is also made for consultative services (especially in regard to vocational guidance), assistance in finding employment (information on vacancies must be registered with these organs) and the recommending of applicants for employment in certain organizations (i.e. enterprises concerned with production, trade, transport, etc., in offices, institutes and other organizations), such recommendations being binding (the applicant may be rejected only on legal grounds). For certain important branches of the economy, the National Committees organize recruitment directly on behalf of the enterprises concerned. Apart from the general guarantees, specific guarantees of the right to work are also provided to ensure: (a) that assistance and material security are assured to applicants for employment released from previous jobs due to rationalization and organizational measures, or because certain work and work places are prohibited to women; (b) that employment and appropriate working conditions are assured to citizens with impaired ability to work (i.e. persons whose capacity for work or training is more or less permanently affected by their state of health); and (c) that attention is given to the vocational training and employment of young people (particularly university graduates and specialized-secondary-school leavers).

In this respect, the Labour Code as amended by the Act of 26 March 1975⁵ further enlarges job security for persons looking after small children; thus, when notice is given for organizational reasons to a pregnant woman, a woman on maternity leave, or workers of either sex caring for a child under 15, the employer organization is obliged to provide suitable new employment for these persons (and also for persons with impaired capacity for work who do not receive a pension). The period of notice cannot expire until this requirement has been met, or until the employee reaches an agreement to the contrary with the employing organization (Labour Code, as amended, sect. 47 (2)). The employing organization can if necessary request assistance from its superior organ. The prohibition of notice has been further extended to cover pregnant employees, those on maternity leave, and both male and female unmarried workers looking after children under 3 years old (Labour Code as amended, sects. 48 and 49).

An important guarantee of the right to work is that the worker can be unilaterally dismissed only on the grounds stipulated in the Labour Code. These grounds (sects. 46 and 53) are listed in the Labour Code Amendment Act of 1975; infringement of the socialist social order was omitted from the list and emphasis was placed on non-fulfilment of the legal prerequisites and of the requirements for satisfactory work (in cases where notice is given), and on the inadmissibility of continued employment when the security of the State is endangered (immediate termination of employment).

The provisions on the protection of health and occupational safety (Labour Code as amended, sects. 133, 135 and 136), on factory-organized meals in keeping with the principles of proper nutrition, and on suitable beverages to be available at or near the place of work (sect. 140 (1)) were further expanded.

⁵ *Sbirka Zákonů*, 18 June 1975, No. 16, item 55. Translations of substantial parts of the Code into English and French have been published by the International Labour Office as *Legislative Series* 1975—Cz.2.

The new regulation of labour relations for co-operative farmers in the Agricultural Co-operatives Act goes a long way towards bridging the gap between these relations and other labour relations in the matter of employment, particularly by applying the principles stipulated in the Labour Code to this field. A labour contract between co-operatives and their members has recently been introduced. It must embody an agreement on the kind of work (function) to be performed by the co-operative member, the place of work and the date on which work is to start. If the co-operative is unable to provide year-round or full-time employment, the contract must stipulate the amount of work to be done by the member within a calendar year. The aim of the contract is to strengthen the guarantees of stable employment for co-operative members, taking into account their abilities, working experience and skills. The contracts are similar to employment contracts, but are modified to suit the conditions in co-operatives.

Towards the end of 1975, 7,376,000 of the total Czechoslovak population of 14,857,145, i.e. 49 per cent, were economically active, and of that number 3,527,000 were women. The number of people of productive age capable of work amounted to 8,239,000, of whom 810,000, i.e. 9.8 per cent, were students and apprentices.

2. RIGHT TO JUST AND FAVOURABLE REMUNERATION

The constitutionally guaranteed right to remuneration for work done according to its quantity, quality and social importance is elaborated in the Labour Code and in the Agricultural Co-operatives Act, which apply to an overwhelming majority of the Czechoslovak population. Remuneration for work is governed by regulations in keeping with the principles stipulated in these laws. It fulfils four fundamental purposes: alimentary or social (securing the standard of living of the employed person and his family); incentive (dependence on quantity and quality of work); compensatory (compensation for disadvantages connected with the performance of certain types of work); and regulatory (influencing both the stability and the mobility of labour). In matters of remuneration, no distinction can be made on grounds of sex, religion, ethnic origin, nationality or any criterion that is not based on the evaluation of the actual work done.

Pursuant to part IV of the new Social Security Act, concerning social welfare, the State provides assistance to citizens whose living conditions have deteriorated and who cannot overcome their difficulties without the help of society, and to citizens whose means of livelihood are not otherwise guaranteed, for example through sickness-insurance benefits (health insurance) and pension insurance or other payments and services rendered under separate regulations. Welfare services, including benefits, are also provided for citizens who need them owing to special circumstances (Social Security Act, sect. 80).

C. Right to rest and leisure

(article 24 of the Universal Declaration)

Working hours have not undergone any substantial change. In 1968 they were reduced, with no cuts in wages, to a five-day working week of 40 to 42.5 hours. The Act of 26 March 1975 deals with the uneven distribution of working hours in certain branches, such as agriculture, forestry, transport and other fields of activity of a seasonal nature, where departures from the regular distribution of working hours are permissible if they can increase efficiency or contribute towards better services for the population (distribution of working hours over a period longer than four weeks, if need be over the whole year). It is thus possible in agriculture, for instance, while observing the stipulated weekly working hours, to vary the length of the working day according to the season. In winter, the weekly working hours can be distributed over less than six work days in a week.

Irregular working hours with a longer period for the calculation of average weekly working hours are, however, permissible only in so far as they are necessary and do not conflict with economy of operation, occupational safety and the requirements of health.

The provisions governing holidays with pay have remained essentially unchanged (Labour Code, sects. 100-110). The basic leave is two calendar weeks; an employee who,

by the end of the current year, (a) has been employed for at least five years since reaching the age of 18, or (b) has not yet reached the age of 18, or (c) has reached the age of 50, is entitled to three calendar weeks' leave; leave of four calendar weeks is granted to an employee who has worked for 15 years since reaching the age of 18. The length of employment includes various supplementary periods, such as that taken up by looking after a child up to the age of three (in the case of women), service in the armed forces, successfully completed studies or post-graduate courses, membership in a co-operative production plant (which may be an agricultural co-operative), care of a disabled relative, the time during which the employee was in receipt of an allowance before being placed or starting new employment, and the time spent under detention if the eventual verdict is not guilty. Special leave is given to: (a) apprentices—four calendar weeks; (b) apprentices in the mines working underground on their apprenticeship—five calendar weeks; (c) teachers—eight calendar weeks; (d) nursery-school teachers—four calendar weeks. The following conditions apply for leave claims: the employee must have worked in the organization for at least five months (qualifying period) and at least 75 days in the current calendar year; these conditions do not apply to employees who change their employment by reason of personnel recruitment carried out by the National Committees (see sect. B (1) above) or because of organizational changes, for health reasons or in connexion with the care of a child (the last-named reason was valid until 1975 only for mothers, but has been extended under the Act of 26 March 1975 to all working women who take permanent care of a child, i.e. also to women who take a child in permanently for adoption or because its mother has died, as well as to foster-mothers who are given charge of a child under the Foster Care Act of 28 April 1973).⁶

People working permanently underground or under particularly difficult conditions or under conditions that are hazardous to health are entitled to supplementary leave (one calendar week); if they fulfil two of the conditions for such leave (e.g. miners working under the influence of ionizing radiation), they are entitled to double supplementary leave. People whose working hours are unevenly distributed over the calendar year, or other working people if their work depends essentially on weather conditions, are entitled, under section 18 of the decree of 23 April 1975⁷ concerning the application of the Labour Code, to two days' extra leave, up to a maximum of one week, for every week of leave taken in the slack period (e.g. in agriculture during the winter). Under sections 53-57 of the new Agricultural Co-operatives Act, the rights of the members of co-operative farms have been adapted to the principles applied in the Labour Code to people working in other spheres.

The legal arrangement of working hours and paid leave is only one of the constitutional guarantees of the right to rest; the second guarantee is the care taken by State and social organizations to ensure that working people use their free time to the full for their recreation and cultural life (art. 22 of the Constitution⁸). This is achieved, on the one hand, by means of health (social) insurance benefits, such as a stay at a health resort, selective recreation and recreation for children, and, on the other hand, by means of a vast network of recreational, sports, cultural, etc., facilities administered for the most part by trade-union organizations and organizations for workers' recreation at home and abroad.

D. Right to an adequate standard of living

(article 25 of the Universal Declaration)

The situation as reported earlier remains essentially unaltered. The basis for a decent standard of living for citizens is their participation in socialized labour and the remuneration granted for the quantity, quality and social significance of the work performed (Labour Code, sects. 111-123; Agricultural Co-operatives Act, sects. 58-59). An important principle is applied as regards wages: the employing organization is obliged to pay wages to an

⁶ *Sbirka Zákonů*, 4 May 1973, No. 15, item 50.

⁷ *Ibid.*, 9 June 1975, No. 15, item 54.

⁸ *Ibid.*, 11 July 1960, item 100. For extracts, see *Yearbook on Human Rights for 1960*, pp. 86-90.

employee in accordance with the appropriate wage regulations or collective agreements; it is forbidden to make other monetary payments in connexion with an employer/employee relationship. The wage regulations also govern wage tariffs, and the lowest wages paid (particularly by the hour) correspond to the minimum wage.

In addition to wages, the workpeople are given various important benefits from the social consumption funds. For this purpose, State and co-operative organizations develop comprehensive programmes for the workers (including co-operative farmers), based on the fact that socialist enterprises and other employing organizations should fulfil not only economic but also social functions which are a condition for the development of the human personality. Socialist organizations therefore establish prerequisites for occupational safety and health at work and for the development of preventive and medical care, they improve the organization and technology of work in accordance with the human sciences, especially psychology, ergonomics and sociology, they provide for canteen meals and they help to satisfy the housing needs of employees and their families, and to regenerate the physical and mental abilities of the workers through the appropriate utilization of leisure for further education, recreation, sports, cultural life, and so on.

The right to social security (in accordance with the Social Security (Minimum Standards) Convention, 1952 (No. 102) of the International Labour Organisation) includes (a) security in case of temporary incapacity for work due to illness or accident, (b) security for mothers in cases of pregnancy and maternity, (c) assistance in educating children, (d) security in case of disablement, (e) security in old age, and (f) security for members of the family and survivors in case of loss of the bread-winner.

Since demands on the labour force are steadily increasing, it is not necessary to arrange for security in case of unemployment. If, exceptionally, following rationalization and re-organization, an employee is without a job immediately after his discharge, he is given an allowance amounting to 60 per cent of his average monthly earnings, up to a maximum of 1,800 koruna per month, for a maximum period of six months; the amount is reduced by half for a further period not exceeding six months. The allowance is granted by the district National Committee (Decree of the Federal Ministry of Labour and Social Affairs of 3 July 1970).⁹

All citizens are entitled to free medical and preventive care, including medicines (Public Health Act of 17 March 1966).¹⁰ Material security in case of disablement is provided for the workers according to the duration of their employment, and amounts to 60 to 90 per cent of the net daily wage (for the first three days it is reduced to 50 to 70 per cent, though in some cases of disablement no reduction is made). Under the Workers' Health Insurance Act of 6 July 1956,¹¹ the Co-operative Farmers' Sickness Insurance Act of 4 June 1964¹² and the Mother and Child Security Act of 27 April 1976,¹³ the maximum net daily wage in a five-day working week in accordance with which sickness benefits are estimated amounts to 120 koruna.

The new Social Security Act also regulates social assistance by the State to citizens needing help. The services and benefits provided under section 80 of the Act include, as to the former, educational and advisory assistance in the family and social sphere, social and legal protection, care of citizens whose ability to work has been impaired, home nursing services, meals for pensioners, care in appropriate institutions, advantages for certain categories of physically handicapped persons, cultural and recreational facilities for pensioners, institutional care, including possibilities of daily and weekly stays and interest-free loans; and; as to the latter, material assistance and lump-sum or recurrent cash payments.

⁹ *Sbirka Zákonů*, 17 July 1970, No. 22, item 74.

¹⁰ *Ibid.*, 30 March 1966, No. 7, item 20. For a summary of this Act, see *Yearbook on Human Rights for 1966*, p. 97.

¹¹ *Sbirka Zákonů*, 19 July 1956, No. 20, item 54.

¹² *Ibid.*, 15 June 1964, No. 45, item 103.

¹³ *Ibid.*, 7 May 1976, No. 9, item 50.

E. Right to education

(article 26 of the Universal Declaration)

1. ACCESSIBILITY OF EDUCATION.

The citizen's right to education, as guaranteed by article 24 of the Constitution, is secured by appropriate laws, in particular the Education Act of 15 December 1960,¹⁴ the Apprenticeship Act of 12 December 1958¹⁵ (as amended and supplemented by subsequent acts and by the Labour Code), the Grammar Schools Act of 19 December 1968¹⁶ and the Universities Act of 16 March 1966¹⁷ (as amended and supplemented by subsequent acts).

The whole body of schools and educational establishments forms a unified and complete educational system, the components of which (kindergartens, basic nine-year schools, grammar schools, secondary vocational schools, universities and colleges) are interconnected. Over and above this system, there is the system of advanced scientific work in which completion of a thesis opens the way to the successive post-graduate degrees of Candidate of Sciences and Doctor of Sciences. Education in science is provided for graduates of universities who have voluntarily applied for it and are qualified to work in research institutes, at universities and colleges, in central State bodies, and so on.

Education is free of charge. No fees are paid at any kind of school, including universities; no fees are paid for examinations or for graduation; the primary and secondary schools provide the prescribed textbooks free of charge. The education provided at institutes of academies of science and at universities and colleges is also free of charge. Regular students at universities and some students at secondary schools receive scholarships (social, proficiency and other scholarships). Those who undertake post-graduate studies leading to the degree of Candidate of Sciences or Doctor of Sciences receive monthly scholarships of 1,600 to 2,200 koruňa; the amount of the scholarship is determined on the basis of previous practice, work results and results in the entrance examination; the scholarship may be increased, within established limits, in the course of post-graduate study. From 1 October 1975, by a government decision, the principles of which were published in the Post-graduate Studies Act of 19 May 1975,¹⁸ a post-graduate scientific study scheme was introduced. Those who study under this scheme at a training establishment remain in employment contact with other organizations, and their study is directed towards the needs of such organizations (the subject of their thesis is selected by the organization which sends them, in agreement with its superior central organ). These students receive from their sponsoring organization a scholarship equal to their average monthly earnings before they began their post-graduate scientific studies; the training establishments conclude agreements with the sending organizations regarding guarantees for studies of accepted post-graduate students, including accommodation and coverage of expenses connected with studies, and expenses for sending such students on study trips in Czechoslovakia and abroad.

2. CHOICE OF EDUCATION

Basic education is compulsory and is given in primary schools, mainly in the pupils' place of residence, so that they can go to school regularly, on foot or by the safe public transport facilities.

After completing compulsory school attendance, a young man or woman acquires legal status under the labour law (sect. 11 of the Labour Code). Thus he or she decides whether to continue studies or enter into apprenticeship or employment. The employing organiza-

¹⁴ *Ibid.*, 28 December 1960, No. 82, item 186.

¹⁵ *Ibid.*, 30 December 1958, No. 37, item 89. For extracts, see *Yearbook on Human Rights for 1958*, p. 38.

¹⁶ *Sbirka Zákonů*, 22 December 1968, No. 46, item 168.

¹⁷ *Ibid.*, 30 March 1966, No. 7, item 19. For a summary of this Act, see *Yearbook on Human Rights for 1966*, pp. 97 and 98.

¹⁸ *Sbirka Zákonů*, 23 June 1975, No. 17, item 59.

tion, in concluding an apprenticeship or employment contract, and on the occasion of other significant steps concerning young people, must request the opinion of the parents (legal representatives).

The schools legislation also respects the provisions of section 32 of the Act of 4 December 1963 on the Family Code¹⁹ to the effect that "the decisive role in the education of children is played by their parents". Parents are authorized and obliged to represent their children and to administer their affairs while they are minors (sect. 36), that is, to act on their behalf in the administrative proceedings mentioned in section 1 above.

¹⁹ *Sbírka Zákonů*, 13 December 1963, No. 53, item 94. See also *Yearbook on Human Rights for 1963*, p. 85.

DEMOCRATIC YEMEN

Introduction

During the years 1975 and 1976, in spite of limited material and technical possibilities, there took place in the People's Democratic Republic of Yemen important developments in the field of the application of human rights, more especially in the areas of education, health, the improvement of the standard of living of citizens and the extension to them of opportunities to participate actively in government.

Among the principal developments was the promulgation of the Penal Code and Rules of Criminal Procedure of 1976. The new law is characterized by a more humane approach than that of previous legislation on the subject, a feature that emerges clearly in the new, light penalties laid down, the power conferred on the court to impose a penalty lower than the prescribed minimum in certain circumstances, the fact that it is forbidden to impose a penalty heavier than that in force at the time the crime was committed, the abolition of the death penalty save as an exceptional, temporary measure, etc. The law also seeks to promote the reform of the prisoner by requiring the competent authorities to direct their efforts towards his reintegration in the community.

The year 1976 saw the drafting of a labour law and an electoral law. These two laws, which will be promulgated in 1977, will play an important part in enhancing the practice of human rights in the People's Democratic Republic of Yemen.

Legislative and other developments that have occurred in the field of human rights during the period under review are set out below according to the sequence of articles in the Universal Declaration of Human Rights.

A. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

The law guarantees and protects the personal freedom and peaceful life of citizens (Penal Code, arts. 2 (1) and 6 (2)). Furthermore, the death penalty has been abolished save as an exceptional, temporary measure.

B. Prohibition of torture and cruel, inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

It is forbidden by law to torture any person, to extort a confession from him or to treat him in an inhuman way (Penal Code, art. 6 (2); Rules of Criminal Procedure, art. 9 (3)).

C. Equality before the law; right to an effective remedy

(articles 7 and 8 of the Universal Declaration)

In pursuance of article 34 of the Constitution, which provides for the equality of all citizens in their rights and obligations, irrespective of their race, origin, religion, language, education or social position, article 7 (2) of the Penal Code and article 8 of the Rules of Criminal Procedure provide that all persons are equal before the law and before the courts without any distinction.

Article 7 (2) of the Penal Code provides that every citizen is entitled to have recourse to the courts for the protection of his legal rights and interests; furthermore, the law guarantees this protection (Penal Code, art. 2 (1)).

D. Right not to be subjected to arbitrary arrest or detention*(article 9 of the Universal Declaration)*

Article 6 (2) of the Penal Code makes it illegal for any person to be arrested or detained except in accordance with the law.

E. Right to a fair and public hearing*(article 10 of the Universal Declaration)*

Article 17 of the Rules of Criminal Procedure provides that the courts are independent in the exercise of their functions, obliged to observe the Constitution and the law, and not bound by precedent in the investigation and determination of judicial matters. The courts sit in public except where the public interest or the interest of the parties to an action requires that publicity be dispensed with (Rules of Criminal Procedure, arts. 19.(1) and 330 (1)).

F. Presumption of innocence; right to all the guarantees necessary for defence; non-retroactivity of criminal law*(article 11 of the Universal Declaration)*

An accused person is presumed innocent until proved guilty (Rules of Criminal Procedure, art. 9 (2)). An accused person may conduct his own defence or appoint counsel to do so and is entitled to legal aid (*ibid.*, art. 15 (1) and (2)). No one is held criminally responsible under the law unless he has committed a crime specified therein. On the other hand, laws that remove liability to penalties or reduce penalties can be applied to actions committed before the entry into force of such laws (Penal Code, arts. 8 (1) and 9 (2)).

G. Protection against arbitrary interference with privacy*(article 12 of the Universal Declaration)*

Dwellings are inviolable and may not be entered except in accordance with the law. The privacy of correspondence and of all means of communication is also guaranteed and may not be breached except in the circumstances specified by law (Penal Code, arts. 6 (3) and (4)). Articles 221 and 223 of the Penal Code provide legal protection against any interference of this kind.

H. Marriage and the family*(article 16 of the Universal Declaration)*

On 4 September 1976, the Minister of Justice and Waqfs issued a ministerial decree bringing into force the Explanatory Note to the Law Concerning the Family promulgated in January 1974. That law contained provisions relating to the equality of both spouses in rights and obligations (art. 2), State support for the family and maternal and child care (art. 29), the consent of both parties as a basic condition for the contracting of matrimony (art. 5) and various other subjects. The issue of the Explanatory Note by the Ministry of Justice ensures that the law will be interpreted and applied in the same way throughout the Republic, thus guaranteeing that the important social development achieved by its promulgation will be followed through.

I. Right to take part in government*(article 21 of the Universal Declaration)*

At the beginning of 1976, work was completed on the drafting of the electoral law under which elections are held in the various governorates of the Republic to the Local People's Councils, which are the organs of local government. As these elections would be the first of their kind in the People's Democratic Republic of Yemen since the ending of foreign rule in 1967, it was decided, in accordance with a resolution of the Central

Committee of the unified political organization, the Popular Front, to apply the draft electoral law on an experimental basis in the largest of the country's governorates, the fifth, and to extend it to the rest of the Republic if it proved successful. In the summer of 1976, the Local People's Council was constituted in the Fifth Governorate by means of free, universal, equal and direct elections, as provided in article 114 of the Constitution of the People's Democratic Republic of Yemen. Since its formation, the Council has been successfully discharging the tasks of local government.

In the light of this successful experiment in the Fifth Governorate, extensive preparations are now being made for elections to Local People's Councils throughout the Republic.

**J. Right to social security; right to an adequate standard of living;
right of motherhood and childhood to special care and assistance**

(articles 22 and 25 of the Universal Declaration)

Pensions

On 24 March 1975, a law concerning pensions was promulgated. Under this law, all workers in the public sector are entitled in case of incapacity to receive a retirement pension sufficient to enable them to live in dignity. In case of death, the pension is paid to the family of the deceased. The promulgation of this law is regarded as an important development in the field of social security arrangements.

Standard of living

The State continuously strives to improve the standard of living of the citizen to the extent that possibilities allow. In 1975-1976, steps were taken to increase the incomes of all workers in the public sector. On 24 March 1975, a law was promulgated under which the salaries of State employees were increased by 5 per cent, and under Ministerial Order No. 8, issued in May 1976 by the Minister of Employment and the Civil Service concerning the assessment of the salaries and grades of employees in the public sector, the salaries of these employees were raised in varying proportions determined by competence, experience and devotion to duty and amounting in some cases to as much as 25 per cent of the former salary. It may be mentioned that the prices of foodstuffs and basic services available to citizens are stable and are not affected by the world-wide increase in prices. Any such increase is borne by the price stabilization fund established in the Ministry of Trade and Finance in July 1974.

Health care

In the field of health care, which is available free to all citizens, mention may be made of the establishment in 1975 of a Faculty of Medicine within the University of Aden. This faculty, in addition to the various institutes of nursing, will play a major role in providing the Republic with the necessary skills in this field and making it independent of foreign assistance.

Maternal and child health care

During 1975-1976, nine new maternal and child health care centres were opened in the various governorates of the Republic. The activities of these centres include:

- (a) Training of midwives, who continue to play an important role, especially in rural areas, and attaching them to maternal and child health care centres;
- (b) Distributing dairy products and other foodstuffs to children and mothers suffering from malnutrition;
- (c) Conducting immunization campaigns against tuberculosis, smallpox, poliomyelitis, whooping cough, tetanus and diphtheria;

(d) Participating actively in the dissemination of health education, using the official information media—television, radio and the press—and organizing lectures in co-ordination with the Women's Union of Yemen, which is the mass organization for women.

K. Limitation of working hours

(article 24 of the Universal Declaration)

In March 1975, the Sixth General Conference of the unified political organization, the Popular Front, limited working hours in the public sector to eight hours per working day. This arrangement has since been in force throughout the public sector.

L. Right to education

(article 26 of the Universal Declaration)

Everyone in the People's Democratic Republic of Yemen has the right to education, which the State is endeavouring to develop widely and rapidly. Between 1969 and 1975 the number of pupils of both sexes in primary schools rose by more than 100 per cent; the number of female pupils increased during the same period by approximately 400 per cent, education for girls not having been encouraged by the authorities in the past. The number of preparatory and secondary schools, including vocational schools, rose to approximately 200 in 1976. In 1975, in pursuance of Law No. 21 of that year, the University of Aden, comprising a number of theoretical and practical faculties and institutes, was founded. Thanks to the foundation of the University and the increase in the number of scholarships offered by friendly States, hundreds of secondary-school leavers now have the opportunity of receiving higher education, on conditions that are applicable to all alike, foremost among them being the possession of the necessary aptitude. By a decree of the Council of Ministers promulgated in 1976, school fees were abolished and education became free as far as the secondary stage; students in the faculties and institutes of the University of Aden receive reasonable monthly grants from the State.

The First Educational Conference, held in September 1975 under the auspices of the Ministry of Education, recommended that the competent authorities should fix a minimum employment age so as to prevent pupils from taking up employment at an age when they should still be studying and to ensure that they continued their education. In response to this recommendation, the Minister of Employment and the Civil Service issued, on 24 November 1976, an order fixing the minimum employment age in such a way as to ensure that pupils completed the first eight years of general education. This is regarded as another step in the direction of compulsory education.

DENMARK

A. Right to just and favourable conditions of work; right to rest

(articles 23 (1) and 24 of the Universal Declaration)

The Working Environment Act, No. 681 of 23 December 1975,¹ which will become fully effective on 1 July 1977, replaces the existing three workmen's protection acts. The purpose of the new Act is to provide a safe and healthy working environment which will at all times be in keeping with the technical and social progress of society. It differs from the existing workmen's protection acts in the following principal ways:

(a) Such matters as long-term effects on health and the importance of correct working positions are also covered under the new Act. In all trades and businesses, including small-scale enterprises, safety and health arrangements are to be made by personal contact between employer and employees, and training programmes are to be set up for the personnel concerned with safety. Industrial health measures, such as plant health services and industrial medicine clinics, will be expanded, as will the practice of giving medical examinations for the purpose of preventing the choice of an unsuitable type of work and thus reducing the risk of injuries. The Act also sets out rules on protection against occupational diseases or injuries caused by dangerous or harmful working processes or methods and introduces a mandatory daily period of rest of not less than 11 hours and a weekly 24-hour rest period for everybody; the latter provision is particularly important for those employed in agriculture and social and health institutions.

(b) The Working Environment Fund, whose purpose is to promote a better working environment through information and training and by other suitable means, will be expanded, on the basis of a charge payable by employers, to become a financially sound instrument of information, training and targeted research of problems related to the working environment.

The period 1975-1976 also saw the issue of several administrative regulations aimed at improving safety at work.

A number of campaigns were launched in order to bring about satisfactory health conditions in various vocations. These efforts included control of silicosis dangers in iron and steel foundries, elimination of the chemical effects of the use of styrene and similar solvents, and reduction of noise in the building and mineral water industries and other enterprises with a high noise level, such as plants manufacturing concrete building blocks, and wood-working and metal-processing industries.

The Directorate of Labour Inspection has prepared a slide series entitled "Your working environment at the building site". This series will be used in connexion with future building and construction campaigns. It points to the special hazards in the building and construction sector and goes on to show how to achieve a safe and wholesome working environment through the use of safety devices such as hard hats, fences and scaffolding.

B. Right to equal pay for equal work

(article 23 (2) of the Universal Declaration)

Act No. 32 of 4 February 1976² introduced equal pay for men and women. Pursuant to this Act every employer must, where not already covered by collective agreement, provide equal pay for men and women employed at the same working place and doing equal

¹ *Lovtidende*, part A, 1975, pp. 1951-1963; see also International Labour Office, *Legislative Series*, 1975-Den.1.

² *Lovtidende*, part A, 1976, p. 64; see also International Labour Office, *Legislative Series*, 1976-Den.1.

work. If a wage-earner is dismissed for having demanded equal pay, the employer must pay compensation.

C. Right to education

(article 26 of the Universal Declaration)

Executive Order No. 179 of 8 March 1976³ provides instruction for non-Danish-speaking pupils in conformity with the Elementary Education Act.

³ *Undervisningsministeriets bekendtgørelse*, No. 179, 8 March 1976.

FINLAND

Introduction

During the period under review a number of legislative and administrative measures for the improvement and further development of human rights in various fields were taken in Finland. The most significant of these was the ratification and entry into force in Finland of the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. At the same time, Finland made the declaration envisaged in article 41 of the latter Covenant to the effect that Finland recognizes the competence of the Human Rights Committee to receive and consider communications by a State party claiming that another State party is not fulfilling its obligations under the Covenant.¹

The main features of the other relevant legislative and administrative measures are described below.

A. Equality before the law

(article 7 of the Universal Declaration)

According to article 5 of the Constitution Act, all Finnish citizens are equal before the law. Consequently, women have enjoyed the same civil and political rights as men. Nevertheless, Act No. 112 of 23 April 1926 on the capacity of women for State offices, while recognizing in principle that women are qualified for all State offices, had provided for the possibility of making restrictions by decree as regards certain offices which were considered to be unsuitable for women. The latest decree enumerating such offices was Decree No. 445 of 25 August 1961. The list contained in that Decree comprised certain offices in the army, the military courts, the police and the prison service as well as certain posts as teachers of gymnastics, sports and hygiene for boys. On the other hand, the Decree contained a list of State offices to which only women could be appointed. Both the Act and the Decree mentioned above were repealed by Act No. 1020 of 19 December 1975;² all legal restrictions in this regard have thus been abolished.

B. Administration of justice

(articles 8-11 of the Universal Declaration)

The close co-operation between the Nordic countries in many fields has made it necessary to make certain arrangements in order to facilitate court proceedings in cases having links to two or more of these countries. For this purpose, the two laws referred to below, which are based on agreement among the Nordic countries, were enacted.

Act No. 349 of 23 May 1975 on the obligation to appear before the court of another Nordic country in certain cases³ provides that a Finnish court of law may summon a person over 18 years of age who is a resident of Denmark, Iceland, Norway or Sweden and is sojourning in one of those countries to appear as a witness in a case before it if his testimony

¹ The International Covenant on Economic, Social and Cultural Rights was brought into force in Finland by Decree No. 106 of 16 January 1976, appearing in *Suomen Asetuskokoelma* (Official Statute Gazette of Finland) (hereinafter referred to as *AsK*), No. 106/76. Those provisions of the International Covenant on Civil and Political Rights which fall within the field of legislation were approved and incorporated in Finnish law by Act No. 107 of 23 June 1975 (*AsK*, No. 107/75); the Covenant as a whole and the Optional Protocol to it were brought into force in Finland by Decree No. 108 of 30 January 1976 (*AsK*, No. 108/76).

² *AsK*, No. 1020/75.

³ *AsK*, No. 349/75.

is considered to be particularly important. In considering resorting to such a summons, the court must take into account the significance of the case and the difficulties that may be caused to the witness by the distance involved. The summons must be issued by the court or by its presiding judge. The witness will be paid compensation from State funds for economic loss as well as for travel and maintenance expenses. If the witness has been summoned at the request of a private party or at the initiative of the court in a civil case, the court must decide whether the amount of the compensation shall be repaid to the State in whole or in part by the party concerned. Similarly, a person who is a resident of Finland and is sojourning there or in another Nordic country is under obligation to obey a summons issued by a court in Denmark, Iceland, Norway or Sweden. The law is the same if the person concerned is a resident of another Nordic country but is sojourning in Finland.

The second act to be mentioned in this connexion is Act No. 601 of 9 July 1976 on the summons of the defendant in a criminal case to the court of another Nordic country.⁴ According to this Act, the appropriate Finnish authority is duty bound to give notice of a summons issued by a court in Denmark, Iceland, Norway or Sweden by which a person who resides in Finland or in another Nordic country and is sojourning in Finland is summoned to be a defendant in a criminal case. Such a person may not, during the time he stays in another Nordic country in response to the summons, be prosecuted or punished for any offence committed before his arrival other than that mentioned in the summons, nor may he be extradited to a third State, unless he consents before the court to such measures or remains in the country for more than 15 days after he has received permission to leave.

An important novelty from the point of view of court practice in criminal cases is Act No. 466 of 3 June 1976 amending the Penal Code.⁵ For each particular offence the Penal Code provides a scale fixing the minimum and maximum punishment. It is the task of the court to determine, within the framework of that scale, what the punishment shall be in each specific case. When using this discretionary power, the court is guided by certain generally accepted principles. The purpose of the amendment is to codify these principles in order to secure a coherent practice in all courts. With this in view, the aggravating and mitigating grounds to be taken into consideration in determining the punishment are accurately specified. As a general rule, it is provided that the punishment shall be proportioned to the harmfulness and danger of the offence in question and to the guilt of the perpetrator as it is revealed by the offence.

It is considered that in the following cases there are aggravating circumstances: if there was systematic organization of the criminal activity; if the perpetrator committed the offence as a member of a group organized for the purpose of committing serious crimes; if the offence was committed against payment; or if the perpetrator had a previous criminal record, provided that its relation to the new offence indicates, by the similarity of the offences or in other ways, indifference to the commands and prohibitions of the law.

On the other hand, the following are considered to be mitigating circumstances: if the offence in question was committed under the influence of threats or pressure; if the perpetrator was led to commit the offence by a strong human sympathy or by an exceptional or unexpected enticement which weakened his ability to obey the law; or if the perpetrator, on his own initiative, has endeavoured to prevent or to repair the effects of his offence or to assist in clearing it up.

If the offence has had, or the sentence of the court will have, consequences for the perpetrator which, together with the punishment, would lead to an unreasonable result in view of the nature of the offence, that fact will be taken into consideration in the determination of the punishment.

Another legislative reform having a bearing on the administration of criminal law is Act No. 135 of 13 February 1976 on conditional punishment.⁶ Conditional punishment was

⁴ *AsK*, No. 601/76.

⁵ *AsK*, No. 466/76.

⁶ *AsK*, No. 135/76.

previously regulated by Act No. 44 of 20 June 1918. This was replaced by the new Act, the purpose of which is to widen the possibilities of using this form of punishment and, thus, to diminish the number of convicted persons detained in prisons. According to the new Act, a sentence of at most two years' imprisonment inflicted for one or more offences may be ordered suspended. Similarly, the payment of a fine, regardless of its amount, may be suspended so as to avoid the possibility that the convicted person, because of the lack of money, would have to go to prison instead. As a general rule, a sentence of imprisonment may be suspended when the maintenance of general law and order does not require a firm sentence in a particular case. The payment of a fine may be suspended only in certain circumstances. When a suspended sentence of imprisonment is considered to be insufficient for the offence in question, the perpetrator may be sentenced to an unconditional fine in addition to the suspended sentence of imprisonment.

A punishment may not be suspended if the perpetrator has, during the preceding three years, been sentenced to imprisonment for more than one year, unless there are particular reasons for an exception.

The period of probation to be fixed by the court in connexion with conditional punishment is at least one year and at most three years.

If during the probation period the convicted person commits an offence for which he is sentenced to imprisonment, the court may order the previous conditional punishment to be executed, provided that the perpetrator has been prosecuted for the new offence not more than a year after the end of the probation. If the punishment for the new offence is more than one year's imprisonment, the previous conditional punishment shall in any case be ordered to be executed.

When a person receives a suspended sentence, he must be informed of the grounds on which the punishment may be ordered to be executed.

Act No. 320 of 16 May 1975 amending chapter 21, article 5, of the Penal Code⁷ should be mentioned in this connexion. The purpose of this amendment is to improve the personal safety of the individual by increasing the punishment for simple assault in cases where it is directed against a person who is unable to defend himself because of age or invalidity.

Act No. 336 of 23 May 1975 on the return of persons having seized a civil aircraft⁸ has international bearing. According to this Act, a person who is suspected of having seized or otherwise illegally taken possession of a civil aircraft may be returned from Finland to the State where the aircraft is registered, provided that the application of such a procedure has been agreed upon between Finland and the State of registration. The suspected person may be returned only if there is evidence showing his probable guilt. A Finnish citizen suspected of such an offence, however, may not be returned. Instead, he is to be prosecuted and punished in Finland. If the suspected person is not a citizen of the State where the aircraft is registered, he may, provided that it has not been agreed upon otherwise with the State of registration, be prosecuted and punished in Finland when special reasons so require. If the person whose return is requested is also suspected of a serious crime committed in Finland, and the latter crime has caused damage to a Finnish citizen or juridical person or to a citizen or juridical person of a third State, his return to the requesting State may be postponed until he has been prosecuted in Finland and has served any sentence imposed upon him. In the procedure concerning the return of a person suspected of seizing an aircraft, the relevant provisions of Act No. 456 of 7 July 1970 on extradition⁹ and of Act No. 270 of 3 June 1960 on extradition between Finland and the other Nordic countries¹⁰ are to be applied.

⁷ AsK, No. 320/75.

⁸ AsK, No. 336/75.

⁹ AsK, No. 456/70; see *Yearbook on Human Rights for 1970*, pp. 90-91.

¹⁰ AsK, No. 270/60; see *Yearbook on Human Rights for 1960*, pp. 128-129.

C. Right to take part in government

(article 21 of the Universal Declaration)

The legal age of majority has been lowered at relatively short intervals. Having originally been 21 years, it was first lowered to 20 years by Act No. 342 of 30 May 1969. By Act No. 457 of 3 June 1976,¹¹ amending the Guardianship Act, it was further lowered to 18 years.

The last amendment has entailed a number of other amendments to relevant parts of other laws. The most important of these is the amendment made to the Parliament Act, which is part of the Finnish Constitution. According to this amendment, a person who has reached the age of majority, that is to say, the age of 18 years, is eligible for membership of Parliament.¹²

D. Right to rest, leisure and periodic holidays with pay

(article 24 of the Universal Declaration)

During the period under review, legislative measures were taken in order to provide persons who carry on small enterprises or agricultural enterprises with the possibility of having an annual holiday without losing their earnings during the holiday and endangering their own and their family's or other dependants' livelihood.

According to Act No. 393 of 14 May 1976 on annual holiday compensation for persons carrying on a small enterprise,¹³ persons envisaged in the Act are entitled to compensation from State funds for days they take off from their work in order to have an annual holiday if they meet the following requirements:

(a) They must have been carrying on such an enterprise during the whole preceding calendar year;

(b) The number of days worked during the preceding calendar year by employees of the enterprise, other than members of their families, must not have exceeded 252;

(c) Their income during the preceding calendar year must not have exceeded the maximum amount laid down annually by the Council of State;

(d) They must not be entitled, under any other law, to six days' annual holiday or more, or to corresponding compensation;

(e) They must bind themselves to take an annual holiday of at least six days, which may be taken in two parts.

If there are more applications than can be covered by the assets reserved for this purpose in the State budget, priority shall be given to those whose need is the greatest, taking into consideration their economic and social circumstances, and who would otherwise have little chance of having an annual holiday.

A similar system was established by Act No. 281 of 2 April 1976 on the arrangements for annual holiday and substitute aid for persons carrying on an agricultural enterprise.¹⁴

¹¹ AsK, No. 457/76.

¹² Article 7 of the Parliament Act containing the relevant provision in this respect was amended by Act No. 455 of 3 June 1976 (AsK, No. 455/76).

¹³ AsK, No. 393/76. Detailed provisions on the implementation of this Act were given in Decree No. 442 of 27 May 1976 (AsK, No. 442/76). The general direction and supervision of this scheme is vested in the Ministry for Social Affairs and Public Health and its subordinate body, the Central Board of Social Affairs. In every county this task is entrusted to the county government, and for local administration there is a particular board established for this purpose in every municipal and rural commune.

¹⁴ AsK, No. 281/76. Detailed provisions on the implementation of this Act were given in Decree No. 297 of 9 April 1976 (AsK, No. 297/76).

E. Right to housing

(article 25 (1) of the Universal Declaration)

By Act No. 408 of 4 June 1975 on housing subsidies¹⁵ a special system was established in order to help people of small means to acquire a dwelling that satisfies reasonable requirements. For this purpose, a housing subsidy is paid from State funds to certain categories of families or people who live in a common household and to students living in dormitories. The amount of the subsidy depends on the size of the family and the income of its individual members and the actual expenditure for housing, such as rent, heating and water. A certain amount of these expenses, which is laid down annually by the Council of State, remains the responsibility of the recipient of a housing subsidy. The housing subsidy is granted upon application by the municipal Social Board, which shall, at least once a year, check that in each case the requirements for obtaining the subsidy still exist and fix the amount of the subsidy.

Particular attention has been paid to the improvement of the housing situation of the gypsy population in Finland. By Act No. 713 of 29 August 1975 on the improvement of the housing circumstances of the gypsy population,¹⁶ the municipal and rural communes were made responsible for ensuring that the gypsy population living in their districts had dwellings satisfying reasonable requirements. The Act contains detailed provisions on the practical arrangements for achieving this goal.

F. Right of all children to enjoy the same social protection; right of children to special assistance

(article 25 (2) of the Universal Declaration)

The revision of the legislation concerning children has been under preparation for several years. The purpose of this revision is to establish equality among children irrespective of their descent and, consequently, to abolish discrimination against children born out of wedlock; and at the same time, to codify and develop the provisions regulating the determination and establishment of paternity and the proceedings to be followed in this regard and the provisions concerning the maintenance, inheritance rights and guardianship of children. A number of new laws have been enacted to effectuate these purposes.

1. AFFILIATION

Act No. 700 of 5 September 1975 on paternity¹⁷ has as its main objectives to codify legislation concerning affiliation, to amend and supplement the previous legislation so as to protect the interests of the child, and to establish a procedure by which the aims of the new legislation can be achieved.

The basic rule according to this Act is, as before, that the husband is the father of a child born in wedlock. When a child is born after the dissolution of the marriage, the husband is considered to be the father if the child is born during such time after the dissolution of the marriage that it could have been conceived during the marriage. However, if the mother entered into a new marriage before the birth of the child, the new husband is considered to be the father of the child.

If it is proved that another man had sexual intercourse with the mother during the period when the child was conceived and if, taking into consideration all other circum-

¹⁵ *AsK*, No. 408/75. Detailed provisions on the implementation of this Act were given in Decree No. 488 of 23 June 1975 (*AsK*, No. 488/75).

¹⁶ *AsK*, No. 713/75. Detailed provisions on the implementation of this Act were given in Decree No. 45 of 23 January 1976 (*AsK*, No. 45/76).

¹⁷ *AsK*, No. 700/75. The Paternity Act, which came into force on 1 October 1976, replaces Act No. 409 of 12 December 1957 on legitimate birth, Act No. 173 of 27 July 1922 on children born out of wedlock, and a relevant provision of Act No. 21 of 15 January 1971 contained in the Act on enforcement of the Marriage Act, of 13 June 1929.

stances, it has to be deemed proved that the child was conceived at that time, or if, on the ground of hereditary characteristics or other particular circumstance, it may be deemed proved that the husband is not the father of the child, the court shall confirm that fact.

If the child was conceived before the marriage or during a time when the spouses were living apart because of broken relations, the court shall likewise confirm that the husband is not the father of the child, unless it is proved likely that the spouses had sexual intercourse during the period when the child was conceived.

An action concerning the annulment of paternity may be brought by the husband, the mother or the child. The husband and the mother must bring their action within five years after the birth of the child. A husband who has acknowledged the child as his own, having been aware of the fact that another man had had sexual intercourse with the mother during the time when the child was conceived, is no longer entitled to bring an action concerning the annulment of his paternity. The right of the husband to bring an action for annulment is transmitted to his legal successors after his death, provided that the time-limit has not expired. An action for the annulment of paternity may not be brought if the child has died, or if both the husband and the mother have died.

When the child is born out of wedlock and the father wishes to acknowledge his paternity, he shall so notify the Children's Welfare Officer, the Public Registrar or the Public Notary. If the child has reached majority, the acknowledgement shall be approved by him. The acknowledgement document shall be forwarded by the Children's Welfare Officer to the judge of the appropriate local court for approval. The judge has to approve the acknowledgement if it has taken place in the way provided by law and if there is no reason to presume that the man who has acknowledged his paternity is not the father of the child.

If no acknowledgement has been made or if an acknowledgement has not been approved by the judge, the paternity may be confirmed by the court after a due procedure. An action to this effect may be brought by the child or, if he is a minor, by the Children's Welfare Officer as his representative or by the man whose acknowledgement has not been approved. The mother of the child shall be given an opportunity to be heard. If the child is under 15 years of age and in the custody of the mother, a paternity action may not be brought by the Children's Welfare Officer against the will of the mother. The mother may also refuse to reveal who is the father of the child. This, however, does not prevent the father from acknowledging his paternity.

A special innovation is that according to this Act an action concerning paternity may be brought against several men at the same time. The court plays an active role in this respect in that it obliges the plaintiff to summon as defendants all the men who, in the light of circumstances, could reasonably be presumed to be the father of the child. If a man who could be presumed to be the father has died, his legal successors may be summoned as defendants instead of the deceased.

Because of the public interest involved, the court may, on its own initiative, order that all the evidence it considers necessary should be assembled. The judgement of the lower court may be appealed to the court of appeal.

Act No. 702 of 5 September 1975 on the inquest concerning certain blood and other hereditary characteristics¹⁸ supplements the Paternity Act by making it possible to obtain necessary evidence in paternity cases. According to this Act, the court may, either at the request of a party to the case or on its own initiative, order that an inquest be made concerning blood or other hereditary characteristics. The inquest shall then be made of the child, the mother and the man who is a party to the case.

If in the light of circumstances revealed during the proceedings there is reason to presume that a man who is not a party to the case is the father of the child, a similar inquest may be ordered to be made of him. Before such an order is given, the person concerned shall be given a chance to be heard.

¹⁸ AsK, No. 702/75.

According to Act No. 703 of 5 September 1975 amending the Act on the Publicity of Judicial Proceedings,¹⁹ the court may decide, at the request of a party, that the hearing of a case concerning the confirmation or annulment of paternity shall take place behind closed doors.

2. MAINTENANCE

Act No. 704 of 5 September 1975 on the maintenance of children²⁰ affirms the general principle that the child has a right to maintenance sufficient to satisfy his material and spiritual needs as well as the cost of his care and education.

The parents of the child, whether married or not, are responsible for the maintenance of their child in accordance with their capacity. In estimating the scope of the maintenance responsibility of the parents, their age and capacity to work, their available resources and their other maintenance responsibilities based on law are taken into consideration. The child's ability to take care of his own maintenance is also taken into account.

A child has the right to be maintained by his parents until he reaches the age of 18. However, even after that age the parents are responsible, to the extent considered reasonable, for the expenses of his education. The child's aptitudes, the duration and cost of the education, and the possibility for the child to be responsible for the cost after he has finished his education, are taken into consideration in this respect.

¹⁹ *AsK*, No. 703/75.

²⁰ *AsK*, No. 704/75.

FRANCE

Introduction

In addition to the laws and regulations described below, several drafts were in preparation during the period under review, on the following subjects: (a) revision of the judicial summons system and of procedure by default; (b) the composition of juries at assize courts and the secrecy of the judicial investigation; (c) professional secrecy; (d) compensation of voluntary rescue workers; (e) compensation of parliamentary deputies who have been victims of criminal attempts; (f) rules governing the possession of weapons; (g) consumer protection and information.

Other general studies were also in progress, concerning, in particular, problems of forensic medicine, the automation of police records, and the use of data processing.

The Commission for the Review of the Penal Code instituted by the decree of 8 November 1974 continued its work. Having deposited in July 1976 a first preliminary proposal for the reform of the general part of the Penal Code (concerning fundamental principles of penal law, responsibility and punishment), the Review Commission undertook the examination of the special part of the Penal Code, starting with a study of offences against persons.

A. Non-discrimination; right to work

(articles 2, 7 and 23 of the Universal Declaration)

Act No. 75-625 of 11 July 1975 amending and supplementing the Labour Code with regard to the particular rules relating to female labour, and article L 298 of the Social Security Code and articles 187-1 and 416 of the Penal Code relating to racial discrimination¹

In addition to provisions aimed at improving the protection at work of the female wage-earner who is expecting a child or has just given birth, this Act provides, at the penal level, for a penalty of two months' imprisonment and a fine of 3,000 to 30,000 francs for any agent of public authority who knowingly refuses a person the enjoyment of a right by reason of his or her sex, and for a penalty of two months' or one year's imprisonment and a fine of 2,000 to 10,000 francs for anyone who refuses a person, by reason of his or her sex, a service or article habitually supplied.

B. Right to security of person

(article 3 of the Universal Declaration)

Act No. 77-1132 of 10 December 1975 authorizing the accession of the Government of the French Republic to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971²

The Montreal Convention of 23 September 1971 sets out to strengthen international co-operation in the suppression of offences which may be committed against aircraft. It supplements the Tokyo Convention of 14 September 1963 on Offences and Certain other Acts Committed on Board Aircraft and the Hague Convention of 16 September 1970 for the Suppression of Unlawful Seizure of Aircraft, extending their principal provisions to unlawful acts other than the hijacking of aircraft.

In order to bring its domestic legislation into line with the obligations deriving from the Convention, France has had to insert in its Penal Code a new article 462-1 making it

¹ *Journal officiel*, 13 July 1976, p. 7226.

² *Ibid.*, 12 December 1975, p. 12660.

a crime to communicate false news or information which may jeopardize the safety of an aircraft in flight. This adaptation was effected by Act No. 75-624 of 11 July 1975 (see below, sect. C).

Committee for the study of violence, crime and delinquency

The Committee for the study of violence, crime and delinquency, set up on the initiative of the President of the Republic by Decree of 23 March 1976 and meeting under the chairmanship of Mr. Alain Peyrefitte, organized its work in three successive stages: investigation; synthesis of information obtained and conclusions; proposals.

In the first stage, two parallel methods of investigation were used, as follows:

(a) Working groups were set up to collect, each in a well-defined area, the maximum of information concerning the incidence of certain factors on violence and crime (biological and psychological aspects, youth protection, penal and penitentiary aspects, urbanization and cultural change, economic life);

(b) A research programme was drawn up in collaboration with specialized bodies. It consisted of field research projects, interviews, surveys among sectors of the public concerned, study of statistical documents, correlation and comparative evaluation of the effectiveness of various methods of prevention, dissuasion and repression.

The Committee also obtained information from certain foreign Governments on the state of research in their countries.

Secondly, in the light of the information collected, the Committee has endeavoured to arrive at a general, coherent and objective view of the problem, namely, the causes of the rise of violence and delinquency in society, and the remedies which those causes seem to call for.

Lastly, the Committee will be required to draw general conclusions and suggest practical and effective solutions.

C. Administration of justice

(articles 5-11 of the Universal Declaration)

Act No. 75-624 of 11 July 1975 amending and supplementing certain provisions of penal law,³ and Decrees Nos. 75-1260 and 75-1261 of 29 December 1975 for applying the Act⁴

Without awaiting the completion of the work of the Commission established to conduct a general review of the Penal Code, the Act of 11 July 1975 introduced in French penal law a number of changes and additions which are likely to have great practical consequences.

In the first place, the Correctional Court (*Tribunal correctionnel*) now disposes of a fairly wide range of penalties which may be substituted for imprisonment. It is recognized that prison sentences, and especially those between 15 days and six months in length, have serious shortcomings, particularly inasmuch as they reduce the offender's chances of social rehabilitation. Such sentences, unless indispensable, should therefore be replaced by other measures whose object may be, depending on the nature of the case and the personality of the offender: dissuasion by means of a heavy fine, the confiscation of a vehicle or the withdrawal of a driving licence; rendering the offender harmless by prohibiting him from exercising certain activities of a professional or social nature; rehabilitation through the application of suitable measures of assistance and supervision; or even a simple warning without punishment.

In the second place, verdict-rendering courts, judges in charge of the application of sentences (*juges de l'application des peines*) and public prosecutors (*magistrats du parquet*) are granted considerable powers, either to modulate the execution of the sentence by the

³ *Ibid.*, 13 July 1975, p. 7219.

⁴ *Ibid.*, 30 December 1975, pp. 13514 and 13515.

suspension, division or reduction of the penalty, depending on the situation and behaviour of the offender, or to facilitate his rehabilitation by limiting certain effects of the conviction, such as entry of the sentence in the police record, withdrawal of residence permit, or professional disqualification.

Besides diversifying the penalties and introducing greater flexibility of execution, the Act of 11 July 1975 extends and strengthens the repression of procuring and, at the same time, fills certain gaps in special penal law (bombing threats, communication of false information to aircraft in flight) and extends the competence of French courts in the matter of offences committed abroad against French persons or property.

Lastly, as a result of parliamentary amendments, provisions have been adopted which did not appear in the original bill, relating to the creation of a new measure known as "placing under judicial protection", applicable to delinquent minors, and to the harmonization of administrative and judicial suspensions of driving licences, the Prefect's decision being henceforth provisional and capable of being set aside by a decision of the court.

Decree No. 75/402 of 23 May 1975 modifying certain provisions of the Code of Criminal Procedure⁵

This decree represents the principal element in the penitentiary reform undertaken by the Government based on a diversification of sentence execution régimes.

This diversification proceeds from the dual orientation of criminal policy with regard to execution of sentences: (i) towards relieving, as far as possible, such constraints of imprisonment as are not an inevitable consequence of the privation of freedom (particularly by developing the prisoner's relations with the outside world and preparing him as rapidly as possible for social readaptation); (ii) towards applying maximum security measures to those serving sentences for the most serious crimes, while observing strict respect of the person.

The main lines of diversification of the execution of sentences are as follows:

(a) In addition to medical establishments and establishments set aside for penal tutelage (a complementary measure applied to multiple recidivists), two categories of establishments have been instituted in accordance with the dual orientation defined above:

- (i) Central prisons in which a security regime is applied and, among these establishments, reinforced security establishments or sections of establishments;
- (ii) Detention centres, including closed and open establishments, where the regime is principally oriented towards resocialization.

(b) As a corollary of such diversification, a uniform regime is applied, as far as possible, in establishments of the same category, in order to simplify and clarify the conditions of application of imprisonment régimes.

For similar reasons, the "progressive régime" involving a diversification of rules in different sections of the same prison has been abolished.

The régimes applied in the different categories of establishment are as follows:

(A) Security establishments:

- (1) Central prisons (at present numbering six, including four set aside for very long sentences).

Under the régime applied in these prisons, the inmates spend the night in solitary confinement and the day in the company of others; this régime is based on the convicts being put to work and engaging in communal activities in the spheres of education, sport and recreation. Relations with the outside world, though allowed in the ordinary way, are subject to the following precautionary measures:

- (a) Visiting rooms with separation arrangements;
- (b) Leave passes granted only when less than three years of the sentence remain to be served.

⁵ *Ibid.*, 27 May 1975, p. 5268.

- (2) Reinforced security centres or establishments (at present numbering nine, of which eight are in operation).

These are small-capacity establishments or sections (30 places on the average). The prisoners spend the day in the company of others, but in very small groups (two to five detainees). Special security measures (surveillance of movements, numerous searches, etc.) are adopted, and the number of supervisory personnel is proportionally much larger than in all other establishments.

- (B) Detention centres, which include the following:

- (1) Closed centres (eight);
- (2) Open centre (one) (Casabianda Agricultural Centre) and outside work site (one) (Fontevraud);
- (3) Centres set aside for young convicts (three) (Ecrouves, Loos, Oermingen).

The régime in detention centres is "principally oriented towards the resocialization of prisoners". Certain privileges are added to the general features of the régime for penal establishments, as follows:

- a. More extensive organization of collective life (access to meeting rooms outside working hours and hours set aside for supervised activities);
- b. Authorization for prisoners to wear personal clothing instead of the regulation clothing supplied by the administration;
- c. More extensive relations with the outside world, namely: visiting rooms without separation arrangements; possibility, on completion of the first third of the sentence, of obtaining five-day leave passes and even, once a year, 10-day passes; authorization to use the telephone.

Act No. 75-701 of 6 August 1975 amending and supplementing certain provisions of penal procedure,⁶ and decrees No. 75-1168 of 17 December 1975⁷ and No. 75-1338 of 31 December 1975⁸

The Act of 6 August 1975 comprises a number of sections relating to penal procedure which set out either to enhance the efficacy of repressive justice or to strengthen the guarantees offered to accused persons.

Among measures in the former category, mention should be made of those which will doubtless be most widely applied: at least one senior court (*tribunal de grande instance*) within the area of each appeal court must specialize in economic and financial matters of the most complex kind, a rule which will ensure that some public prosecutors and examining and trial judges (*magistrats du parquet, de l'instruction et du siège*) receive training appropriate to this purpose; the only procedures which may be pronounced null and void are those "giving ground for complaint", i.e., whose effect has been contrary to the interests of one of the parties; lastly, the President of the Criminal Chamber of the Court of Cassation can, by simple ordinance, declare appeals lodged against decisions not eligible for this remedy at law to be non-admissible.

The additional guarantees offered to those under the jurisdiction of the courts, resulting, in part, from parliamentary amendments, relate to procedure in the case of persons taken *in flagrante delicto* and to judicial investigation procedure. In the former case, an accused person arrested *in flagrante delicto* will no longer necessarily appear before the court under committal, since the office of the State counsel may henceforth confine itself to informing him of the date of the hearing at which he is to be judged and, if necessary, to requesting a judge of the bench to place the accused person under judicial supervision. Where a preliminary investigation has been instituted, it will not be possible to keep a person charged with minor offences under provisional detention for more than six months,

⁶ *Ibid.*, 7 August 1975, p. 8035.

⁷ *Ibid.*, 20 December 1975, p. 13104.

⁸ *Ibid.*, 3 January 1976, p. 153.

provided certain conditions are fulfilled; to this should be added a maximum period of two months between the completion of the investigation and the court hearing. In both cases, from the moment of his interrogation by the public prosecutor or of his being placed under detention by the investigating judge, the accused person will be entitled to the assistance of a lawyer of his choice or appointed by the court. The application of this principle will involve a special effort by public prosecutors, examining judges and members of the Bar.

Lastly, the Act of 6 August 1975 establishes a mechanism whereby appeals may be brought before a special commission of the Court of Cassation by officers of the judicial police who have been disqualified or suspended by the Attorney General of the area.

Act No. 75-229 of 9 April 1975 empowering associations set up for the purpose of the suppression of procuring to bring civil actions⁹

This Act authorizes associations recognized as being in the public interest whose purpose is the suppression of procuring and the granting of social assistance to persons engaged in prostitution, or in danger of engaging therein, to bring civil actions before all courts competent to receive such actions in respect of procuring offences as defined in the Penal Code.

Decree No. 75-922 of 2 October 1975 making public the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, done at Strasbourg on 30 November 1964¹⁰

The Convention of 30 November 1964, which entered into force on 22 August 1975, regulates France's relations with Belgium and Italy as from that date and establishes a system of international co-operation ensuring the execution, within the territory of a State Party, of conditional measures concomitant with or subsequent to sentences passed by another State.

D. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

Commission on Data Processing and Liberties

This Commission, set up under the Minister of Justice by Presidential Decree of 8 November 1974, is required to propose to the Government "measures intended to guarantee that the development of data processing in the public, semi-public and private sectors shall be consistent with respect of privacy and of individual and public freedoms".

After conducting extensive consultations among all interested sections of the population (professions, trade union organizations, civil service) and collecting all the relevant information on work in this field being done abroad and within the international organizations, the Commission drafted a general report which was deposited in June 1975.

This report proposes, *inter alia*:

(a) The creation within the State of an independent authority to supervise the use of data processing, to be called "Permanent Committee on Data Processing and Liberties"; the purpose of this body would be to inform, advise, co-ordinate, inspect and take the necessary regulatory measures;

(b) The prohibition or limitation in time of the recording of certain data concerning persons, and repression of any misuse of nominal data;

(c) That persons, groups or enterprises in respect of whom or which nominal data are collected for processing should be granted the right of individual access to such data, i.e., the right to know the existence and contents of the data files concerning them, and to criticize and challenge such data files.

⁹ *Ibid.*, 11 April 1975, p. 3788.

¹⁰ *Ibid.*, 11 October 1975, p. 10495.

Commission set up to propose a code of fundamental freedoms

This Commission was set up by Decree No. 74-937 of 8 November 1974. Its terms of reference are to codify laws and regulations concerning the exercise of individual freedoms, to study the case law of administrative and judicial jurisdictions, and to propose any necessary updating and adaptation, taking into consideration, more particularly, the development of new methods of expression and the use of new techniques entailing a threat to individual freedoms and privacy.

The Commission's work has principally taken the form of drafting a bill on the protection of the secrecy of telephone communications and of a bill on police questioning and identity checks.

Independently of this government commission, and following the submission of three parliamentary bills on freedoms, the National Assembly, for its part, has set up a special commission on fundamental freedoms and rights, presided over by the President of the National Assembly and having as its rapporteur the Chairman of the Commission of Laws of the National Assembly.

E. Marriage and the family

(article 16 of the Universal Declaration)

Act No. 75-617 of 11 July 1975 concerning divorce reform¹¹

At the penal level, this Act brings the offences of desertion of family and non-surrender of children into line with the new grounds for divorce.

Furthermore, a new offence is established consisting of the failure of a spouse required to pay maintenance or alimony to notify his or her change of domicile to the other spouse.

F. Freedom of expression

(article 19 of the Universal Declaration)

Decree No. 75-341 of 13 May 1975 relating to the right of reply on French radio and television broadcasting stations, and amending the decree of 30 September 1953 reforming the procedure of the administrative courts and the decree of 28 November 1953 on administrative arrangements for its application¹²

This text establishes, *inter alia*, a new offence, namely, failure to broadcast a reply in the manner prescribed by the National Commission on the Right of Reply set up by the same decree. This offence is punishable by a fine of 1,000 to 2,000 francs. The text concerns only State broadcasting stations and physical persons.

Supervision of the banning of films

By a decree of 24 January 1975 (*Ministry of Information v. Société Rome-Paris Films*), the Council of State established its right to investigate the grounds on which the Ministry of Information has imposed a general ban on the showing of a film in France, by reason of the need to reconcile the general interests for which that Ministry is responsible with due respect for public liberties and, in particular, the freedom of expression.

Freedom of expression of conscientious objectors

In application of the Act of 13 July 1972 relative to the general status of members of the armed forces, an ordinance of the Council of State of 19 March 1975 (Bizieux, Dedieu and Lafond) established that conscientious objectors directed, under the provisions of the National Service Code, to complete their national service in civilian units have the right to

¹¹ *Ibid.*, 12 July 1975, p. 7171.

¹² *Ibid.*, 14 May 1975, p. 4867.

exercise a political or trade-union activity and to join a political party when they are candidates for elective public office.

**G. Right to work, to just and favourable conditions of work
and to protection against unemployment**

(article 23 of the Universal Declaration)

*Act No. 75-5 of 3 January 1975 relating to dismissals for economic reasons*¹³

All cases of proposed individual or collective dismissal for economic reasons are subject to previous authorization by the labour inspectorate, which may take one month to reach a decision. When the measure concerns at least 10 persons in one month, the employer must lay the matter before the works committee (or, failing that, the shop stewards), giving precise information as to the motives for the dismissals and plans for redeployment.

In the event of liquidation, the public trustee must inform the inspectorate. Letters of dismissal cannot be sent out before the administration has pronounced an opinion or before the allowed period has elapsed. A fine of between 1,000 and 3,000 francs may be imposed in case of violation of these rules. Independently of any compensation provided for by laws or agreements, a worker who has been dismissed is entitled to damages for breach of contract.

*Act No. 76-621 of 10 July 1976 reinforcing repressive measures for illegal traffic in and irregular employment of foreign labour*¹⁴

This Act answers the need, arising from the present economic situation, for considerable vigilance in immigration control. It establishes further optional sentences which may be imposed on traffickers in foreign labour.

Thus, in addition to the sentences already provided for by article 21 of the ordinance of 2 November 1945, the court can now pass a sentence of withdrawal of residence permit and suspension of driving licence for a period not exceeding three years, temporary or definitive withdrawal of the administrative authorization to operate international transport services, and confiscation of any vehicle having been used in committing the offence.

*Act No. 76-1106 of 6 December 1976 relating to the development of labour-accidents prevention*¹⁵

This Act institutes a number of measures intended to improve workers' safety in all respects.

Thus, the chief of an enterprise is obliged to furnish information to his employees, he may be required by the Ministry of Labour to apply certain preventive measures and he bears objective responsibility in the event of inexcusable negligence.

At the penal level, the Act envisages the possibility of penal conviction in a case where the chief of the enterprise has failed to remedy certain dangerous situations after due warning by the Ministry of Labour.

Moreover, fines imposed on wage-earners guilty of violations of rules concerning health and safety may be charged to their employers.

Lastly, in the event of a labour accident occurring in an enterprise where serious or repeated breaches of health and labour safety rules have been recorded, the court must require the enterprise to present, within a fixed time-limit, a plan of execution of work intended to restore normal safety conditions; the works committee and the health and safety committee or, failing that, the shop stewards must be consulted in connexion with

¹³ *Ibid.*, 4 January 1975, p. 202.

¹⁴ *Ibid.*, 11 July 1976, p. 4171.

¹⁵ *Ibid.*, 7 December 1976, p. 7028.

this plan. After consultation with the regional director of labour and manpower, the court may direct the enterprise to implement this plan within a maximum time-limit of five years or, in some cases, to replace it by another.

Prison sentences may be imposed in the event of failure to submit a plan to the court or to put the plan into effect.

*Act No. 76-1288 of 31 December 1976 modifying certain provisions of the Public Health Code relative to the exercise of the medical professions*¹⁶

This Act expressly introduces into the Public Health Code, for all the medical professions, the principle of national treatment already applicable since the end of the transitional period provided for in the Treaty of Rome in respect of nationals of States members of the European Economic Community.

In this way it provides for the application of two directives of the Council of the European Communities of 16 June 1975, one concerning "the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and the freedom to provide services" and the other concerning "the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors".

The Act of 31 December 1976 modifies and supplements to this effect various provisions of the Public Health Code concerning, in particular, the nationality conditions for the exercise of the medical professions (art. L 356), the conditions relating to physicians' diplomas and certificates (new arts. L 356-1 and L 356-2), breaches of the law with regard to the illegal exercise of the profession of physician, dental surgeon or midwife (new art. L 367-1, arts. L 372, L 373, L 374 and L 378) and the conditions for enrolment in the order of physicians (arts. L 413, L 414 and L 415).

H. Social protection

(article 25 of the Universal Declaration)

*Act No. 75-551 of 2 July 1975 relating to the situation of detainees and their families with regard to sickness and maternity insurance*¹⁷

Under this Act, all detainees retain, in addition to family allowances, the right for their families to receive sickness and maternity benefits for a period of one year.

Moreover, detainees at penal labour are themselves entitled, not only to the benefit of the legislation relating to labour accidents, but also to sickness and maternity insurance under the general conditions of social security, and also to old-age pensions (Act of 31 December 1975).

*Act No. 75-17 of 17 January 1975 concerning the voluntary termination of pregnancy*¹⁸

This Act suspends, for a period of five years, the implementation of the provisions of the first four paragraphs of section 317 of the Penal Code, and creates a chapter III *bis* of Book II, Title I, of the Public Health Code, entitled "Voluntary termination of pregnancy".

It is henceforth for the woman, and for her alone, to decide whether a voluntary termination before the end of the tenth week of pregnancy is warranted. Only physicians may perform the pregnancy termination. The physician may not refuse to intervene unless he has informed the woman of his position on the occasion of her first visit.

To avoid voluntary interruptions of pregnancy requested under the influence of momentary distress, the law imposes certain conditions, namely: (a) the woman has to

¹⁶ *Ibid.*, 1 January 1977, pp. 25-26.

¹⁷ *Ibid.*, 3 July 1975, p. 6715.

¹⁸ *Ibid.*, 18 January 1975, p. 739.

obtain medical and social advice in the form of information on the rights, aids and advantages granted to families and mothers, and of a consultation with a family planning or education centre; (b) she has to observe a period of reflection of at least one week, at the end of which she may confirm her request in writing.

As to the place of termination, the text specifies that the procedure may be carried out in either a public or a private hospital, but that, in certain establishments, the number of voluntary terminations of pregnancy performed annually may not be greater than one-quarter of all the surgical and obstetrical operations performed.

The voluntary termination of pregnancy must not constitute a means of birth control; after the operation, every woman must be provided with information and advice on birth control.

GAMBIA

Introduction

The human rights clauses of the republican Constitution of 1970¹ incorporate the provisions of British legislation, particularly concerning habeas corpus, which were taken over when the country became independent with sovereign status within the Commonwealth in 1965, and which had been made operative in the Gambia by section 2 of the Law of England (Application) Act, 1953. Chapter III of the Constitution deals succinctly with the protection of human rights and fundamental freedoms as defined in section 13.

As regards the "social" rights, i.e., the right to education, rights relating to marriage, the right to work under just and favourable conditions, the right to an adequate and decent standard of living, the right to health and the right to social security, the Government of the Gambia, owing to the paucity of available resources, has not initiated full measures to secure their enforcement. It was hoped that the introduction of free primary education would be followed by the provision of free medical services.

A. Right to all the guarantees necessary for defence

(articles 10 and 11 of the Universal Declaration)

Two cases before the Supreme Court, one an appeal and the other an application for redress, are of interest in this connexion. Both turn on the application of section 20 of the Constitution, which deals with provisions to secure the application of the law.

Baba Musa Travally v. The Inspector-General of Police

The appellant, who had been charged with the offence of criminal libel, had engaged the services of local counsel to conduct his defence. Counsel had apparently intimated to the court that unless he was given a longer adjournment he would withdraw. Counsel had withdrawn and the trial had continued, the appellant choosing not to cross-examine the witnesses for the prosecution but insisting on his right to choose counsel. Dealing with this aspect of the appeal, the Chief Justice remarked that counsel did not seem to have been given formal leave to withdraw, and the trial appeared to have proceeded with unseemly haste. The appellant had, however, been given the opportunity to brief other counsel, but the offer has been rejected. He could not say that the defendant had been treated unjustly, and consequently that ground of appeal failed.

Ghazzi Mahmoud v. The Inspector-General of Police

The accused had been charged on various counts of fraud, involving forgery, uttering forged documents and corrupt practices. At the commencement of his trial he had engaged local counsel, but had changed his mind later and engaged a non-resident Queen's Counsel and a member of the Sierra Leone Bar. The prosecuting counsel had challenged their competence to conduct the defence of the accused, but the accused argued that he was entitled to choose counsel, and that any attempt to prevent him from doing so was a denial of his rights under the Constitution. The Court ruled that "the Supreme Court (Amendment) Rules, 1976, do not violate the Constitution, nor do they affect in any way the fundamental rights of the applicant to counsel of his choice, they only define the categories of legal representatives and their rights to practise generally in The Gambia and the conditions under which they can have rights of audience in the various Courts".

B. Right to education

(article 26 of the Universal Declaration)

A modest step was taken with the introduction of free primary education.

¹ For extracts from the Constitution, see *Yearbook on Human Rights for 1970*, pp. 96-105:

GERMAN DEMOCRATIC REPUBLIC

Introduction

The German Democratic Republic, carrying out the decisions of the Eighth and Ninth Congresses of the Socialist Unity Party of Germany (SED), further pursued its central policy of continuously raising the material and cultural standards of the people in order to enable every citizen to realize freely all the physical and spiritual potentialities of his personality. This policy reflects the meaning of socialism, namely to ensure to all people a life of peace, freedom and social security. These general principles, also contained in the Universal Declaration of Human Rights, have been embodied in the Constitution and other laws and regulations of the German Democratic Republic, and are translated into practice in everyday life. Coincidence between fundamental rights and freedoms, as established and reliably protected by law, and social reality is an essential feature of the socialist system of society. In the German Democratic Republic, the granting and exercise of human rights have a solid foundation in the country's policy aiming to safeguard peace and well-being, and in the fact that the foremost human right—the right to work—is not just a principle, legally guaranteed in the Constitution, but is in fact enjoyed by the people.

In the period under review, legislation and all policies served the further realization of the social policy programme whose aim is a steady improvement of the working and living conditions in the German Democratic Republic. The programme, based on the socialist principle of the unity between economic and social policies, underlies the Joint Decision of the Central Committee of the Socialist Unity Party of Germany, the National Executive of the Confederation of Free German Trade Unions and the Council of Ministers of the German Democratic Republic for the further systematic improvement of working and living conditions of working people in the German Democratic Republic from 1976 to 1980, which was adopted on 27 May 1976. Implementation of the programme started immediately upon its announcement, and a number of legal regulations, specified under paragraphs F to H below, were enacted to this end. The programme provides for higher wages, improvements in old-age pensions and longer annual holidays and sets forth various facilities for women and mothers (e.g., longer pregnancy and maternity leaves).

A. Right to protection of the law

(articles 3-12 of the Universal Declaration)

I. LEGAL PROTECTION UNDER CIVIL LAW

In the period under review, work on the further elaboration and implementation of the right to protection of the law centred on the revision of civil legislation. In this context, the following laws were enacted by the People's Chamber of the German Democratic Republic:

- (a) Civil Code of the German Democratic Republic;¹
- (b) Law on court procedure in civil, family and labour law relations—Code of Civil Procedure;²
- (c) Introductory law to the Civil Code of the German Democratic Republic;³
- (d) Act on the application of law in international civil, family and labour law relations and international economic contracts—Law Application Act;⁴

¹ *Gesetzblatt I*, 1975, No. 37, p. 465.

² *Ibid.*, 1975, No. 29, p. 533.

³ *Ibid.*, 1975, No. 27, p. 517.

⁴ *Ibid.*, 1975, No. 46, p. 748.

(e) Law on State notarial offices—Notarial Offices Act.⁵

The new civil legislation defines the fundamental rights and the status of citizens in the socialist system of society. Essential basic rights are the protection of civic rights and of socialist property (Civil Code, art. 4), respect for the personality (*ibid.*, art. 7), the right of citizens to participate in the conduct of civil law relationships (*ibid.*, arts. 8 and 9), and the right of citizens to legal protection by the courts and other governmental authorities (*ibid.*, art. 16; Code of Civil Procedure, art. 2). All of part II (arts. 17 to 42) of the Civil Code deals with the protection of property, socialist and personal.

Of special importance is article 7, which reads:

“Respect of the personality

“Every citizen is entitled to enjoy respect for his personality, especially as regards honour, standing, name, image, copyright and similar rights associated with creative activity. Likewise, every citizen is obligated to respect the personality of other citizens and resulting rights.”

The Civil Code contains specific provisions for the enforcement of the aforementioned rights.

Full and effective legal protection of citizens is to be ensured by an extended scope of rights and duties concerning the prevention of damage and danger, and by the elaboration of the right to an effective remedy or restitution.

The further perfecting of civil rights in substantive civil law is linked to the revision of the rules of court procedure. The new Code of Civil Procedure obligates courts to enforce the rights of citizens granted by law and to ensure that socialist legislation is strictly observed (Code of Civil Procedure, art. 2). It specifies the rights and duties of the litigating parties, affording each citizen a legal title to obtain aid, assistance and protection from a law court and to enjoy equal protection of the law, irrespective of nationality, race, philosophy and religious confession, or social position (Code of Civil Procedure, arts. 2 and 3; Act on the Constitution of Courts, art. 8). Article 181 of the Code of Civil Procedure contains the specific provision that citizens of other States and stateless persons are entitled to equal protection of the law.

The Law Application Act, which entered into force simultaneously with the Civil Code and the Code of Civil Procedure, is based on the generally recognized norms of international law (art. 1). The domestic laws of the State of which the person concerned is a citizen shall, as a matter of principle, be applicable in any international legal relationships covered by the Act.

The Notarial Offices Act is another major instrument for guaranteeing the civil rights of citizens. Under its terms, State notarial offices shall have the task of enforcing and protecting the legal rights and interests of citizens and enterprises (art. 2). In addition, they are to advise citizens on their legal rights and duties.

2. LEGAL PROTECTION UNDER PENAL LAW

In addition to the laws on criminal proceedings, the execution of sentences and the reintegration of prisoners,⁶ the following legal regulations were enacted.

The first executive regulation to the Code of Criminal Procedure of the German Democratic Republic⁷ was enacted to define the tasks of courts in initial action to enforce court decisions, the execution of penalties not involving imprisonment, additional penalties and other court rulings.

The first executive regulation to the law on the execution of sentences involving imprisonment and the reintegration of prisoners into society (Penal Execution and Reinte-

⁵ *Ibid.*, 1976, No. 6, p. 93.

⁶ See *Yearbook on Human Rights for 1973-1974*, pp. 71-72.

⁷ *Gesetzblatt I*, 1975, No. 15, p. 285.

gration Act)⁸ based on article 68 of the Penal Execution and Reintegration Act of 12 January 1968; as amended on 19 December 1974, specifies the details concerning commencement of a sentence in a penal institution (art. 1 ff.), the process of re-education (arts. 6 to 17), special features of sentences involving imprisonment of juveniles (art. 19 ff.), the duties and rights of prisoners (art. 25 ff.), and preparatory measures for the reintegration of prisoners into society, and their release (art. 37 ff.).⁹

B. Marriage and the family

(article 16 of the Universal Declaration)

The Law Application Act is especially relevant in connexion with marriage (art. 18), the dissolution of marriage (art. 20), and legal relationships between parents and children (art. 22). In all these matters, courts of the German Democratic Republic apply the law of the country of origin to decide on the legal relationships.

C. Right to own property

(article 17 of the Universal Declaration)

The further perfecting of civil rights under the new Civil Code is also exemplified in provisions relating to personal ownership of land and buildings and to the use of land for the purpose of having owner-occupied houses or weekend cottages built thereon or for recreational purposes. Such rights of citizens are promoted and protected.

D. Freedom of association

(article 20 of the Universal Declaration)

The Decree on the founding and activity of associations¹⁰ was passed to implement the right of citizens to pursue their interests, in agreement with the principles and aims of the Constitution, by joint action in associations. It encourages joint cultural activities and other social interests of citizens (art. 1).

E. Right to take part in government

(article 21 of the Universal Declaration)

The following legal regulations were enacted to promote the right of citizens to take part in the government of their country, directly or through freely chosen representatives.

Law on the elections to the representative bodies of the German Democratic Republic¹¹

This law takes account of the growing responsibilities of representative bodies as elected organs of power of the socialist workers' and farmers' State. The activities of these bodies are characterized by an ever greater involvement of citizens and work-teams, and their greater expertise, in the planning and direction of political, economic, social and cultural affairs and in the preparation, enforcement and control of laws and government decisions. Article 1 of the law states that the conduct of the elections by democratically formed electoral commissions, popular discussion on basic questions of policy, and the

⁸ *Ibid.*, 1975, No. 17, p. 313.

⁹ In connexion with the notified legal regulations relating to penal law, the People's Chamber of the German Democratic Republic, in carrying out the decisions of the Ninth SED Congress for the systematic and further perfecting of the socialist legal order, passed the following laws on 7 April 1977: (a) Law on the State Prosecutor's Office of the German Democratic Republic; (b) Law on the execution of sentences involving imprisonment (Penal-Execution Law); (c) Law on the reintegration of persons released from imprisonment into society (Reintegration Act); (d) Law amending provisions of penal law and rules of penal procedure (*Gesetzblatt I*, 1977, No. 10, pp. 93 ff.).

¹⁰ *Gesetzblatt I*, 1975, No. 44, p. 723.

¹¹ *Ibid.*, 1976, No. 22, p. 301.

nomination and examination of candidates by the voters are inalienable socialist electoral principles; that workers, co-operative farmers, members of the intelligentsia and other working people delegate their best representatives as deputies to the representative bodies; and that deputies perform their responsible duties in the interest and for the benefit of the working people of the German Democratic Republic, maintain close contact with their electors and work-teams, and co-operate with the committees of the National Front of the German Democratic Republic and mass organizations, especially trade unions at enterprise level. Deputies are bound to give regular account to their electors on the work of their respective representative body and on their own activity, and they have to ensure that proposals, suggestions and criticisms from citizens receive careful attention. Any deputy who grossly infringes his duties can be recalled by his electors.

Article 2 provides for the election of the People's Chamber and the representative bodies in countries, districts, cities, urban districts and villages, for five years, in free, general, equal and secret elections. Every citizen who is 18 years of age on election day has the right to vote (art. 3) or be elected (art. 4).

Executive regulations were enacted in 1976 which set forth the electoral procedure for the elections to the People's Chamber and the county assemblies and for the election of directors, judges and lay judges of county courts and guarantee democratic control and legality in elections. Special mention should be made here of the task of democratically formed electoral commissions to conduct the elections, and of the rights of citizens elected as members of such commissions. Details are laid down, *inter alia*, in:

(a) Decision of the Council of State of the German Democratic Republic on the formation of the Electoral Commission of the Republic;¹²

(b) Decision of the Council of State of the German Democratic Republic on the composition of the Electoral Commission of the Republic;¹³

(c) Decision of the Council of State of the German Democratic Republic concerning the election of directors, judges and lay judges of county courts in 1976.¹⁴

Law on the treatment of public petitions (Petitions Law)¹⁵

This law, which came into force in the period under review, establishes the right of every citizen to address to elected representative bodies, State and economic executive organs, nationally owned enterprises and combined works, socialist co-operatives and institutions, as well as to elected deputies, written or oral proposals, suggestions, requests or complaints (art. 1). At the same time it prescribes a respectful attitude vis-à-vis citizens and a careful and speedy response to their concerns as a basic duty for all executives and staff of State and economic organs, of nationally owned enterprises and combined works, socialist co-operatives and institutions (art. 2). Every citizen has the right to receive a substantiated written or oral answer to his petition. Decisions on petitions have to be taken not later than four weeks after the petition was received, and the citizen concerned has to be informed of the decision (art. 7).

F. Right to social security; right to an adequate standard of living; right of motherhood to special assistance

(articles 22 and 25 of the Universal Declaration)

1. SOCIAL SECURITY

A group of legal regulations enacted in pursuance of the Joint Decision of 27 May 1976 for the realization of the social policy programme comprises improved social insurance benefits on case of invalidity and old age. The following examples will elucidate this:

¹² *Ibid.*, 1976, No. 31, p. 395.

¹³ *Ibid.*, 1976, No. 31, p. 395.

¹⁴ *Ibid.*, 1976, No. 31, p. 400.

¹⁵ *Ibid.*, 1975, No. 26, p. 461.

- (a) Decree on the further improvement of care in eventide and nursing homes;¹⁶
- (b) Second Decree on the granting and calculation of social insurance pensions (Pensions Decree);¹⁷
- (c) Second Decree on social welfare benefits (Social Welfare Decree);¹⁸
- (d) Third Decree on the further improvement of voluntary supplementary pension schemes and social insurance benefits in case of inability to work;¹⁹
- (e) Decree on the further improvement of social welfare benefits for seriously disabled and handicapped persons.²⁰ This decree shows the concern of the socialist State to provide specific social welfare services and special care to seriously disabled and handicapped persons and their families in order to enable them to join in community life;
- (f) Decree on the provision of additional services to teachers (Teachers Services Decree).²¹ This decree was enacted in recognition and appreciation of the work and merits of teachers, educators and kindergarten nurses to secure for them retirement supplements and higher services in case of sickness.

2. ASSISTANCE TO LARGE FAMILIES AND SINGLE PARENTS

The Decree on the granting of State-financed children's allowances and special assistance to large families and single mothers or fathers with three children²² provides that citizens of the German Democratic Republic who have their residence in the German Democratic Republic receive children's allowances for children belonging to their household (art. 1).

In order to support families with four or more children as well as single mothers or fathers with three children, local authorities, enterprises and institutions have the duty to assess the working and living conditions of such families and the problems involved and consequently to grant allowances and make arrangements for other suitable measures even if no application has been made (art. 9). In addition, article 10 of the Decree regulates preferential treatment of large families concerning housing accommodation, especially in newly built houses.

3. MATERNITY LEAVE

In implementation of the Joint Decision of 27 May 1976, a number of other legal regulations were enacted, including:

- (a) Decree on extended maternity leave and improved maternity benefits;²³
- (b) First executive regulation to the Decree on extended maternity leave and improved maternity benefits;²⁴
- (c) Second executive regulation to the Decree on extended maternity leave and improved maternity benefits;²⁵
- (d) Third executive regulation to the Decree on extended maternity leave and improved maternity benefits;²⁶

¹⁶ *Ibid.*, 1976, No. 28, p. 381.

¹⁷ *Ibid.*, 1976, No. 28, p. 379.

¹⁸ *Ibid.*, 1976, No. 28, p. 382.

¹⁹ *Ibid.*, 1976, No. 30, p. 393.

²⁰ *Ibid.*, 1976, No. 33, p. 411.

²¹ *Ibid.*, 1976, No. 18, p. 253.

²² *Ibid.*, 1976, No. 4, p. 52.

²³ *Ibid.*, 1976, No. 19, p. 269.

²⁴ *Ibid.*, 1976, No. 19, p. 271.

²⁵ *Ibid.*, 1976, No. 27, p. 369.

²⁶ *Ibid.*, 1976, No. 41, p. 488.

(e) Decree on improved maternity benefits for students, post-graduate students and apprentices.²⁷

These extensive legal regulations ensure that women covered by mandatory social insurance, in connexion with the birth of a child, receive pregnancy leave for a period of six weeks prior to confinement plus maternity leave for a 20-week period after confinement. This increases the total maternity leave by eight weeks.

Mothers covered by the social insurance scheme who have given birth to their second or any further child are entitled to paid leave subsequent to their maternity leave, up to the child's first birthday, if they prefer to look after the baby at home. During this supplementary leave, they receive a monthly mother's allowance out of the social insurance fund.

Equally, students and post-graduate students who have given birth to their second or any further child are entitled to interrupt their studies or post-graduate studies subsequent to their maternity leave up to the first birthday of the child if they prefer to look after the baby at home. During this supplementary leave they receive the full amount of study grants plus supplements equal to their sick pay.

G. Right to work; right to just and favourable remuneration

(article 23 of the Universal Declaration)

The Decree on the rise of minimum gross wages from 350 marks to 400 marks a month and the differentiated rise of monthly gross wages up to 500 marks²⁸ was enacted in implementation of the aforementioned Joint Decision of 27 May 1976. It stipulates that, as of 1 October 1976, minimum gross wages and salaries for full-time manual and office workers will increase from 350 marks to 400 marks a month and that differentiated rises will become effective for gross wages and salaries up to 500 marks. This measure is very helpful in improving the material living conditions of many people.

The Decree on vocational guidance centres and vocational guidance cabinets²⁹ serves further to increase the effectiveness of vocational guidance. Vocational guidance centres advise pupils, youths and other people on their occupational choices and on how to harmonize personal interests and physical or psychological conditions with the requirements of society, thus enabling them fully to exercise their right to work.

H. Right to rest and leisure and reasonable limitation of working hours

(article 24 of the Universal Declaration)

The Decree on the planning and financing of expenditure for holiday schemes for pupils and apprentices³⁰ and the Decree on the planning, financing and settlement of recreation and work camps for pupils and students³¹ were enacted on the basis of the Youth Law of the German Democratic Republic of 28 January 1974 and on the basis of the Decree on the further development of holiday schemes for pupils, students and apprentices of 1 September 1972. They provide for the appropriation of public funds to finance holiday and leave activities of pupils, students and apprentices.

In pursuance of the Joint Decision of 27 May 1976, the Decree on the granting of additional leave for shift workers and on a wider eligibility for a housekeeping day and for minimum leave³² provides for additional leave of three days for persons working regularly in a two-shift, three-shift or rotating shift system as of 1977. Single women of 40 years or older who are in full-time employment and have a household of their own are given a

²⁷ *Ibid.*, 1976, No. 27, p. 369.

²⁸ *Ibid.*, 1976, No. 28, p. 377.

²⁹ *Ibid.*, 1975, No. 18, p. 334.

³⁰ *Ibid.*, 1975, No. 16, p. 304.

³¹ *Ibid.*, 1975, No. 16, p. 306.

³² *Ibid.*, 1976, No. 37, p. 437.

monthly day off in accordance with the legal regulations in force for the granting of a house-keeping day (art. 4).

The Decree on the free use of sports facilities for organized sports activities³³ serves to maintain organized sports activities of sports groups of the Sports and Gymnastics Union of the German Democratic Republic, the Free German Youth, the "Ernst Thaelmann" Pioneers' Organization, the Confederation of Free German Trade Unions, the Democratic Women's League, the Society of Sports and Technology, the Red Cross of the German Democratic Republic and school sports clubs, as well as the rational use of sports facilities.

The Decree on the further gradual introduction of the 40-hour working week³⁴ provides for a reduction of the working week from 42 to 40 hours for persons working in a three-shift or rotating shift system (art. 2). For all mothers working full time and having two children up to 16 who belong to their household, the working week is reduced to 40 hours (art. 3).

I. Right to education

(article 26 of the Universal Declaration)

The Decree on the award of study grants to full-time students at the universities, colleges and technical schools of the German Democratic Republic³⁵ (Study Grants Decree) embodies the principle that study grants are awarded according to social aspects and performance.

The Decree on the preparation and organization of periods of practical training for university and college students (Practical Training Decree)³⁶ and the Decree on financial arrangements for periods of practical training for university and college students (Financing of Practical Training Decree)³⁷ regulate the preparation and organization of periods of practical training which students of universities, colleges, technical schools and schools of engineering have to undergo on the basis of the curricula in force. During such practical training, students of universities and technical schools receive study grants and other financial allowances in accordance with the provisions of the Practical Training Decree.

The Decree on the admission and procedure for extramural acquisition of university and technical school certificates (Extramural Studies Decree)³⁸ makes provision for people who have acquired knowledge in their employment or service, in training courses or auto-didactic studies to acquire university and technical school certificates.

³³ *Ibid.*, 1975, No. 24, p. 441.

³⁴ *Ibid.*, 1976, No. 29, p. 385.

³⁵ *Ibid.*, 1975, No. 39, p. 664.

³⁶ *Ibid.*, No. 39, p. 669.

³⁷ *Ibid.*, No. 39, p. 671.

³⁸ *Ibid.*, No. 10, p. 192.

FEDERAL REPUBLIC OF GERMANY

Introduction

In view of the mass of available material, the present report, covering 1975 and 1976, deals only with the most important modifications and additions to previous legislation and judicial decisions. Individual cases can in any event only be presented in summary form. To avoid repetition, cases involving more than one human right have been grouped under the right which is principally at issue. Pertinent court decisions made in the second half of 1976 but not yet published at the time this report was concluded (January 1977) will as usual be included in the next report. The various human rights are presented in the order followed in the Universal Declaration of Human Rights: References to the Universal Declaration and to the corresponding articles of the International Covenant on Economic, Social and Cultural Rights (hereinafter, the first Covenant) and the International Covenant on Civil and Political Rights (hereinafter, the second Covenant) are given under the section headings.

ABBREVIATIONS

AVG	<i>Angestelltenversicherungsgesetz</i> (Employees' Insurance Law)
BB	<i>Der Betriebs-Berater</i> (Industrial Journal)
BGB	<i>Bürgerliches Gesetzbuch</i> (Civil Code)
BGBI, I, II	<i>Bundesgesetzblatt, Teil I und II</i> (Federal Law Gazette, Parts I and II)
BGHZ	<i>Entscheidungen des Bundesgerichtshofes in Zivilsachen</i> (Federal Supreme Court decisions in civil matters)
BVerfGE	<i>Entscheidungen des Bundesverfassungsgerichts</i> (Federal Constitutional Court decisions)
BVerwGE	<i>Entscheidungen des Bundesverwaltungsgerichts</i> (Federal Administrative Court decisions)
DÖV	<i>Die Öffentliche Verwaltung</i> (Public Administration)
DVBl	<i>Deutsches Verwaltungsblatt</i> (German Journal of Administration)
FamRZ	<i>Zeitschrift für das gesamte Familienrecht</i> (Journal of Family Law)
GG	<i>Grundgesetz</i> (Basic Law)
GVBl	<i>Gesetz- und Verordnungsblatt</i> (Law and Regulations Gazette)
GVG	<i>Gerichtsverfassungsgesetz</i> (Law on the Judiciary)
JR	<i>Juristische Rundschau</i> (Law Review)
KUG	<i>Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie</i> (Law on copyright of works of art and photography)
MDR	<i>Monatsschrift für Deutsches Recht</i> (Monthly Journal on German Law)
NJW	<i>Neue Juristische Wochenschrift</i> (New Weekly Law Journal)
RVO	<i>Reichsversicherungsordnung</i> (Reich Insurance Code)
StGB	<i>Strafgesetzbuch</i> (Penal Code)
StPO	<i>Strafprozessordnung</i> (Code of Criminal Procedure)
ZBR	<i>Zeitschrift für Beamtenrecht</i> (Civil Service Law Periodical)

A. Protection of human dignity

(preamble and article 1 of the Universal Declaration; preambles of first and second Covenants)

The mandatory penalty for murder of life imprisonment prescribed by section 211 (1) of the Penal Code is, in the view of the Verden Regional Court, incompatible with the

human dignity guaranteed by article 1 (1) of the Basic Law. The court, therefore, stayed proceedings in a case pending before it, in accordance with article 100 (1) of the Basic Law, and referred the matter to the Federal Constitutional Court for a decision. In its submission of 5 March 1976,¹ the Verden Regional Court points out that the final and absolute exclusion from society of the criminal brought about by life imprisonment, and his resulting mental annihilation, conflict with the obligation imposed on the legislature by article 1 of the Basic Law to respect human dignity, to which every human being, including the criminal, is entitled. Even if in an individual case long years of imprisonment should lead to no change of personality, human dignity would still have been violated since life imprisonment degrades the criminal to the status of a mere object. The decision of the Federal Constitutional Court, which hitherto has held life imprisonment to be constitutional, has not yet been delivered.

Following the basic judgement of the Federal Constitutional Court of 5 June 1973 in the so-called Lebach case,² the Higher Regional Court of Hamburg also dealt, in a supplementary decision of 24 October 1974,³ with the relationship between the general right to personality and personal inviolability based on human dignity (Basic Law, arts. 1 and 2) and the right to freedom of expression (Basic Law, art. 5). The occasion of the decision was a suit filed by a wife who had been the victim of a murder attempt instigated by her jealous husband, and who was seeking to prevent the defendant from having a film about the case shown on television. The court concluded that the general right to personality and inviolability together with the right to one's personal image included, in particular, the protection of private life: article 1 (1) and article 2 (1) of the Basic Law guaranteed every individual autonomous area of private life and the exclusive right to decide whether and to what extent others might be given an insight into it. The court held that this protected area was violated by the details given in the film of the plaintiff's conjugal life. It was immaterial that the plaintiff's name was not mentioned, since the circumstances would make it possible for her identity to be established. The court pointed out, however, that the private life of the plaintiff did not enjoy absolute protection against intrusion, since the basic right of freedom of broadcasting conferred by article 5 of the Basic Law must also be taken into account; radio and television; as well as the press, were among the indispensable mass media exercising a decisive influence on the integration of society in all spheres of life. On balance, the court concluded that, since the mental suffering the television transmission was likely to cause the plaintiff was out of all proportion to the need of the general public to be informed, the protection of the personal inviolability of the plaintiff should take precedence.

According to a judgement of 14 April 1975 by the Munich Labour Court,⁴ the procurement of a graphological analysis without the consent of the writer is a violation of the general right to personality, since a scientific application of graphology is normally concerned only with bringing out private aspects of the personality and revealing them to third parties. The consent of the applicant could as a rule be assumed, however, if he had submitted a handwritten *curriculum vitae* or other handwritten document of a kind customarily used in applying for a position. In the latter case, consent would nevertheless be limited to ascertaining such aspects of personality as would be relevant to the position in question.

B. Principle of equal treatment

(articles 2 and 7 of the Universal Declaration; articles 2 and 3 of the first Covenant; articles 2, 3 and 26 of the second Covenant)

In the period under review, there have been a number of court decisions on the principle of equal treatment (Basic Law, art. 3) which have, in effect, confirmed the already abundant legal opinion and practice on the subject and only modified or supplemented it

¹ *NJW* 1976, p. 980.

² *NJW* 1973, p. 1226.

³ *NJW* 1975, p. 649.

⁴ *NJW* 1975, p. 1908.

in minor ways. A few decisions which do reveal new tendencies in legal opinion are worth noting.

Pensions for widowers

The Federal Constitutional Court was again called upon, in response to a constitutional complaint, to deal in its decision of 12 March 1975⁵ with the fact that under existing social insurance law the husband only receives a widower's pension, after the death of a wife who was insured, if she had previously been the family's principal means of support (Employees' Insurance Law, sect. 43 (1); Reich Insurance Code, sect. 1266 (1)). Payment of a widow's pension from the insurance of a deceased husband is not, however, subject to the same limitation. Whereas in a decision of 1963⁶ the court had declared the provisions of section 43 (1) of the Employees' Insurance Law to be constitutional on the ground that widows were relatively in greater need of maintenance allowance, in its present decision it showed some doubt, in the light of the growing number of married women who work outside the home, whether this provision was really reconcilable with the principle of equality. The Federal Constitutional Court did not go so far as to declare the ruling unconstitutional at present but it directed the legislature to begin immediately to prepare new provisions reflecting the principle of equality, assuming that such new provisions will have been made by the end of the next but one legislative period of the Federal Parliament (1984).

Elections

In a ruling of 9 March 1976,⁷ the Federal Constitutional Court decided that the provision in section 18 of the Law on Parties, under which only political parties and not independent candidates may have their electoral expenses reimbursed, conflicted with the principle, contained in article 38, paragraph 1, first sentence, of the Basic Law, of equality of opportunity for all electoral candidates. The court reversed a contrary judgement by the Federal Administrative Court of 1973.⁸ In explaining the judgement, the court pointed out that, in addition to the parties, all active citizens to whom article 38 (2) of the Basic Law expressly guaranteed eligibility for election had, as electoral candidates, a right to equality of opportunity which could only be infringed on compelling grounds. The right to equal opportunity also applied to reimbursement of electoral expenses, which under the Constitution is not mandatory but is permitted. But if the legislature decided on reimbursement, it must pay regard to the principles of party freedom and equality of opportunity. As the unilateral reimbursement of electoral expenses to the political parties did not fulfil this requirement, the legislature was directed to rectify this unconstitutional state of affairs.

C. Right to life and physical integrity

(article 3 of the Universal Declaration; articles 6 and 7 of the second Covenant)

Termination of pregnancy

The right to life and physical integrity lies at the centre of an important decision by the Federal Constitutional Court of 25 February 1975⁹ declaring the fifth penal law reform law of 18 June 1974¹⁰ unconstitutional in that the amended section 218a of the Penal Code imposes no penalty for an abortion performed by a doctor, with the consent of the pregnant woman, within the first twelve weeks of pregnancy. In delivering judgement, the court emphasized that the life developing in the womb also enjoyed constitutional protection; of particular relevance were article 2 (2), first sentence (right to life), and article 1 (1) (protec-

⁵ *BVerfGE* 39, p. 169; *FamRZ*, 1975, p. 238.

⁶ *BVerfGE* 17, p. 1.

⁷ *BVerfGE* 41, p. 399; *NJW* 1976, p. 1193.

⁸ *BVerwGE* 44, p. 187; *Yearbook on Human Rights for 1973-1974*, p. 82.

⁹ *BVerfGE* 39, p. 1 ff; *NJW* 1975, p. 573.

¹⁰ *BGBI* I, p. 1297.

tion of human dignity) of the Basic Law. The duty of the State to afford protection not only forbade State-authorized violation of unborn life but also obliged the State to take this life under its care and, if necessary, defend the interests of the unborn against the mother. At the same time, the right of the woman freely to develop her personality, including the responsibility of deciding for herself against parenthood and the resulting obligations, also had a claim to recognition and protection. A balance which would both ensure protection of the developing life and allow the pregnant woman freedom to terminate the pregnancy was not possible, since termination of pregnancy always entailed destruction of the unborn life. Since human dignity must be regarded as the core of the value judgements contained in the Constitution, the decision must therefore accord priority to protecting the life of the embryo over the mother's right of self-determination. As the development of the human embryo, at least from the fourteenth day of pregnancy (nidation), represented a continuous process without easily definable stages, this priority must as a matter of principle be observed for the entire duration of pregnancy and might not be called in question within certain time-limits. The State must therefore regard completion of pregnancy as a duty and its termination as wrong.

On the other hand, it would be unjust to oblige a pregnant woman to continue the pregnancy if her own right to life and physical integrity were at stake; the State could not expect her to sacrifice these to the unborn life. It was also open to the legislature to exempt from punishment abortions on grounds of other exceptional and equally serious burdens to the woman. In all other cases, however, termination of pregnancy remained a punishable wrong.

On the basis of the Federal Constitutional Court's decision, the Federal Parliament has since introduced new provisions on termination of pregnancy in the form of the fifteenth penal law reform law of 18 May 1976.¹¹ Under the revised version of section 218 of the life or health of the mother are at risk (medical grounds), when irreparable damage to the health of the child is to be expected as a result of heredity or harmful influences before birth (genetic grounds), when the mother has been a victim of rape (criminal grounds), or when termination of pregnancy is indicated on other grounds in order to protect the mother against the risk of serious economic difficulties (social grounds).

D. Protection against arbitrary deprivation of liberty

(articles 3, 4 and 9 of the Universal Declaration; articles 8, 9 and 11 of the second Covenant)

1. PREVENTIVE CUSTODY

Under section 66 of the Penal Code, a person who has been sentenced to at least two years' imprisonment for a premeditated offence may on certain conditions be held in preventive custody in addition to the sentence. One of the conditions is that he is judged, on the basis of his whole personality and actions, to constitute a danger to the public on account of his propensity for serious crime. In a series of decisions, the Federal High Court has hitherto shown reluctance to apply this provision to offenders under 25 years of age, on the ground that "the prediction that a long term of imprisonment is likely either to improve or to deter a person who has just emerged from adolescence [is] only justified in exceptional cases, on the basis of a detailed evaluation of his personality, since the human being, particularly the male, does not [attain] emotional maturity until the age of 25, in some cases not until 30". By its decision of 28 October 1975,¹² the Federal High Court has now discarded this sceptical view of the value of an early prediction. It declares that its previous opinion was based on the legal position at that time, under which the time of release from prison was the material one for determining the degree of risk. Since current law has brought forward the estimate of the risk to the time of the trial, and the enforcement court is required before conclusion of the sentence to consider, in accordance with section 67c (1) of the

¹¹ *BGBI* I, p. 1213.

¹² *NJW* 1976, p. 300.

Penal Code, whether preventive custody is still necessary, the objections of the court are substantially met. In the case before it, the Federal High Court saw no ground for objecting to the preventive custody imposed by the Lower Court on the 23-year-old accused. As regards future practice it should, however, be pointed out that under the amended version of section 66 of the Penal Code, to come into effect on 1 January 1978, preventive custody will be ruled out for offenders under 25 years of age.

Questions of preventive custody were also the subject of a decision by the Federal Constitutional Court of 9 March 1976.¹³ As already mentioned in the judgement of the Federal High Court quoted above, the enforcement court must, in accordance with section 67c of the Penal Code, examine before completion of the sentence whether preventive custody is still necessary or whether it can be commuted to probation. The regulation does not, however, expressly provide whether, on completion of sentence, a person sentenced to imprisonment and subsequent preventive custody is to be released or to be kept in custody if on completion of sentence the decision of the enforcement court is still outstanding. The Federal Constitutional Court has now decided that a person whose original sentence provided for a term of imprisonment and subsequent preventive custody may be kept in preventive custody even if the enforcement court has not yet taken a decision on the necessity of the measure, because the preventive custody is based on a formal law and a court decision, the basis of deprivation of liberty being the order for preventive custody contained in the sentence of the original court, in accordance with section 66 of the Penal Code. Enforcement of preventive custody would, however, infringe the offender's basic right to personal freedom if the enforcement court had either failed without sufficient cause to begin the required examination by the time sentence was completed or, having begun it in good time, had as a result of avoidable errors or delays not been able to reach a decision within a reasonable period.

2. RIGHTS OF PRISONERS

On 16 March 1976 the Federal Parliament enacted the Criminal Punishment Law.¹⁴ This law, which contains a special section dealing with the rights and obligations of prisoners and the closely related powers of the prison authorities, was to enter into force on 1 January 1977.

E. Judicial and administrative guarantees of due process

(articles 8 and 10 of the Universal Declaration; articles 2 and 14 of the second Covenant)

Due process in administrative proceedings

Of major importance in guaranteeing the right to due process to the citizen vis-à-vis the administration is the Administrative Procedure Law of 25 May 1976.¹⁵ This law contains all the procedural rules which the federal authorities and, in the absence of *Länder* administrative laws, *Länder* and communal authorities will, in future, have to apply. Whereas hitherto it was left to the authority whether or not to allow a citizen involved in legal proceedings access to official files, the new rules provide that he has a right to such access (sect. 29). Another innovation is the obligation of the authority to inform the citizen of his rights and obligations in the administrative proceedings (sect. 25, second sentence) and to give him an opportunity, before the issue of an administrative order against him, to comment on the questions of fact at issue (sect. 28 (1)). A further improvement in the position of the citizen is that in future the authorities are prohibited from communicating to third parties secrets of a personal or business nature revealed in the course of the administrative proceedings (sect. 30). Hitherto, this prohibition has rested on a combination of a number of regulations of public service law, criminal law and constitutional law. Section 39

¹³ *NJW* 1976, p. 1736.

¹⁴ *BGBI* I, p. 581.

¹⁵ *BGBI* I, p. 1253.

of the Administrative Procedure Law substantially extends the obligation of the authority to give the reasons for its administrative acts.

Right to legal counsel in legal proceedings of all kinds

An important element of the rule-of-law principle is the right of every citizen to a fair trial, including the right to legal counsel in legal proceedings of all kinds. Following the admission by the Federal Constitutional Court in 1974¹⁶ of the right of a witness to engage counsel in connexion with evidence before a court, the Bremen Higher Administrative Court has now gone one step further and, in a judgement of 23 September 1975,¹⁷ admitted the right of a civil servant on probation to be accompanied by a lawyer at an internal interview with his superior to which he had been summoned because of doubts as to his loyalty to the Constitution. The court held that such an interview, which could result in the dismissal of the person concerned from the civil service or an extension of his probationary period, was a proceeding of far-reaching legal importance which made it incumbent on the authority, as part of its duty as a civil service employer, to allow the civil servant access to legal advice during the interview. In the court's view, these principles did not, however, apply to the preliminary interview in which a candidate seeks admission to the civil service. In a further decision of 11 November 1975,¹⁸ the court rejected the right to legal counsel at the preliminary interview, on the ground that there was not yet any legal relationship between the parties such as would impose special obligations.

Moreover, the preliminary interview was in the nature of an examination; it served principally to give a personal impression of the candidate, not to establish facts of legal importance.

Laws assenting to international treaties

A number of constitutional objections to the laws¹⁹ assenting to the Treaty of 12 August 1970 with the USSR and the Treaty of 7 December 1970 with Poland gave the Federal Constitutional Court the opportunity, in a decision of 7 July 1975,²⁰ to express an opinion on the extent to which laws giving effect to international treaties may be subjected to examination by the courts. The court held it to be a primary consideration in regard to treaties of this kind that all those entrusted with political negotiations in the field of foreign affairs must be allowed a wide margin of political judgement. The range of possible results of international negotiations was limited to what was politically acceptable to the other party. Thus, a constitutional objection seeking to establish that the negotiations for such a treaty should have secured the inclusion of a particular provision in the plaintiff's favour, and that the conclusion of the treaty without this provision was unconstitutional and the entire treaty invalid, could not be admitted. If the Federal Constitutional Court were to pronounce on issues of this kind, it would be entering a field in which those agencies responsible for foreign affairs must be accorded a certain freedom of movement, the exercise of which was legitimately determined mainly by political objectives and judgements.

F. Right to due process

(articles 10 and 11 of the Universal Declaration; articles 14 and 15 of the second Covenant)

1. EDITORIAL SECRECY

With the Law of 25 July 1975 on the Right of Press and Radio Journalists to Refuse to Give Evidence,²¹ a uniform and comprehensive procedure for the judicial protection of

¹⁶ *NJW* 1975, p. 103.

¹⁷ *ZBR* 1976, p. 18.

¹⁸ *ZBR* 1976, p. 21; *NJW* 1976, p. 770.

¹⁹ *BGBI* II, 1972, pp. 353 and 361.

²⁰ *BVerfGE* 40, p. 141; *NJW* 1975, p. 2287.

²¹ *BGBI* I, p. 1973.

editorial secrecy has come into effect. The Law was enacted in response to two decisions by the Federal Constitutional Court²² in 1973 and 1974 declaring the provisions on the right of journalists to refuse to give evidence contained in *Länder* legislation to be null and void, on the grounds that this matter was one of criminal procedure and thus fell within the legislative competence of the Federation. Under section 53 (1) 5 of the Code of Criminal Procedure, as amended by the new law, press and radio journalists are now granted as a matter of principle an unlimited right to refuse to give evidence. The right applies only to information concerning the editorial sections of publications or broadcasts; since commercial interests predominate in the advertising sections, judicial protection there was not held to be necessary. In addition to the new provisions on the right to refuse to give evidence, the ban on confiscation has been correspondingly extended. In the interest of greater protection, the ban now covers objects in the care of an editorial office, publisher, printer or broadcasting corporation (Code of Criminal Procedure, sect. 97 (5)) instead of, as hitherto, only those in the care of the person entitled to refuse evidence.

2. RIGHTS OF THE ACCUSED

The right of an accused person based on the rule-of-law principle to be adequately defended in criminal proceedings was the subject of two further decisions by the Federal Constitutional Court. Thus in a judgement of 11 March 1975²³ the court declared that a new provision limiting the number of counsel an accused may appoint to defend him to three (Code of Criminal Procedure, sect. 137 (1), second sentence), and a further one forbidding several accused persons to be defended by a single counsel (Code of Criminal Procedure, sect. 146) were both compatible with the Basic Law. The court held that the limit on the number of defence counsel was intended to obviate the risk of undue delay in the proceedings. Thus, it rested on material considerations, ensured that justice was effectively done as required by the rule of law, and struck an appropriate balance between the legitimate claim of the accused to be adequately defended and the imperative needs of the proceedings themselves. The provision was therefore neither arbitrary nor a violation of the basic right of the accused to a fair trial. The ban on the defence of several accused by the same counsel was equally unobjectionable from the constitutional point of view since it was designed, for obvious material reasons, to avoid from the outset any conflict of interest. The right to free choice of defence counsel was no more infringed thereby than the professional freedom of the lawyer under article 12 (1) of the Basic Law. In a further decision, taken on 8 April 1975,²⁴ the Federal Constitutional Court took the view that the right of the accused person to a free trial and to freedom of action (Basic Law, art. 2 (1)) was not infringed if the defence counsel appointed by the court was dismissed on suspicion of complicity (Code of Criminal Procedure, sect. 138a).

3. RIGHT TO A HEARING

Several applications to the Federal Constitutional Court turned on the effects of the right under the Basic Law to a hearing in accordance with the law (Basic Law, art. 103 (1)) on the procedure laid down in the Code of Criminal Procedure for restoration of the *status quo ante*.

One case was that of a foreigner who had received a court order and accompanying explanation in German, which he did not understand. It was one day after the expiration of the one-week time-limit for an appeal that he was able to find an interpreter who could translate for him the court order and the accompanying explanation. He immediately made an application for restoration of the *status quo ante*, which was rejected by the courts on the ground that he had no right to an explanation in a language intelligible to him and that he should have made a greater effort to procure a prompt translation. In a decision of 10 June

²² *BVerfGE* 36, pp. 193 and 314.

²³ *BVerfGE* 39, p. 156; *NJW* 1975, p. 1013.

²⁴ *BVerfGE* 39, p. 238; *NJW* 1975, p. 1015.

1975,²⁵ the Federal Constitutional Court quashed this decision on the grounds that it infringed the basic right enjoyed by all, including foreigners, to a hearing in accordance with the law. The court took the view that a non-German-speaking foreigner who received a court order in German without an explanation he could understand could not, in the event that the time-limit was exceeded, be treated otherwise than as if he had received no explanation of the legal position.

In another case, an order to pay a fine of DM 1,000 for driving without a licence was served, in July 1974, on a foreigner employed as a teacher at a private school in the northern part of the Federal Republic of Germany by depositing it at the post office. In his application for restoration of the *status quo ante*, the teacher maintained that he had failed to appeal within the time-limit because during the school holidays he had been on leave in his home country; this was not accepted as an adequate reason by the court. In a decision of 10 June 1975,²⁶ the Federal Constitutional Court found that this was a violation of article 103-(1) of the Basic Law. In support of the decision, the Federal Constitutional Court referred to its previous opinion that, in the case of the "first approach" to the court, the conditions for a restoration of the *status quo ante* should not be exaggerated. In application of this principle, a person who had a permanent domicile which he left only temporarily when on holiday could not be required to make special arrangements for a court order to be forwarded to him during his absence.

In a third case, the plaintiff had sent off his appeal against a court order by registered post from the post office at Essen one day, a Thursday, before expiry of the time-limit. The registered letter did not reach the Aschaffenburg local court until the following Monday, after expiry of the time-limit. The application for restoration of the *status quo ante* was refused by the lower court because, in the nature of things, the plaintiff could not assume that the registered letter would be delivered within one day. In its decision of 16 December 1975,²⁷ the Federal Constitutional Court upheld the complaint. It took the view that the Basic Law required section 44 of the Code of Criminal Procedure to be so construed as not to make the citizen responsible, when appealing in writing against a court order, for delays on the part of the Post Office in conveying or delivering letters. On the contrary, the citizen was entitled to assume a normal delivery period, which in case of doubt could be ascertained officially.

4. THE PRINCIPLE OF AN OPEN TRIAL

The principle of an open trial (Law on the Judiciary, sect. 169) requires that everyone who so wishes should be able without undue difficulty to ascertain the time and place of a trial, gain access to it and follow the proceedings. According to a judgement by the Karlsruhe Higher Regional Court of 31 July 1975,²⁸ this principle is not infringed when, in trials where serious disruption of the proceedings is to be expected, members of the public are admitted only on condition that they hand in their identity cards while they are in the courtroom. Since, according to the law, all persons of 16 years and over must be in possession of an identity card, this requirement does not prevent those concerned from taking part in public sessions of the court nor make it unduly difficult for them to do so; there should not, however, be any concomitant form of selection of the persons to be admitted.

According to a decision by the Hamm Higher Regional Court of 5 August 1975,²⁹ the principle of the public nature of proceedings is not infringed when in the course of inspecting the scene of an offence, a trial is held on the pavement and a time is chosen when it is to be expected that passers-by will see that it is being held. As against this, the Cologne

²⁵ *BVerfGE* 40, p. 95; *NJW* 1975, p. 1597.

²⁶ *BVerfGE* 40, p. 88.

²⁷ *NJW* 1976, p. 513.

²⁸ *NJW* 1975, p. 2080.

²⁹ *NJW* 1976, p. 122.

Higher Regional Court, in a decision of 28 November 1975,³⁰ found that a trial held in the same circumstances on a motorway verge did constitute an inadmissible limitation of its public character, since traffic regulations strictly forbade pedestrians to go on the verges and even vehicles were not allowed to stop on them except in an emergency.

G. Protection against arbitrary interference with privacy

(*article 12 of the Universal Declaration; article 17 of the second Covenant*)

Protection of privacy was the subject of various legislative proposals and court decisions during the period under review. For reasons of space only the most important of them can be mentioned in this section. Other cases are dealt with in sections A and N.

Personal data records

The main development is the Federal Law on Protection of Recorded Data, passed by the legislature in November 1976 and promulgated on 27 January 1977,³¹ whose object is to protect personal privacy against abuse caused by the use of recorded data. This is achieved by subjecting the handling of personal data in the critical phases of processing (namely storage, forwarding, alteration and cancellation) to judicial control. Storage of personal data, for example, even when derived from generally accessible sources, is in future permitted only by non-automatic means. Specially sensitive data, such as that relating to health, punishable offences, infringement of regulations and religious and political views, may only be stored by private agencies with the permission of the person concerned and by public agencies subject to certain limitations. The individual is also accorded a number of rights for his protection, in particular the right to demand information about data relating to him, to have incorrect data corrected and, under certain conditions, to have data blocked or cancelled. The law establishes certain agencies to supervise protection of data and further provides, on the federal level, for an independent Federal Commissioner to be responsible for data protection.

Secrecy

With the entry into force on 1 January 1975 of the Introductory Law to the Penal Code of 2 March 1974,³² privacy also received greater protection under criminal law. The new law introduces into the Penal Code new sections on violations of private life and secrecy (Penal Code, sects. 201-205) which add to existing offences (breach of verbal confidence and breach of mail and professional secrecy) two further offences: disclosure by officials of private secrets (Penal Code, sect. 203 (2)) and abuse of the secrets of third parties (Penal Code, sect. 204).

Another new provision closely related to these is that in section 353d of the Penal Code which deals with the case of unauthorized communication of information about court proceedings. As well as protecting the impartiality of those concerned with the proceedings, this provision protects a person involved in criminal, civil or disciplinary proceedings from exposure through the publication of official documents before the accusations against him have been examined in court.

Inviolability of the home

Protection of privacy also includes inviolability of the home. Under article 13 (2) of the Basic Law, as a matter of principle, the search of a home can only be ordered by a judge. The demands made with respect to the judicial search warrant by the principle of the rule of law were dealt with in a decision by the Federal Constitutional Court on 26 May 1976.³³

³⁰ *NJW* 1976, p. 637.

³¹ *BGBI* I, p. 201.

³² *BGBI* I, p. 469.

³³ *BVerfGE* 42, p. 212; *NJW* 1976, p. 1735.

In the view of the court, the judge, as the agent of the prosecuting authorities, has the special responsibility of ensuring, by wording the search warrant appropriately, that the encroachment on the basic rights of the persons concerned remains measurable and controllable. A search warrant which did not specify the charge nor make clear the nature or possible content of the evidence the search was designed to reveal would not satisfy these demands if such details could have been given at that stage of the inquiries without prejudicing the object of the prosecution. A warrant confined to outlining the suspected offence and quoting the text of the authority for the search would not be an adequate substitute for the full explanation of the grounds for the search that was required by the rule-of-law principle.

Photographing of demonstrators

For the police to photograph a procession of demonstrators with the aim of identifying those guilty of earlier offences does not represent, according to a judgement by the Federal Court of Justice of 12 August 1975,³⁴ an unauthorized encroachment on the basic rights of the demonstrators. While conceding that taking photographs secretly could violate the general right to personality of the person photographed, the court held that the circumstances in which the photograph was taken and the object in view played a decisive role. In the case in point, the people concerned had not been photographed in their private capacity but as participants in a public meeting. That this fact alone entailed a certain limitation of the right to one's personal image was already clear from section 23 (1) 3 of the law on copyright of works of art and photography, under which pictures of "meetings, processions and similar gatherings" in which the person concerned has taken part may be distributed and publicly shown without his permission provided this does not conflict with his legitimate interests. The purpose of the police photographs here was not, however, to distribute them or exhibit them publicly but to help internal police inquiries with a view to clearing up punishable offences. The interests of those concerned must therefore yield to the more substantial general interest.

H. Freedom of movement

(article 13 of the Universal Declaration; article 12 of the second Covenant)

Although the right to emigrate is not expressly included in the basic rights listed in the Basic Law, it is recognized in the Federal Republic of Germany as an expression of the free development of personality and general freedom of action and thus enjoys the protection of article 2 (1) of the Basic Law. The only legal provisions on emigration are, therefore, those which are indispensable for the protection of the emigrant. In order to unify emigration law, which derives from many sources and in part from the last decade of the nineteenth century, and to adapt it to present conditions, the Law for the Protection of Emigrants was enacted on 26 March 1975.³⁵ The object of the law is to provide would-be emigrants with impartial and exhaustive advice in each individual case. It therefore makes the giving of advice to emigrants on a commercial basis (sect. 1) dependent on a special authorization, which is only to be granted to persons of the required reliability and expert knowledge. Further provisions of the Law deal with the protection of emigrants when travelling to destinations outside Europe (sect. 4) and with the ban on commercial advertising of emigration (sect. 2).

I. Right of asylum; conditions for expulsion

(article 14 of the Universal Declaration; article 13 of the second Covenant)

A commentary on the nature of the right of asylum for persons persecuted on political grounds, guaranteed by article 16 (2), second sentence, of the Basic Law, and the limitations placed on it by the Aliens Law is contained in two decisions by the Federal Administrative

³⁴ MDR 1975, p. 1029.

³⁵ BGBI I, p. 774.

Court of 7 October 1975.³⁶ In the court's view, protection from persecution represents the inviolable and unchangeable essence of this basic right: a person threatened with political persecution may not be turned back at the frontier, and he may not be deported to a country where he would be persecuted or to a country from which he might be redeported to another country where he would be persecuted. Further, a person threatened with persecution can claim a permanent right of abode such as would provide him with an adequate living and the chance to develop his personality. The limitations under the Aliens Law on the right of abode granted to the person threatened with persecution distinguish between expulsion (sect. 10) and deportation (sect. 13). The deportation regulations are compatible with the Constitution because the person entitled to asylum is free to choose a country to which he can proceed without risk. Nor is there any constitutional objection to the possibility under the law of deportation to a country offering equal protection from persecution to that afforded in the Federal Republic of Germany. Thus, the question of compatibility with the Constitution only arises in relation to the deportation of a person entitled to asylum to a country where he might be persecuted, since this could lead to nullifying the essential right to asylum. Viewed by itself, the right to asylum under article 16 (2), second sentence, of the Basic Law is guaranteed as an unlimited basic right; but a value-based system cannot admit of unlimited rights as such. In a conflict between values which are in principle equal, each value is subject to the limitations imposed by the need to respect the other values. The protection of the public from serious danger is a value which equals the right to asylum. Deportation would then be permissible if the foreigner were regarded as an established and grave danger to the security of the Federal Republic of Germany or to the public. It would, however, only be justified in order to ward off future danger and might not constitute an additional punishment for a past offence, however grave.

In a further basic decision of 7 October 1975,³⁷ the Federal Administrative Court added to its previous legal opinion on the question of whether a sentence for so-called *Republikflucht* (i.e., escaping illegally from the State of origin), as imposed by certain countries, is to be regarded as political persecution giving entitlement to asylum. Having already expressed the view in several previous decisions that sentences for *Republikflucht* constituted political persecution and entitled the person concerned to asylum, the court decided that the mere expectation of such a sentence also entitled the person to asylum.

The extent to which the principle of presumption of innocence should apply to deportation proceedings was dealt with in a decision by the Bavarian Supreme Regional Court on 19 November 1975.³⁸ On the grounds of section 10 (1) 11 of the Aliens Law (prejudice to substantial interests of the Federal Republic of Germany), the Aliens Authority had started expulsion proceedings against a foreigner in custody and, in justification, pointed to the well-founded suspicion that he had committed punishable acts. The man claimed that this was a violation of article 6 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), since it had been assumed that he had in fact committed punishable offences although no criminal proceedings had been taken against him. The court held that the provision concerning presumption of innocence contained in that article related only to judicial proceedings to decide whether an accused was guilty. It did not, however, forbid any rule of police law, such as section 10 (1) 11 of the Aliens Law, which permitted the deportation of a foreigner when his presence was prejudicial to the substantial interests of the country. This very generally worded condition could be satisfied by the existence of a punishable act and did not require a conviction; reasonable suspicion of a punishable act would, therefore, be an adequate ground for deportation.

³⁶ *BVerwGE* 49, pp. 202 and 211; *DÖV* 1976, pp. 92 and 94.

³⁷ *MDR* 1976, p. 516.

³⁸ *Bayerisches Verwaltungsblatt* 1976, p. 88.

J. Right to a nationality

(article 15 of the Universal Declaration; article 24 of the second Covenant)

In a basic judgement of 1 July 1975,³⁹ the Federal Administrative Court declared for the first time that foreigners entitled to asylum were to be given preference in citizenship proceedings. The plaintiff was a foreigner who had left his country in 1954 and been recognized as a political refugee in the Federal Republic in 1955. Since then, he had lived in Munich and practised as a licensed tax agent and legal adviser. His naturalization application in 1965 had been rejected by the authorities. In its judgement the court pointed out that the question whether naturalization was in the interest of the State should be considered in the case of foreigners entitled to asylum, just as it was in the case of other categories of foreigners. Naturalization might be in the interest of the State if it settled definitively the question of the nationality of particular groups or individuals. In its Constitution, the Federal Republic of Germany had taken on a special responsibility for observing humanitarian principles. It had been the first State in the world to make the right to asylum a basic right (Basic Law, art. 16 (2)). Furthermore, with the incorporation into domestic law of the provisions of the 1951 Convention relating to the Status of Refugees, the legislature had taken over article 34 of the Convention, which obliges the contracting parties to render the assimilation and naturalization of persons entitled to asylum as easy as possible. The provision was to be regarded as an instruction to give favourable consideration to persons entitled to asylum and must be observed by the naturalization authorities as a guiding principle when exercising their discretion. Naturalization of foreigners entitled to asylum was accordingly always indicated when they wished to remain permanently in the Federal Republic of Germany and their full integration into the everyday life of the country had either already been completed or seemed certain to follow.

K. Protection of marriage and the family

(article 16 of the Universal Declaration; article 10 of the first Covenant; articles 23 and 24 of the second Covenant)

Protection in expulsion cases

Under article 6 (1) of the Basic Law, marriage and the family enjoy the special protection of the State. As this guarantee applies equally to foreigners, the authorities are always bound, in expulsion cases, to take into account the possible consequences of expulsion for the marriage and family of the foreigner concerned. In a number of decisions the courts have accordingly held that a foreigner of either sex married to a national and living with his or her spouse in the Federal Republic of Germany may only be expelled if the grounds for expulsion are serious and the presence of the foreigner, despite his or her marriage to a national, can no longer be tolerated. According to a judgement by the Federal Administrative Court of 11 June 1975,⁴⁰ the same considerations apply in respect of children where the person to be expelled is widowed or divorced. If a child possesses the nationality of the Federal Republic of Germany (solely or simultaneously with another nationality) and the foreign parent has legal care of the child, the interest of the child in remaining in the Federal Republic of Germany should be taken into consideration in the same way as the interest of a marriage partner. If on the other hand, the foreign parent does not have legal care of the child and the parent and child do not live together under the same family roof, expulsion proceedings could only take account of parent-child relationships in exceptional cases: for instance, where the foreign parent has been the victim of unusual circumstances.

Protection where a spouse is detained in custody

A decision of the Federal Constitutional Court on 6 April 1976⁴¹ dealt with protection of marriage and the family while a person is detained in prison. In the case at issue, the

³⁹ BVerwGE 49, p. 44; NJW 1975, p. 2156.

⁴⁰ NJW 1975, p. 2155.

⁴¹ BVerfGE 42, p. 95; NJW 1976, p. 1311.

plaintiff asked to be allowed in future to visit her husband, who had been in custody for a considerable time awaiting trial for suspected commercial offences, at the prison on Saturdays. The grounds for the application were that she was still living with their children in the couple's home 325 kilometres away from the prison and was in full-time employment, so that to make the long journey during the working week was very difficult. The application was rejected by the lower court on the basis that visits at the week-end could not be adequately supervised. In its decision, the Federal Constitutional Court declared that the guarantee contained in article 6 (1) of the Basic Law was specially important when a person was held in custody. Detention in custody awaiting trial for any length of time necessarily placed a severe strain on the relations of the person concerned with his family. It was the duty of the State, in the execution of its constitutional obligation to protect marriage and the family, to limit the harmful effects of imprisonment as far as possible and practicable, but with due consideration to the public interest. Thus, it was the duty of the authorities concerned to take all possible and reasonable steps to enable spouses and children to visit persons detained in custody. In cases of special hardship, therefore, the prison could reasonably be required to arrange facilities for visits by spouses and children outside normal visiting days.

Changes in the law on marriage and the family

The First Law for the Reform of the Law on Marriage and the Family, approved on 14 June 1976,⁴² brought about substantial changes in marriage and family law in the Federal Republic of Germany. Under the new provisions, divorce law will in future recognize the principle of breakdown of a marriage (Civil Code, sect. 1565 ff.) by which a marriage is deemed to have failed and can be terminated by divorce if the partners no longer live together and a reconciliation is not to be expected. The breakdown is assumed to be irrevocable after a separation of one year if both parties desire a divorce and of three years in other cases. A hardship clause provides a safeguard against unjust divorces. The question of maintenance after divorce is governed by the principle that a party to the marriage can only claim maintenance from the other party if he or she cannot maintain himself or herself after the divorce (Civil Code, sects. 1570 ff.). This applies particularly if he or she is prevented from taking employment by the duty of bringing up the children, by age, illness or other infirmity. The new marriage law further provides that entitlement to pensions and social security acquired during marriage is to be divided between the two partners (Civil Code, sects. 1587 ff.)

The First Law for the Reform of the Law on Marriage and the Family also amends the law on names, by providing that the parties to a marriage may choose as the family surname either the man's or the woman's surname. If no choice is expressed, the man's name prevails (Civil Code, sect. 1355).

Adoption

The new Adoption Law of 2 July 1976⁴³ brings the existing law into line with modern views on the adoption of children. Under the new system, a minor child will be absorbed into the family of the adopter in every respect—including nationality—on the same footing as his or her own children and all former relationships are legally dissolved ("full adoption"). Thereafter, the new parent-child relationship can be dissolved only in very exceptional cases and even then only when such an action would be in the interest of the child. A further innovation is that adoption is no longer effected by a contract but by a court award, in which the child's welfare, not private interests, is the deciding factor. A law on adoption agencies,⁴⁴ which reserves the arrangement of adoptions for certain specified agencies and regulates the procedure to be followed, was approved at the same time.

⁴² BGBI I, p. 1421.

⁴³ BGBI I, p. 1749.

⁴⁴ BGBI I, p. 1762.

L. Protection of property*(article 17 of the Universal Déclaration)**The thalidomide disaster*

Interesting views on protection of property within the limits set by social obligations and the law are contained in a judgement by the Federal Constitutional Court of 8 July 1976⁴⁵ on the compatibility with the Constitution of the law of 17 December 1971⁴⁶ establishing the "Foundation for Aid to Handicapped Children". The foundation was set up to provide help as rapidly and effectively as possible for the children affected by the thalidomide disaster of 1960 (the drug was marketed in the Federal Republic of Germany under the trade name of Contergan). The reserve funds consisted of a sum of DM 100 million made available by the manufacturers of Contergan as a final lump-sum settlement to the injured parties and a further DM 50 million from federal sources.

Following a ruling by the Federal Court of Justice on 13 February 1975⁴⁷ that, with the entry into force of the law establishing the foundation, the injured parties had forfeited any claim against the manufacturers and could now only claim from the foundation, one of the injured parties entered a constitutional objection on the grounds that the conversion of existing claims to compensation into claims to benefit under the law establishing a foundation was an illegal violation of the guarantee of property in article 14 (1), first sentence, of the Basic Law. The Federal Constitutional Court agreed that the claims of the injured parties under the settlement agreement with the manufacturers enjoyed the protection of property afforded by the Basic Law, but maintained that the satisfaction of claims under private law did not necessarily mean that they were inviolable; on the contrary, article 14 (1), second sentence, of the Basic Law empowered the legislature on certain conditions to intervene in existing rights and give them a new content. The authority of the legislature in this was, however, not unlimited. The more closely a legal ruling affected important areas of human freedom of action, the more substantial must be the grounds justifying intervention in the basic freedoms of the citizen. Thus a limitation on freedom of action in property matters could not be based indiscriminately on any public interest, but only on such grounds of public weal as would, judged by the principle of degree of importance, enjoy precedence over the citizen's basic claim to freedom. The priorities must be maintained and the substance of the law remain intact. By these standards, the conversion of claims to settlement under private law into legally-based claims to benefit, the agreed funds for the settlement being transferred to the funds of the foundation, could not be regarded as constitutionally objectionable. On the one hand, there was considerable doubt, since the full consequences of the Contergan disaster were not yet foreseeable, whether the settlement sum was large enough and the claims sufficiently well-established to ensure adequate care for those affected. On the other, only those children were entitled to share in the settlement who by a given date had accepted it as final, while children who had not done so would receive nothing. The legislature was, therefore, correct in deciding that social solidarity demanded that an attempt be made to alleviate the effects of the disaster, at least financially, by means of a law. Its decision, based on consciousness of social responsibility, could not, therefore, in view of the highly unusual circumstances and the special need of the handicapped children for protection, be regarded as unlawful intervention in rights protected by the Basic Law.

Constitutionality of tax regulations

In a decision of 27 October 1975,⁴⁸ the Federal Constitutional Court held that the property guarantee in article 14 of the Basic Law was not necessarily violated where the effect of property tax, in addition to other taxes, was to make the total tax burden exceed

⁴⁵ *NJW* 1976, p. 1783.

⁴⁶ *BGBI* I, p. 2018.

⁴⁷ *BGHZ* 64, p. 30 ff; *NJW* 1975, p. 1457.

⁴⁸ *NJW* 1976, p. 101.

the income received. In the court's view, a decision on whether a legal regulation under tax law was compatible with the Constitution must be based, in accordance with the nature of the law as a general regulation, on how the law operated in practice—whether, from the very way in which it was framed, it had a restrictive or confiscatory effect, whether it offended against the property guarantee in general, or whether it occasionally led to an abnormal degree of hardship. The property tax was so designed that it could, in normal circumstances, be paid out of income. The revenue authorities were entitled to assume a normal income from property and to levy an appropriate sum from it by means of the property tax, which generally should not be a tax on capital. The authorities were, however, not obliged to keep the tax burden so low that even unprofitable property should in all cases retain its capital value or yield an appropriate income.

M. Freedom of conscience and religion

*(articles 18 and 26 of the Universal Declaration;
article 18 of the second Covenant)*

1. RIGHT TO WITHHOLD A STATEMENT OF RELIGION

According to a decision by the Federal Administrative Court of 23 July 1975,⁴⁹ patients at municipal hospitals may legitimately be asked to state their religion so long as an answer is not compulsory and may be withheld on reasonable grounds. Citing as instances the duty to take the oath, conscientious objection to military service and a parent's option of whether a child is to participate in religious instruction, the court stated that there were occasionally other circumstances where a statement of adherence to or rejection of a religion was required, namely when a person found himself unable to comply with the demands of the law on grounds of his conscience, belief or lack of belief, or membership or non-membership of a religion. The obligation to state one's position did not encroach on the freedom not to follow a religion. Asking a patient to what religion he belonged served to secure the right granted to religious societies by the Weimar Constitution of 1919 and taken over by the Basic Law to provide pastoral care in hospitals. An answer to the question could not, however, be insisted on since the religious societies were not allowed to exert any pressure on patients in exercising this right.

2. PARENTAL CONTROL

The question to what extent the suitability of a parent to exercise parental control is diminished by membership of Jehovah's Witnesses was the subject of a decision by the Bavarian Supreme Court on 29 September 1975.⁵⁰ In the case at issue, the local and regional courts had awarded parental control of the two minor children of a divorced couple to the mother, who was a Jehovah's Witness. The divorced husband appealed on the ground of the religious beliefs of the mother. In its decision, the court pointed out that in accordance with section 1671 (3) of the Civil Code, parental control was to be ordered in such a way, taking all the circumstances into account, as to serve the best interests of the child. It would not be compatible with the basic right of freedom of religion (Basic Law, art. 4 (1)) to seek to deny a parent's right to exercise parental control solely on the ground of his or her religious beliefs. As the children in the case in question had a much better relationship with their mother than with their father, and the court had come to the conclusion that, in spite of the general aversion of Jehovah's Witnesses to blood transfusions, the mother would in an emergency consent to one for her children, the court saw no reason to reverse the decision of the lower court.

⁴⁹ *MDR* 1976, p. 169; *NJW* 1976, p. 393.

⁵⁰ *MDR* 1976, p. 145.

3. CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

The right, guaranteed by article 4 (3) of the Basic Law, to refuse on conscientious grounds to render war service involving the use of arms was the subject of a judgement by the Federal Administrative Court of 18 July 1975.⁵¹ The occasion was a complaint by a man liable to military service who had in fact performed basic military service—the last part of which he had spent with a radar unit—from October 1965 to April 1967 and whose request in May 1968 to be recognized as a conscientious objector had been rejected by the competent authorities. The court held that the basic right conferred by article 4 (3) of the Basic Law could only be claimed by a person who asserted that his conscience forbade him to perform war service involving the use of arms of any kind. An assertion by a person whose objection was limited to the use of particular weapons or participation in particular wars, or wars in certain circumstances or in certain historical situations, that he was a conscientious objector did not possess the necessary unconditional character. A person who was ready to perform actions directly aimed at killing human beings with the help of weapons did not reject war service as such. Not every activity within the Federal Armed Forces, however, was so closely connected with the use of weapons; a distinction must be made between armed service and other military service. A conscientious objector could not be obliged against his will to perform any service connected with the Armed Forces (Basic Law, art. 12a (2), third sentence) but his refusal on grounds of conscience need only be in respect of war service involving the use of arms. In drawing the line between armed service and other military service, the essential consideration was whether the service was performed only for the benefit of members of the Armed Forces as such (for example, the medical services) or whether the service was by its nature closely and directly connected with the manifold military processes leading to the killing of human beings. A close material relationship of this kind with the use of arms was characteristic of the operations of a radar unit, which the plaintiff had accepted. However great his sense of responsibility to mankind, he could therefore not be recognized as a conscientious objector within the meaning of article 4 (3) of the Basic Law.

4. RELIGIOUS FREEDOM IN RELATION TO EDUCATION

A constitutional complaint by several parents who considered that their rights as parents (Basic Law, art. 6 (2)) and their basic right to freedom of religion and conscience (Basic Law, art. 4 (1)) had been violated by the introduction in Baden-Württemberg in 1967 of the Christian non-denominational school as the only form of public primary school was the subject of a decision by the Federal Constitutional Court of 17 December 1975.⁵² The court admitted that the basic right in article 4 (1) of the Basic Law included the right of parents to arrange for their children to receive the religious or ideological education they considered right. But neither the parents' rights under article 6 (2) of the Basic Law nor any other provisions of the Basic Law conferred a positive right on parents or guardians to demand the establishment by the State of schools of a particular religious or ideological character. On the contrary, article 7 of the Basic Law left it to the democratic *Land* legislature to determine the religious and ideological character of State schools, taking into account the basic right of parents and children to freedom of religion and conscience under article 4 of the Basic Law. The legislature must resolve the tension inevitable in schools between "negative" and "positive" religious freedom by balancing the various different concepts protected by the Constitution. A form of school which imposed as few ideological and religious constraints as humanly possible, and also provided an opportunity for a tolerant and factual analysis of all religious and ideological views, would not bring parents and children opposed to religious education into a constitutionally unreasonable conflict of conscience.

⁵¹ *BVerwGE* 49, p. 71.

⁵² *NJW* 1976, p. 947.

Parental rights of upbringing and freedom of religious creed were also the central points of a judgement by the Münster Higher Administrative Court of 25 July 1975.⁵³ The occasion was a suit filed by a foreign couple of the Islamic faith claiming the right not to send their son to the State elementary school. The court began by pointing out that the provisions on compulsory education in force in the various *Länder* applied equally to foreign children irrespective of the legal position in their country of origin. Nor was there any exception for children who were being brought up by their parents in accordance with religious—e.g., Islamic—principles very different from those of German schools. As a matter of principle, every religious community was free to establish schools of its own denomination. But if children of these religious communities were in the last resort obliged for lack of such schools to be educated and brought up in State non-denominational schools on the basis of Christian educational and cultural values, this was not a violation of freedom of religious creed (Basic Law, art. 4). The general principles of education in State schools were essentially the basic human values. In addition, the principle of tolerance was binding in those schools. The court held that compulsory education did not impair the plaintiffs' parental rights of upbringing (Basic Law, art. 6 (2), first sentence). This provision recognized the care and upbringing of the child as the "natural right of, and a duty primarily incumbent on, the parents" but it did not contain any exclusive right of upbringing for them; on the contrary, the parental rights of upbringing were placed on the same level as the State's duty to provide education in the schools (Basic Law, art. 7 (1)). Universal compulsory education at schools open to all children was one of the basic features of State education in the Federal Republic of Germany. The public interest in maintaining this school system and the educational aims connected with it must as a matter of principle outweigh any individual interests of parents in private individual instruction for their child.

N. Freedom of opinion and of information

(article 19 of the Universal Declaration; article 19 of the second Covenant)

The basic right of free expression and dissemination of opinion was the subject of a decision by the Celle Higher Regional Court on 4 April 1975.⁵⁴ In the case at issue, a student who had distributed political pamphlets in a street in Hanover without possessing the "special use" permit required under the Lower Saxony street law was first fined by the authorities but in subsequent proceedings before the local court was acquitted of infringing the regulations. In rejecting an appeal lodged by the prosecution and upholding the ruling by the local court, the Higher Regional Court took the view that although the distribution of political pamphlets in the streets did represent "special use", in the light of the right to free expression and dissemination of opinion and of freedom of the press, such "special use" was not in every case subject to possession of the permit generally required under the street law. It was true that these rights under article 5 (1) of the Basic Law were limited by the provisions of the general laws (Basic Law, art. 5 (2)), of which the Lower Saxony street law was one. But in view of their importance as an essential element in administering a free democratic State and as the most direct possible expression of human personality in society, the principle of degree of importance, not observed in the present case, assumed special significance. According to the appeal lodged by the prosecution, the only purpose of the obligation to obtain a permit was to enable the appropriate authorities to take precautions against the disruption of traffic and risk to security which the distribution of pamphlets might cause. This object could equally be achieved by requiring the person distributing political pamphlets to give notice of his intention. In contrast to the obligation to obtain a permit, this would not result in an undue limitation of basic rights. In a further decision of 25 April 1975,⁵⁵ the same court ruled on the same grounds that the sale of political literature in the street was equally not subject to the possession of a permit.

⁵³ *NJW* 1976, p. 341.

⁵⁴ *NJW* 1975, p. 1894.

⁵⁵ *NJW* 1975, p. 1895.

A constitutional complaint by a man held in custody awaiting trial gave the Federal Constitutional Court a further opportunity of underlining the special significance of the freedom to express opinions as between husband and wife. In the case in point, the complainant had included in a letter to his wife, who was not in custody, the following remarks about persons concerned with his conviction: "I simply can't understand how the people who give the judgements there can sleep peacefully at night; in my view they are the biggest clowns. Somebody ought to give some of the people over there a special comedian's medal, they certainly have the talent to put on a good act". The Chairman of the Criminal Court had objected to this letter and ordered it to be confiscated. The appeal against this had been rejected as unjustified by the Higher Regional Court concerned, on the grounds that the letter contained gross insults and that to forward it might adversely affect prison discipline. The Federal Constitutional Court, in its decision of 16 June 1975,⁵⁶ found that the constitutional requirement to respect privacy, guaranteed by the right freely to develop one's personality, was strengthened in the case of expression of opinion between husband and wife by the constitutional guarantee of protection of marriage and the family. The right to freedom of expression, therefore, included the right of a person detained in custody to express his view on the trial freely and openly to his wife and to describe and judge things as he saw them even if, in the nature of things, these judgements would often be prejudiced or inaccurate. It would therefore not be reconcilable with the special significance of freedom of expression of opinion between husband and wife to hold back letters to a spouse from a person in custody awaiting trial on account of inaccurate statements about the proceedings in progress or the judges involved.

O. Freedom of peaceful assembly and association

(article 20 of the Universal Declaration; articles 21 and 22 of the second Covenant)

Authority for deciding on the constitutionality of a political party

In addition to the freedom of association guaranteed by article 9 of the Basic Law, political parties in the Federal Republic of Germany enjoy the special protection of article 21 of the Basic Law. Under paragraph 2, second sentence, of this provision, the binding decision that a party is unconstitutional can only be taken by the Federal Constitutional Court in accordance with the prescribed procedure. General legal opinion holds that the court's monopoly of decision totally excludes any administrative action against the existence of a political party, however hostile to the free democratic basic order it may be. Thus, until a decision has been taken by the Federal Constitutional Court no one can legally establish the unconstitutionality of a party (so-called "party privilege"). The scope of this "party privilege" was dealt with in a decision by the Federal Constitutional Court of 29 October 1975.⁵⁷

In the case under review, the National Democratic Party of Germany (NPD) had lodged a complaint against a report published by the Federal Minister of Internal Affairs entitled "Protection of the Constitution 1973" in which the NPD was summed up as an example of "organized right-wing radicalism" and described as an "enemy of freedom", "a danger to the free basic order" and as "extreme right wing". In its decision, the court first pointed out that it was for the appropriate State authorities to decide whether or not it was their duty to apply for a party to be banned. As evidenced by the Basic Law, the Federal Republic of Germany was a democracy willing to defend itself. It would, however, be constitutionally acceptable if the highest constitutional organs, instead of applying for a ban, first tried by reasoned political debate to bring the party considered unconstitutional (within the meaning of article 21 (2), first sentence, of the Basic Law) within acceptable bounds and thus to render proceedings for a ban superfluous. Viewed from this standpoint, the Federal Constitutional Court did not regard the passage quoted from the report complained of as a judicial questioning of the constitutional status of the plaintiff but rather as "value judgements [expressed by] the Federal Minister of Internal Affairs in fulfilment

⁵⁶ NJW 1976, p. 1629.

⁵⁷ BVerfGE 40, p. 287; NJW 1976, p. 38.

of his constitutional duty to protect the free democratic basic order and as part of his resulting responsibility for observing groups and activities hostile to the constitution", which had no judicial consequences. Should such value judgements cause actual harm to a party, article 21 of the Basic Law would afford it no protection. In the court's view this did not, however, mean that there were no constitutional limits on the powers of the State authorities to express adverse value judgements on political parties. On the contrary, the expression of such judgements—for instance, 'arousing a lasting suspicion that a given party, although not banned, was unconstitutional—would be forbidden "if, on a reasonable interpretation of the thoughts underlying the Basic Law, the attitude was no longer comprehensible and therefore gave rise to the conclusion that it was based on irrelevant considerations".

Political demonstrations

An order issued in May 1967 to an Iranian not to take part in any political demonstration during a five-day State visit by the Emperor and Empress of Iran and not to leave the district where he lived for the same period was the subject of a decision by the Federal Administrative Court in July 1975.⁵⁸ Since the right of freedom of assembly guaranteed by article 8 of the Basic Law is reserved to nationals of the Federal Republic of Germany, the legality of the measure is governed only by section 6 (2) of the Aliens Law, under which the political activity of foreigners can be restricted on grounds of public safety and order if this is necessary to meet other substantial interests of the Federal Republic of Germany. In the court's view, these conditions were fulfilled in the case under review: judging by the previous behaviour of the plaintiff it had to be assumed that he would take part in the collective anti-Shah demonstrations planned during the State visit, which were not only likely to do serious and lasting harm to the good relations between the Federal Republic of Germany and Iran but also to endanger public safety and order. In the light of the expected public clashes between groups of demonstrators of differing views and the resulting riots, the authorities of the Federal Republic of Germany were bound, in the interests of both nationals and foreigners living in the country, to prevent federal territory from becoming the scene of violent fights between rival groups of foreigners. It was, therefore, a necessary precautionary measure by the police to keep away from such demonstrations those Iranians in the Federal Republic of Germany whose participation was feared to be dangerous.

P. Right to take part in government

(article 21 of the Universal Declaration; article 25 of the second Covenant)

Following the Federal Constitutional Court's ruling in an earlier case that the link provided in section 12 (1) of the Federal Electoral Law between active suffrage in elections to the *Bundestag* and the requirement of "residence in the electoral area" was constitutional, a complaint by a national of the Federal Republic of Germany employed by the European Communities and based in Brussels gave the Federal Administrative Court, in its decision of 2 July 1976,⁵⁹ an opportunity of dealing with the same problem from a slightly different angle.

The plaintiff had cited the provision in section 12 (2) of the Federal Electoral Law exempting civil servants serving abroad on the orders of their employers from the requirement of "residence in the electoral area" and demanded equivalent treatment in accordance with the principle of equality. The Federal Administrative Court saw no reason why the demand should be admitted; the civil servants envisaged in section 12 (2) of the Federal Electoral Law were in an essentially different position in that they were not living abroad of their own accord but as a result of official orders; by the giving or cancelling of official orders, the active suffrage of individuals or whole groups of civil servants could, for instance, be manipulated if the exemption in section 12 (2) of the Federal Electoral Law

⁵⁸ *BVerwGE* 49, p. 36; *DÖV* 1975, p. 751.

⁵⁹ *NJW* 1976; p. 1648.

were not provided for. This possibility did not exist in the case of officials employed by the European Communities. A further difference was that civil servants serving abroad were bound to the Federal Republic of Germany by specially close ties of duty and loyalty (Basic Law, art. 33 (4)), which did not apply to officials of the European Communities and, indeed, could not apply, because such officials must be guided by the interests of the organization and were not allowed to accept instructions from national authorities.

Q. Right to social security

(articles 22 and 25 of the Universal Declaration; articles 9 and 11 of the first Covenant)

1. SOCIAL CODE

In the period under review, there have been a series of laws serving to improve still further the social security system in the Federal Republic of Germany. On 1 January 1976 the General Part of the planned Social Code⁶⁰ came into effect, as the first step towards unifying and simplifying the various kinds of social services. The central points of the law envisage a far-ranging duty on the part of the appropriate authorities to provide information on the kind, scope and conditions of the social services to which all are entitled as a matter of principle. At the same time, the legal position of the individual will be improved by provisions on the right to a legal hearing, protection of privacy, and limits on the duty of co-operating, particularly in connexion with medical treatment and examination. The Special Part of the Social Code, containing common rules for compulsory health, accident and pensions insurance, is at present under study by the appropriate parliamentary bodies. It is expected to be approved in the course of the current legislative period.

2. COMPENSATION FOR VICTIMS OF VIOLENCE

The Law on Compensation for Victims of Violence of 11 May 1976⁶¹ has provided appropriate social security for persons who have suffered damage to health or property, or even lost their lives, as a result of violent crime, and to their dependants. Under the new procedure, the victims of premeditated violence and their surviving dependants can, on application, receive assistance on account of resulting deterioration in their health or economic circumstances, in accordance with the provisions of the Federal Welfare Law. In hardship cases, limited compensation may also be granted for material damage if the person affected has no other legal redress. The rules on compensation for material damage also cover people who go to the help of the victims and who, in respect of possible damage to health, are already insured under the Reich Insurance Code.

3. SOCIAL INSURANCE OF THE HANDICAPPED

The Law on Social Insurance of Handicapped Persons of 7 May 1975⁶² brings physically or mentally handicapped persons employed in recognized workshops for the handicapped or the blind, or who work for them at home, within the scope of compulsory sickness and pensions insurance. Whether wages are paid in an individual case is immaterial for the insurance. In order to ensure an appropriate pension for handicapped persons, the contributions to pensions insurance for all those concerned are calculated on the basis of a national wage of 90 per cent of the average wage of all insured persons in the preceding calendar year, unless their actual earnings are higher than that average. The necessary extra contributions are paid by the Federation and the *Länder*.

⁶⁰ *BGBI* I 1975, p. 3015.

⁶¹ *BGBI* I, p. 1181.

⁶² *BGBI* I, p. 1061.

**R. Right to choose and exercise a profession;
protection of rights in labour legislation**

(articles 23 and 25 of the Universal Declaration; articles 6 and 7 of the first Covenant)

Numerus clausus for the study of medicine

In two decisions of 9 April 1975⁶³ the Federal Constitutional Court again dealt with restrictions on admission to universities (*numerus clausus*) for the study of medicine. The court had already established, in its *numerus clausus* judgement of 1972⁶⁴ that absolute restrictions on admission are only constitutional when all available capacity at institutes of higher education financed by the State has been fully utilized, in accordance with an allocation system subject to judicial control. The present case was concerned with an aspect not considered in 1972, namely, the allocation of vacant study places whose existence had only come to light in the course of litigation following inefficient allocation of capacity.

Political loyalty of civil servants

A decision by the Schleswig Administrative Court gave the Federal Constitutional Court the opportunity, for the first time, in a ruling of 22 May 1975,⁶⁵ to express an opinion in principle on the question of the civil servant's duty of political loyalty. The lower court had declared unconstitutional a ruling under *Länder* law which made appointment as a graduate trainee lawyer dependent on an assurance by the applicant that he would at all times support the free democratic basic order under the Basic Law.

The Federal Constitutional Court began by pointing out that the civil servant's special duty of loyalty to the State and the Constitution was a traditional and basic principle of the professional civil service (Basic Law, art. 33 (5)). The essence of this duty was political loyalty, that is, "the duty to be ready to identify oneself with the idea of the State one is to serve and with the free democratic rule-of-law order of that State"; this did not, however, prevent a civil servant from expressing criticism and advocating changes in existing conditions within the scope of the Constitution. But it did impose a duty of keeping clear of groups or initiatives aimed at "attacking, opposing and libelling that State, its constitutionally established organs and the prevailing constitutional order", since the free, democratic, rule-of-law State could not and should not deliver itself into the hands of its destroyers. Only someone who gave an assurance that after becoming a civil servant he would defend the fundamental principles of the Basic Law in the way described possessed the necessary qualifications within the meaning of article 33 (2) of the Basic Law. The employing authority could not give the applicant the benefit of any doubt as to his loyalty to the Constitution.

On the central question—whether "party privilege" (Basic Law, art. 21 (2)) excludes the employing authority from taking into account the applicant's membership of a party which, though not banned, is in the authority's view essentially anti-constitutional—the court came to the conclusion that "the discretion of the employer in applying civil service regulations on political loyalty is not limited by article 21 (2) of the Basic Law". Since membership of a political party was an element of behaviour which could be of considerable importance in determining the suitability of the applicant, the court held that it would be "absolutely arbitrary" to exclude this element from the evaluation of personality, that is, to force the employer to assume the loyalty to the Constitution of a civil servant simply because the Federal Constitutional Court had not yet ruled on the constitutionality of a given party. The court took the view that the principles of political loyalty were applicable also to preparatory service for the civil service, even when this (for example, service as a graduate trainee lawyer or teacher) was the qualification not only for the professional civil service but also for entering a private profession. In order that training should not entail involuntary membership of the civil service, which would be objectionable in the light of

⁶³ *BVerfGE* 39, pp. 258 and 276; *NJW* 1975, pp. 1501 and 1504.

⁶⁴ *BVerfGE* 33, p. 303.

⁶⁵ *BVerfGE* 39, p. 334; *NJW* 1975, p. 1641.

the guarantee of free choice of place of training (Basic Law, art. 12 (1)), the State would have either to offer, for those contemplating a profession outside public service, an equivalent and non-discriminatory practical training, or to provide for an exception within civil service regulations allowing practical training to be carried out, if desired, without entering into a civil service relationship.

Expulsion from an adult education institute

In a ruling of 27 January 1976,⁶⁶ the Federal Constitutional Court decided that exclusion on disciplinary grounds from an institute of adult education infringed the basic right to free choice of employment under article 12 (1) of the Basic Law and therefore required a basis in law. The complainant, then aged 25, after several years in a trade, was attending a course which would qualify him for higher education; immediately before the final examination he was expelled from the course for a breach of regulations. While criminal proceedings taken against him ended in his acquittal and the Administrative Court invalidated his expulsion as being disproportionate to the offence, the Higher Administrative Court and the Federal Administrative Court ruled that the original disciplinary order had been lawful. They took the view that the fact that, at the time, there had been no foundation in law for this order had had to be accepted temporarily in the interest of enabling the course to function. In reversing this ruling, the Federal Constitutional Court pointed out that legal opinion on rights and obligations in educational establishments has changed considerably in recent years. Turning away from the traditional concept of "special authority", the courts were increasingly demanding that important measures affecting education should have a basis in law. This demand was constitutionally acceptable at least as regards expulsion from an institution for adult education since, depending on its duration and the detailed circumstances, expulsion could have a decisive influence on the further course of the person's life and education and thus on his social role. In addition, expulsion from an adult education institution necessarily meant that entry to a desired trade or profession would be rendered either impossible or at least more difficult and that the chances of freely choosing a profession would be diminished. A measure of this kind would therefore be constitutional only if it met the requirements of article 12 (1) of the Basic Law, which expressly demands a basis in law. In the absence of a basis in law, the measure must always be unconstitutional. It was true that this absence of legal provision could be accepted temporarily, in exceptional cases where interpretation of the Constitution had changed, in order to ensure the continued functioning of State institutions. During such a temporary period, however, the power of the authorities and courts to encroach on positions protected by the Constitution was restricted to what was indispensable in the specific case, and in the light of all the circumstances, for the continued smooth functioning of the institution. In the present case, it was not clear if it had been essential to expel the complainant from the course just before the examinations began.

Conditions for leaving the professional military service

Under section 46 (4) of the Army Law as amended by the law of 10 January 1968,⁶⁷ a professional soldier whose military training has included a university course or specialist training, and who leaves the service at his own request before he has served for a period three times as long as that of the course or training, must repay the costs incurred. In cases of special hardship, however, the obligation to repay may be wholly or partly waived. According to a ruling by the Federal Constitutional Court of 22 January 1975,⁶⁸ this provision does not violate the right under article 12 (1), first sentence, of the Basic Law freely to terminate a chosen profession. This basic right does not relieve a person who changes his profession from the duties arising from termination of his previous professional status, as laid down by a constitutional law with a view to ensuring an orderly transition.

⁶⁶ BVerfGE 41, p. 251.

⁶⁷ BGBl I, p. 56.

⁶⁸ BVerfGE 39, p. 128.

Section 46 (4), first sentence, of the Army Law is just such a law. Since the profession of regular soldier is designed to be for life, an employer who provides a regular soldier with an expensive education in the interests of the service can assume as a matter of principle that the knowledge acquired will be at his disposal permanently. If not, provision must be made for adequate compensation. The provision the court had been asked to examine took equal account of the interests of the employer and of the soldier.

Compensation for dismissal

The question whether it is constitutionally permissible for the compensation paid to an employee on premature termination of his contract to be reckoned against his unemployment benefit was the subject of a decision by the Federal Constitutional Court of 12 May 1976.⁶⁹ The plaintiff in the original case had been summarily dismissed without notice by his employer. On his appeal, the two parties agreed before the Labour Court that the dismissal should be maintained and that the plaintiff should receive a sum of DM 8,800 in lieu of notice. When the plaintiff then registered as unemployed, the Labour Office refused to pay unemployment benefit for the period up to the expiry of the customary notice—in this case six months—since for this period the plaintiff had received wages in the form of the compensation money, and under section 117 (2) of the Labour Promotion Law this excluded payment of unemployment benefit. In its opinion on the ruling of the appropriate Social Court, the Federal Constitutional Court held that the provision quoted conflicted with the principle of equality (Basic Law, art. 3 (1)) in conjunction with the social State principle (Basic Law, art. 20 (1)), to the extent that it implied that compensation received by an unemployed person on premature termination of his contract led to total loss of the right to unemployment benefit. The court pointed out that compensation was often intended to cover loss of social assets. If the law ignored this aspect and treated compensation money merely as wages, this would force unemployed people whose contract had been terminated prematurely to use up the entire compensation sum, including the element relating to social assets, whereas unemployed people whose contract had been terminated with due notice would receive the full compensation.

Protection of the right to express one's opinion

The duty of the works council, under article 74 (2), third sentence, of the Works Constitution Act of 1972,⁷⁰ to refrain from any party political activity within the works lay at the centre of a decision by the Federal Constitutional Court of 28 April 1976.⁷¹ In the case under discussion, the complainant had distributed his trade union's electoral propaganda for the forthcoming communal elections in the factory area before working hours and had been ordered by the *Land* Labour Court in the second instance to be expelled from the works council on the grounds of gross dereliction of duty with reference to the provision mentioned above. The Federal Constitutional Court held that, although the *Land* Labour Court's decision was not an impairment of the basic right to form associations (Basic Law, art. 9 (3)), since this did not embrace the distribution of trade union propaganda for political elections, it nevertheless infringed the basic right of the complainant freely to express his opinion (Basic Law, art. 5 (1)). In a free democratic State, this basic right was of special importance and must be given due weight in works constitution law, especially as many people spent a large part of their daily life at work in factories. Although the prohibition of party political activity as such contained a constitutional restriction of the basic right of freedom of opinion (Basic Law, art. 5 (2)), in applying the law the effect of the basic right must be taken into account. That would have been possible here either by a narrower interpretation of the term "party political activity" or by denying the existence of grave dereliction of duty. In the circumstances of the case in point, expulsion from the works council represented a reaction out of all reasonable proportion to the action of the complainant.

⁶⁹ *BB* 1976, p. 1077; *NJW* 1976, p. 2117.

⁷⁰ *BGBI* I, p. 13.

⁷¹ *DVBt* 1976, p. 709.

Worker participation

Worker participation in the boards of industrial companies was introduced into the Federal Republic of Germany by the Coal and Steel Co-determination Law of 1951⁷² and the Works Constitution Act of 1952.⁷³ The Co-determination Law of 4 May 1976⁷⁴ developed the concept further by introducing worker co-determination, with equal rights and on the same footing, for all incorporated companies normally employing more than 2,000 employees. The central clause of the law provides an equal number of seats on the board for shareholders and employees in each company, the worker members, consisting partly of persons employed in the company and partly of trade union representatives, being elected either by primary direct elections or by delegates according to the size of the concern. The law came into force on 1 July 1976, and the boards of directors of the companies concerned must be brought into conformity with the provisions of the law within a two-year transitional period.

S. International instruments

(article 28 of the Universal Declaration)

With effect from 1 July 1976 the Federal Republic of Germany has recognized the competence for a further five years each of the European Commission of Human Rights and the European Court of Human Rights, under articles 25 and 46, respectively, of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. The declarations of acceptance also extend to Protocol No. 4, dated 16 September 1963, to that Convention.

In a law of 12 April 1976⁷⁵ the Federal Parliament and Upper House approved the Convention relating to the Status of Stateless Persons of 1954.

In the period under review, the Federal Republic of Germany extended its network of bilateral agreements on employees' social insurance. Thus, the agreement with Israel of 17 December 1973 on social security came into force on 1 May 1975, and a similar agreement with the United States of America of 7 January 1976 was approved by the Bundestag and the Bundesrat by a law of 2 August 1976. Other instruments which have entered into force are the Agreement of 25 April 1974 between the Government of the Federal Republic of Germany and the Government of the German Democratic Republic on Health Questions (on 1 January 1976), the Convention with Great Britain of 19 November 1974 on the Provision of Benefits in Kind within Sickness Insurance (on 1 February 1976), and the Agreement of 9 October 1975 between the Federal Republic of Germany and the People's Republic of Poland on Pension and Accident Insurance, together with a Supplementary Arrangement of the same date (on 1 May 1976).

⁷² *BGBI* I, p. 347.

⁷³ *BGBI* I, p. 681.

⁷⁴ *BGBI* I, p. 1153.

⁷⁵ *BGBI* II, p. 473.

GUYANA

A. Right to an effective remedy

(article 8 of the Universal Declaration)

The Income Tax Act provides that a taxpayer who is dissatisfied with the assessment of the Commissioner of Inland Revenue can appeal in the first place either to the Board of Review or to a Judge in chambers. If, in the first instance, he appeals to the Board of Review and is dissatisfied with its decision he can then appeal therefrom to a Judge in chambers. The Income Tax (Amendment No. 2) Act 1970 provides that a taxpayer who desires to appeal against an assessment by the Commissioner to the Board of Review must first deposit with the Commissioner a tax equal to two thirds of the tax which is in dispute. If the taxpayer appeals to a Judge in chambers, the deposit must be equal to the whole amount of the tax which is in dispute.

In judgements rendered on 15 November 1976 (*Bata Shoe Co. Guyana Ltd. et al. v. Commissioner of Inland Revenue and the Attorney General; The Guyana Unit Trust Management Company Limited et al. v. Commissioner of Inland Revenue and Attorney General*),¹ it was held that the Constitution did not guarantee a right of appeal from tax assessments. The right depended wholly and solely on ordinary statutes which could attach conditions to the exercise of the right of appeal, including a requirement for the deposit of the tax assessed. The Income Tax (Amendment No. 2) Act 1970 did not, therefore, fetter the taxpayer's right to approach the Court for a determination of his rights as guaranteed by the Constitution.

B. Right to own property; right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

The Constitution (Amendment) Act 1975² amends the provisions of articles 8 and 92 of the Constitution relating to compulsory acquisition of property of any description. The amendment requires that such acquisition shall be by or under the authority of a written law which provides for compensation, and either fixes the amount of compensation or specifies the principles on which it is to be assessed. It also prescribes that the provisions of the Acquisition of Lands for Public Purposes Act shall be deemed to specify the principles on which and the manner in which the payment of compensation is to be determined. The amendment precludes challenge in any court on the ground that the compensation provided by that law is inadequate. (See also sect. C below.)

C. Right to education

(article 26 of the Universal Declaration)

The Constitution (Amendment) Act 1976,³ passed by the National Assembly on 10 September 1976, amended articles 8 and 11 of the Constitution to enable the Government to assume full ownership and control of all government-aided schools and thus make better provision for the promotion of education in Guyana. The Act vested in the State certain government-aided schoolhouses, their records and equipment, and gave the Minister of Education the power to make an Order vesting in the State any land appurtenant to any schoolhouse. The Minister may, in such circumstances as he thinks just, pay com-

¹ *Court of Appeal*, Civil Appeals Nos. 10 and 12 of 1975.

² *Official Gazette, Legal Supplement*, 1975, No. 35.

³ *Ibid.*, 1976, No. 9.

pensation in such amount and in such manner as may be determined by him for the property, and any determination made by him in this respect shall be final and conclusive and shall not be called in question in any court on the ground that the compensation is not adequate.

HUNGARY

Introduction

The legislation adopted in Hungary during the period under consideration dealt largely with economic, social and cultural rights. The following international instruments were given the force of national law: the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Decree-law No. 7 of 1976); the International Covenant on Civil and Political Rights (Decree-law No. 8 of 1976); the International Covenant on Economic, Social and Cultural Rights (Decree-law No. 9 of 1976); and the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (Decree-law No. 27 of 1976).

A. Legal aid

(articles 10 and 11 of the Universal Declaration)

The legal aid provided by the trade unions, in accordance with Directive No. 1/1976/III.27 of the Central Council of Hungarian Trade Unions, adds a new element to the legislative guarantees of the enjoyment of human rights in the Hungarian People's Republic. The assistance has the following characteristics:

- (a) It is available to any worker who is employed, whether or not he is a member of a trade union, as well as to retired workers and industrial apprentices;
- (b) Its main function is the legal representation of workers in matters relating to employment and social insurance, as well as in civil, administrative and criminal cases;
- (c) It also includes the provision of legal information to workers on request;
- (d) It is free of cost.

B. Right to social security

(articles 22 and 25 of the Universal Declaration)

The whole system of social security was reshaped by the Social Insurance Act of 1975 (Act No. II of 1975)¹ and the legislative instruments giving effect to it. Coverage was extended to practically the whole of the population, and the scope of the benefits was enlarged, particularly so far as concerned the agricultural population.

Decree No. 7/1975 of the Minister of Health² contains basic provisions guaranteeing to all Hungarian citizens the right to free medical and hospital care and to medicaments at reduced prices (arts. 1, 2 (2), 3 and 4).

With regard to the protection of mothers and children, it should be noted that chapter II of the Social Insurance Act contains important provisions, particularly concerning maternity and confinement benefits (arts. 23 and 26).

C. Education and cultural life

(articles 26 and 27 of the Universal Declaration)

Act No. V of 1976 relating to general education³ is one of the most important acts adopted in the two years under review. It codifies the legislation in force and makes the State largely responsible for general education (art. 12), stipulating that participation in

¹ *Törvények és Rendeletek Hivatalos Gyűjteménye* (Official Collection of Laws and Ordinances), 1975 (Budapest, 1976), pp. 3-27.

² *Ibid.*, 1975, pp. 627-630.

³ *Ibid.*, 1976 (Budapest, 1977), pp. 46-54.

general education is the citizen's right. It places particular emphasis on promoting the general-education activities of the nationalities (art. 9), and on the importance of such activities in fostering a better knowledge by the peoples of each other's cultures.

The Act establishes in detail the functions of the cultural institutions that play a major role in general education, such as teaching and training establishments, institutions of general culture, publishing firms, the press, radio and television, museums, scientific and health institutions, etc. The administration and local management of general-education activities are the responsibility of the Council of Ministers and the local authorities, respectively.

An earlier instrument, adopted at a lower level of government—Order No. 1/1975 of the Minister of Culture, the Minister of Finance and the Chairman of the National Planning Office, relating to the establishment of a general-education fund⁴—is designed to ensure a more rapid development of general-education activities.

⁴ *Ibid.*, 1975 (Budapest, 1976), pp. 749-751.

INDIA

A. Non-discrimination; equal rights of men and women (articles 2 and 23 (2) of the Universal Declaration)

The Indian Constitution provides for equality before the law and in educational and employment opportunity for women and men. Besides this, there are legal provisions for safeguarding the interests of women with regard to such matters as employment, marriage, inheritance, guardianship and adoption. In 1971, the Government of India set up a committee to make a comprehensive study of all important aspects of these matters and to make recommendations aimed at removing inequalities and ensuring the involvement of Indian women in national development. The Committee submitted its report on 1 January 1975, and follow-up action is being taken on its recommendations. The Equal Remuneration Act, 1976, was one of the important measures adopted during the period under review.

India joined other countries of the world in observing the year 1975 as International Women's Year. A National Committee on the International Women's Year, with the Prime Minister as President, was set up to formulate a programme for the Year. The programme included the issue of a commemorative postage stamp, the observance of 16 February 1975 as All India Women's Day, the distribution of educative material among individuals and institutions, publicity measures through All India Radio as well as through films, film festivals, exhibitions, seminars, discussions and other media, the undertaking of research and the identification of the critical issues relating to women.

The National Committee on the International Women's Year recommended at its valedictory meeting, in February 1975, the constitution of a representative and broad-based committee to review the implementation of a national plan of action for women. In October 1976, the Government of India appointed a National Committee on Women to keep a watch on the safeguarding of women's rights.

B. Marriage law (article 16 of the Universal Declaration)

Several important laws have been passed that improve the status of women, including the following: the Marriage Laws (Amendment) Act, 1976; the Special Marriage Act, 1954 (as modified up to 1 July 1976); and the Hindu Marriage Act, 1955 (as modified up to 1 July 1976).

C. Right to work and to just and favourable conditions of work; right to security in the event of disability (articles 23 and 25 (1) of the Universal Declaration)

Conditions of work

The Sales Promotion Employees (Conditions of Service) Act, 1976, provides for the improvement of the conditions of work of persons employed or engaged in any establishment.

The Bonded Labour System (Abolition) Act, 1976, provides for the abolition of the bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the population.

The handicapped

The Government of India is implementing a number of schemes for the education, training and rehabilitation of the physically handicapped to enable them to play a useful role in the society.

A national centre for the blind, a training centre for the adult deaf, a school for partially deaf children and a model school for mentally deficient children are being run at State expense.

It is proposed to establish a National Institute for each major category of handicapped persons which will not only extend specific services but also act as consultant to the Government and non-governmental organizations.

The Government has established a number of scholarships in education to enable handicapped children to pursue general, technical and professional courses.

Special employment exchanges are being run to find suitable employment avenues for physically handicapped persons. Some of the state governments have made special job reservations for the physically handicapped in their public services and have relaxed the upper age limit in their favour. Government and nationalized banks encourage self-employment among handicapped persons through loans, subsidies, etc.

Concessions are also given to handicapped persons in rail and air travel. The Indian Income-Tax Act also provides for a special rebate to blind and other seriously handicapped persons.

Voluntary welfare organizations are assisted by the central and state governments to establish, expand and improve services for the handicapped.

One award each for the best employers of the blind, the deaf and the orthopaedically handicapped is given every year. Similarly, two awards each are given every year to the best employees amongst the various aforementioned categories.

D. Right of children to special care and assistance

(article 25 (2) of the Universal Declaration)

Children's programmes have been accorded the highest priority in the social welfare section in the Fifth Five-Year Plan (1974-1979). The Government of India has sanctioned the Integrated Child Development Scheme under which 33 projects have already started functioning with the object of delivering a package of services, viz. supplementary nutrition, immunization, health check-ups, referral services, health and nutrition education and non-formal pre-school education.

Another important programme has been implemented for the benefit of abandoned, neglected, unwanted and destitute children through voluntary organizations, which are extended financial assistance by the Government of India for the purpose. Increased coverage has been given to the scheme for running crèches for children of working women by enhancing government grants.

India observes Universal Children's Day every year on 14 November, which happens to be the birthday of India's first Prime Minister, who was an ardent lover of children. The Day is celebrated throughout the country in a fitting manner by the organization of special children's programmes.

India has supported the United Nations move to observe 1979 as the International Year of the Child and was the first country to announce its contribution.

IRAN

A. Right to life and security of person

(article 3 of the Universal Declaration)

Since the right to life is an inalienable and fundamental right of each person, every attempt must be made to prevent its violation. To this end the Imperial Government has, during the years 1975 and 1976, taken the following steps:

(a) The law concerning the amendment of certain provisions of the Nutrition, Beverages and Cosmetics Law was ratified on 9 March 1975.¹ The said law was passed in order to protect consumers against the preparation and supply of adulterated items which cause illness, mutilation, injury, defacement or death. The new law prescribes more severe punishment for such offences.

(b) The law prescribing more severe punishment for kidnapping, using force or deceit with the intent to extort money, or taking revenge, was ratified on 9 March 1975.²

(c) The law concerning the pardon or commutation of sentences of individuals convicted by military or civil courts who were eligible for pardon at the time of the approval of the law was approved on 14 March 1976.³

(d) The Pardon Committee's regulations concerning reduction or reversal of sentences passed on non-political offenders were ratified on 14 June 1975.⁴ The Pardon Committee is to convene four times annually to recommend the eligible prisoners for pardoning.

B. Treatment compatible with human dignity

(article 5 of the Universal Declaration)

The regulations governing prisons and their affiliated agricultural institutions, composed of 301 articles, were approved on 10 July 1975.⁵ Almost all the rules contained in the Standard Minimum Rules for the Treatment of Prisoners, sanctioned by resolution 663 C (XXIV) of the United Nations Economic and Social Council, together with other complementary provisions, have been incorporated into these new regulations.

C. Right to recognition as a person before the law

(article 6 of the Universal Declaration)

In order to regulate the personal status registration procedure and the method of registering births, deaths, marriages and divorces of both Iranians and foreigners, the Personal Status Registration Law was passed in July 1976.⁶

Article 39 of the Statute on Personal Status⁷ concerning the registration of the particulars of urban and rural inhabitants, the pattern of migration, places of residence and number of families was approved on 23 October 1976; such registrations will be made in police stations, gendarmeries, public places and shops.

¹ *Justice Department, Statute Book*, 1353, pp. 442-444.

² *Ibid.*, 1353, pp. 446-448.

³ *Ibid.*, 1354, p. 408.

⁴ *Ibid.*, 1354, pp. 25-27.

⁵ *Ibid.*, 1354, pp. 42-94.

⁶ *Official Journal*, 2535, No. 327, pp. 670-685.

⁷ *Ibid.*, 2535, No. 335, pp. 968-971.

D. Protection against arbitrary interference with privacy
(*article 12 of the Universal Declaration*)

The Council of Ministers on 13 September 1976 ratified the newly drafted Editors and Reporters Regulations.⁸ It is impressed on professional writers and translators employed by newspaper and magazine establishments and on those engaged in socio-political reporting that the information they send to their headquarters should be accurate and that they should refrain from interfering in the personal and family life of others.

E. Protection of the family
(*article 16 of the Universal Declaration*)

The Family Protection Law was ratified on 4 February 1975.⁹ The new law, in which a greater degree of family protection was embodied, superseded the old Family Protection Act.

The new law provides, among other things: for special steps for the investigation of family disputes without official judicial procedure and in private; for the determination of family disputes; for investigations to be conducted free of court or legal fees if the people concerned have limited financial resources; for arbitration and conciliation procedures, whenever appropriate; for procedures to deal with disputes in cases where the contending parties reside abroad; for determination of the cases in which filing for divorce is justified; for arrangements to be made concerning the guardianship and living expenses of children in cases where divorce action is inevitable owing to incompatibility and for arranging regular meetings between parents and children; for recognition of a husband's right to ban his wife from any employment that may prove prejudicial to the interests of the family or the dignity of the husband, and of the right of the wife to do likewise, provided that no hardship is caused to the family's life style; for raising the marriageable age to 18 for women and 20 for men; for health certificates to be produced before marriage is contracted.

On 1 April 1975 the regulations governing the procedure for implementing decisions of the family courts were ratified.¹⁰ On 3 May 1975, the working regulations of the Family Protection Law were approved.¹¹

F. Socio-economic and cultural rights
(*article 22 of the Universal Declaration*)

The Women's Social Services Act, ratified on 4 July 1968,¹² provided the opportunity for women, after completing their education in secondary school or higher, to work and render social, cultural, educational and health services for salaries equal to those of men. A new law amending that Act was ratified on 5 January 1975.¹³ It provides for improvements which benefit women, including an adjustment of the eligibility age and of the remuneration for their work.

The law concerning the provision of welfare services for people in lower income brackets was ratified on 13 March 1975.¹⁴ By virtue of this law an agency affiliated with the Ministry of Social Welfare was organized to tackle the major tasks stipulated in the law. The agency's responsibilities consist of reviewing the welfare requirements of individuals and groups and preparing plans and working programmes, providing uninsured and low-income

⁸ Justice Department, *Statute Book*, 1354, pp. 135-138.

⁹ *Ibid.*, 1353, pp. 301-310.

¹⁰ *Ibid.*, 1353, p. 126.

¹¹ *Ibid.*, 1354, pp. 4-5.

¹² *Ibid.*, 1347, pp. 212-216.

¹³ *Ibid.*, 1353, pp. 282-284.

¹⁴ *Ibid.*, 1353, pp. 474-477.

families with minimum living expenses, granting financial aid to disabled persons, taking care of children and elderly people and giving advice to families on welfare matters. The statute on the provision of social welfare was ratified by both houses of parliament on 29 May 1975.¹⁵

With a view to ensuring a more equitable distribution of income throughout the country, to widening the ownership of production enterprises and increasing public participation—more especially that of workers, farmers and employees—in production enterprises, the following measures, among others, were adopted:

(a) By virtue of the Royal Decree issued on 24 April 1975,¹⁶ the major production enterprises were asked to convert into common shareholder companies and to offer their shares first to their own workers and employees and then to offer the remainder to farmers and the general public, in such a way that 99 per cent of the shares of government-owned enterprises (with the exception of certain enterprises) and 49 per cent of the shares of private industries would have been disposed of to prospective buyers by 22 October 1978. Newly established industries were asked to follow the same procedure, and the Government was authorized to legislate the necessary rules and regulations and to institute the required financial centres for better and faster execution of this decree;

(b) The Law on Increasing the Ownership of Production Enterprises was ratified on 24 June 1975,¹⁷ and the manner of execution thereof was left to the discretion of the "Increasing Council". It was recommended that to assist workers and farmers to purchase the shares offered, a financial institution be set up by the Government. The institution thus formed was to benefit, to the extent necessary, from public revenue sources. Moreover, the law stipulated the provision by the Government of facilities for raising the capital necessary for the establishment of small common share investment companies within the private sector;

(c) The Statute on the Financial Organization for the Development of Production Enterprises was ratified on 2 July 1975.¹⁸ It set up a common share company with a total capital of one billion rial, for the purpose of extending loans to workers and farmers to enable them to purchase shares in production enterprises;

(d) The decree exempting from taxation the interest realized from bonds issued for the increase of production enterprise ownership was ratified on 13 September 1976.

The Law on Social Security, comprising 118 articles, was ratified on 24 June 1975.¹⁹ The aim of this law is the dissemination and expansion of all types of social insurance and the establishment of a co-ordinated system suitable for the social security programmes, covering accidents, pregnancy, loss of pay, disability, retirement and death. The law provides for the extension of financial assistance to large families.

By virtue of this law and in order to accomplish the above goals, the Social Welfare Organization, affiliated with the Ministry of Social Welfare, was formed. The organization's revenue comes from workers and employees (7 per cent of wages or salaries), employers (20 per cent) and the Government (3 per cent).

All salaried or wage-earning individuals and all self-employed persons, as well as pensioners and the handicapped, are covered by this law. Foreign nationals working in Iran are also covered. It is hoped that the law will gradually take the entire rural population under its shield. The provision of medical care as stipulated in this law is the responsibility of the Health Service Organization.

¹⁵ *Ibid.*, 1354, pp. 7-11.

¹⁶ The text of the decree was published in the daily newspapers.

¹⁷ *Justice Department, Statute Book*, 1354, pp. 229-232.

¹⁸ *Ibid.*, 1354, pp. 113-117.

¹⁹ *Ibid.*, 1354, pp. 232-262.

G. Right to favourable conditions of work

(article 23 of the Universal Declaration)

The statute and regulations comprising 298 articles concerning safety and security measures in mines were ratified on 17 November 1975.²⁰ The law prescribes the appointment of a permanent safety officer and the adoption of proper precautionary measures for the prevention of accidents in each mine. The law also provides for certain health standards to be observed in mines and for safety equipment and first-aid facilities to be available.

The rules governing agricultural workers' overtime (note 2, article 7, of the Agricultural Work Law, ratified on 12 December 1976)²¹ establish the procedure for working extra hours with the mutual consent of both employer and employee and in emergency cases at the request of the employer.

The regulation governing the adoption of measures of safety and hygiene in agricultural activities (article 30 of the Agricultural Work Law)²² provides for maintaining standards of safety and hygiene in the work environment.

H. Right to an adequate standard of living

(article 25 of the Universal Declaration)

1. HEALTH AND WELFARE

A Royal Decree was issued on 25 June 1975 concerning the provision of public insurance.²³

The law concerning the establishment of the Ministry of Health and Hygiene was ratified on 7 July 1976.²⁴ The Ministry will provide social welfare treatment and rehabilitation, social security and family planning measures. For the purpose of implementing article 3 of this law, the Statute of the Regional Health and Hygiene Organization, in provinces and townships was approved on 1 November, 1976 by the Council of Ministers.²⁵

2. DETERMINATION AND STABILIZATION OF PRICES

To secure a better and more prosperous life for the people of the country, a Royal Decree was issued on 6 August 1975²⁶ providing for the determination and stabilization of prices, the reasonable and equitable distribution of commodities, and an incessant campaign against the exploitation of consumers.

3. IMPROVEMENT OF NUTRITION

A law providing for the punishment of persons guilty of impairing the supply and distribution of livestock, meat, flour, sugar, rice, wheat and cooking oil was ratified on 21 May 1975.²⁷

The law concerning the establishment of the Institute of Nourishment and the Food Industry was ratified on 6 July 1976.²⁸ The Institute is responsible for centralizing the research activities in food technology and co-ordinating them with the most advanced procedures currently used in developed countries, and for setting the necessary guidelines for the purpose of improving people's diet and eating habits.

²⁰ *Ibid.*, 1354, pp. 216-251.

²¹ *Official Journal*, 2535, No. 335, p. 976.

²² *Ibid.*, pp. 973-976.

²³ The text of the decree was published in the daily newspapers.

²⁴ *Official Journal*, 2535, No. 328, pp. 715-720.

²⁵ *Ibid.*, No. 333, pp. 905-907.

²⁶ The text of the decree was published in the daily newspapers.

²⁷ *Justice Department, Statute Book*, 1354, pp. 55-56.

²⁸ *Official Journal*, 2535, No. 328, pp. 711-715.

The law concerning the insurance of agricultural produce was ratified on 8 July 1976.²⁹ By virtue of this law, the Insurance Company of Iran has undertaken to institute a fund with an initial capital of 50 million rial for the purpose of insuring all types of agricultural produce, trees, livestock, fowls, silkworms and honey bees. Under the law, a high-ranking committee is formed, composed of three cabinet ministers and the heads of the Plan Organization and the Central Bank of Iran. The committee's rulings on insurance policies will be enforceable. The extent of the Government's financial contribution to the fund will be determined by the Council of Ministers.

Two decrees, dated 23 August³⁰ and 6 December 1976,³¹ were issued concerning the manner in which the funds allocated for the improvement of students' nutrition are to be used.

4. HOUSING

Various steps were taken to provide more and better housing.

According to an amendment of the Statute of the Housing Organization that was ratified by both Houses of Parliament on 24 June 1975,³² the Housing Organization was set up, with a capital of one billion dollars. It is to be managed as a corporate body, affiliated with the Ministry of Housing and Urban Development, and is to prepare and execute construction and development plans and to facilitate the work of housing construction by the public and private sectors.

During 1976, the Council of Ministers approved the statutes of a number of housing loan and savings companies in Teheran and several other towns.

5. RIGHT OF MOTHERHOOD AND CHILDHOOD TO SPECIAL CARE AND ASSISTANCE

A decree adopted on 5 July 1976³³ allows a woman to receive three months of sick leave with pay and the related allowances for the birth of her first child and her second child. The mother can, on a physician's recommendation, also receive sick leave for the birth of her third child.

A law that was ratified on 20 March 1975³⁴ provides for the protection of children with no guardian who have reached the age of 12, whose parents are dead or unknown or whom no one has claimed. According to this law, the guardianship of such children may be given to childless couples.

A decree was issued on 25 December 1975 for the protection of mothers and their newborn babies.³⁵ By virtue of this decree, the Government must assist families unable to provide for the nourishment and physical and moral development of their children up to two years of age. The Government is to assist such mothers during the pre-birth period also.

I. Right to education

(article 26 of the Universal Declaration)

The working regulations of article 8 of the law for the provision of supplies and facilities for the education of children and youth in Iran were ratified by both Houses of Parliament on 3 July 1975.³⁶

²⁹ *Ibid.*, 2535, No. 326, pp. 658-659.

³⁰ *Ibid.*, 2535, No. 331, pp. 839-843.

³¹ *Ibid.*, 2535, No. 334, pp. 930-943.

³² *Justice Department, Statute Book*, 1354, pp. 57-63.

³³ *Official Journal*, 2535, No. 26, p. 660.

³⁴ *Justice Department, Statute Book*, 1353, pp. 477-480.

³⁵ The text of the decree was published in the daily newspapers.

³⁶ *Justice Department, Statute Book*, 1353, pp. 143-146; text of the regulations in *ibid.*, 1354, pp. 98-103.

A decree concerning free education in high schools and universities, provided that the students pledge to serve the Government, was issued on 7 December 1975.³⁷

On 8 July 1976, a law designed to improve the quality of education was approved.³⁸ It provides for research and investigation of the quality of education, preparation and continuous evaluation of scholastic programmes, compilation of academic textbooks, and preparation of schools and other educational institutions for the application of modern facilities.

A decree approved on 27 December 1976³⁹ provides for an increase in the amount of the educational grants given to students who are studying abroad at government expense.

³⁷ The text of the decree was published in the daily newspapers.

³⁸ *Official Journal*, 2535, No. 327, pp. 685-688.

³⁹ *Ibid.*, 2535, No. 336, pp. 998-999.

IRAQ

A. Protection of minorities

(article 2 of the Universal Declaration)

Statute No. 4 of 1975 concerning the Institutions of the Autonomous Region supplements the regulations concerning organs of government of the Kurdistan Region, which is inhabited by Kurdish citizens.

Law No. 52 of 1975 declares a general amnesty for Kurdish soldiers and civilians reporting to their district centre or to the nearest military or civil authority during the period of the law's validity.

B. Right to return to one's country

(article 13 of the Universal Declaration)

Under Revolutionary Command Council Decision No. 1293 of 1975 (a decision having the force of law), Iraqi Jews who left the country after 1948 are allowed to return there. The same legislative decision provides that Iraqi Jews who return to Iraq shall enjoy all the legal rights of Iraqi citizens, and the Government guarantees to all returning Jews the full constitutional rights of Iraqi citizens, including equality and a peaceful existence without discrimination.

C. Right to a nationality

(article 15 of the Universal Declaration)

Law No. 5 of 1975 empowers the Minister of the Interior to grant Iraqi nationality to all Arabs (with the exception of Palestinians) of full legal age who apply for it, even if they do not satisfy the conditions laid down for naturalization in the laws at present in force.

D. Equality of rights of the spouses

(article 16 of the Universal Declaration)

Law No. 191 of 1975 accords married women the same financial rights and privileges as men by providing that a female State employee is entitled to the same cost-of-living allowance as her husband. It treats a woman as an independent taxpayer for income-tax purposes: she enjoys the same tax allowance as she was entitled to before her marriage, and also the husband's allowance if he is unable to work and has no private income. The law in question also provides that children may inherit the pension rights of either spouse.

E. Right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

Under Law No. 193 of 1975, the power to sequester the property of persons convicted of a felony *in absentia* or guilty of a crime against the external or internal security, or the rights or property, of the State is restricted to the judiciary and withdrawn from the bodies that formerly exercised it. Furthermore, Revolutionary Command Council Decision No. 1320 of 1975 (a decision having the force of law) prohibits the sequestration of personal property for any reason whatever and restores this power to the judiciary, to be exercised in accordance with the law.

F. Right to social security; health insurance
(articles 22 and 25 of the Universal Declaration)

In the field of social security, Law No. 37 of 1976 ratified the Arab Convention on Minimum Social Security Levels adopted by the first conference of the Arab Labour Organization (Cairo, April 1971) in recognition of the fact that social security is a fundamental prerequisite for the achievement of justice and its enjoyment by the peoples of the Arab States, and with a view to establishing certain internationally recognized basic levels as minimum standards in labour legislation and social security in the Arab Labour Organization and to upgrading those standards for the purpose of attaining the aforementioned objectives.

Law No. 211 of 1975 establishes a public health insurance service (supplementing the provisions of the Law concerning Health Insurance promulgated in 1973) to provide health care in all parts of the country, including rural areas.

G. Right to education
(article 26 of the Universal Declaration)

1. PRIMARY EDUCATION

Law No. 118 of 1976 concerning Compulsory Education¹ guarantees completion of primary education to all children in Iraq. This law will be applied as from the school year 1978/79. Article 1 provides that education at the primary level shall be free and compulsory for all children aged 6 or over and makes it compulsory for parents to enrol their children in primary schools. For its part, the State is obliged to provide all educational facilities, such as books, stationery, premises, teachers, etc., free of charge.

2. VOCATIONAL TRAINING

Law No. 198 of 1975 provides for the establishment of the Vocational Education Foundation, which is affiliated to the Ministry of Education and has a triple function: to spread vocational education and training within the requirements of the national development plans, and to raise its standards, both theoretical and applied; to keep pace with modern vocational and technical developments by strengthening cultural and technical relations with Arab and foreign scientific foundations; and to institute continuous interaction between the Foundation and the various sectors by the exchange of information and experience, and of teachers and lecturers.

3. LITERACY AND ADULT EDUCATION

By Decision No. 740 of the Revolutionary Command Council, of 6 July 1976, the functions of the Higher Committee for Literacy established under Law No. 153 of 1971 were transferred to the Higher Committee for Literacy set up within the Revolutionary Command Council.

By Decision No. 1/4/3123 of the Revolutionary Command Council, of 19 July 1976, the name of the Higher Committee for Literacy was changed to "Supreme Council for Compulsory Literacy and Adult Education".

In order to strengthen national unity and ensure that teaching in autonomous zones is in the languages of their inhabitants, the competent authorities continued, during the period 1975-1976, the preparation and printing of textbooks in Kurdish, the organization of training courses for Kurdish teachers and the preparation of research and studies, in Kurdish, on school curricula and their development. In addition, they gave financial support to the publication of literary works by Kurdish authors and prepared reading books in Turkoman for the fourth and fifth primary-school grades.

¹ *Waqayi' al Iraqiya*, No. 2552, 11 October 1976.

4. RURAL EDUCATION

Special priority was given to the spread of education in rural, remote, and socially and economically unprivileged areas. This has led to an increase in the number of pupils at primary and secondary schools in those areas.

5. EDUCATIONAL INNOVATION

Various new projects were tried out during the period 1975-1976, such as projects for technical schools engaged in production, comprehensive secondary schools, schools for boys and girls of 10-15 years of age who had had no opportunity of attending ordinary schools, the Pilot Experimental Project for an Integrated Approach to Education for Rural Development, and compulsory literacy campaigns.

6. EDUCATION FOR STUDENTS FROM OTHER ARAB COUNTRIES AND FOR FOREIGN STUDENTS

Free education for these students in schools and institutions, and the provision of education grants for them, were continued.

IRELAND

A. Criminal law and jurisdiction

(articles 3, 7, 9, 10, 11, 29 and 30 of the Universal Declaration)

Criminal Law (Jurisdiction) Act, 1976¹

This Act extends the criminal law of the State, so far as concerns certain serious offences, to offences committed in Northern Ireland. The offences in question include most of the more serious offences against persons and property and they have become extraterritorial offences. The Act also reforms the substantive criminal law of the State by making certain amendments to the list of offences. Its constitutionality was upheld by the Supreme Court after referral by the President under article 26 of the Constitution.

Emergency Powers Act, 1976²

This Act refers in particular to article 28.3.3^o of the Constitution, which reads as follows:

“3^o Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this subsection ‘time of war’ includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and ‘time of war or armed rebellion’ includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist.”

The resolution which was adopted by both Houses of the Oireachtas (Parliament) on 1 September 1976 in respect of the Act, therefore, protects laws passed during the emergency and expressed to be for the purpose of securing the public safety and the preservation of the State in time of the armed conflict in Northern Ireland from being declared repugnant to the Constitution. The passing of the resolution followed the murder of the British Ambassador to Ireland and of another British civil servant in Dublin on 15 July 1976. These crimes, which hit at the friendly relations existing between Ireland and the United Kingdom, were the culmination of a long series of violent crimes, murders (including those of a member of Parliament and of policemen), kidnappings, robberies, etc. It is the intention of the Government to use the immunity conferred by the resolution to pass only whatever measures are strictly necessary for the protection of the community and the preservation of a free society. In the course of his speech when moving the Emergency Motion in the Dáil (Chamber of Deputies), the Taoiseach (Prime Minister) said:

“...the very existence in the Constitution of the article under which this resolution is moved is evidence that there are circumstances in which a democratic government may be compelled to limit the exercise of individual rights in the interests of protecting from attack the ordered community of the State without which anarchy and armed repression would reign supreme and the exercise of individual rights and fundamental freedoms be utterly abolished.”³

¹ *Acts of the Oireachtas*, 1976, No. 14.

² *Ibid.*, 1976, No. 33.

³ *Dáil Debates*, vol. 292, No. 1, col. 11.

The Act, which was passed following the declaration by the Houses of the Oireachtas of a state of emergency, provides for the arrest by the police, without warrant, of persons suspected with reasonable cause of committing, having committed or being about to commit certain specified offences. A person arrested under the Act may be kept in custody for up to 48 hours and, if a policeman not below the rank of chief superintendent so directs, this period of custody may be extended for a further period not exceeding five days.

The Act remains in force for 12 months from the date of its enactment but it may be continued in force or again brought into force by government order. The Act shall automatically expire whenever both Houses of the Oireachtas resolve that the national emergency has ceased to exist.

A derogation from the Convention for the Protection of Human Rights and Fundamental Freedoms, arising out of the provisions of the Emergency Powers Act, has been made.

Criminal Law Act, 1976⁴

This Act made a number of amendments in the criminal law and in powers of enforcement and investigation. The maximum penalties for certain offences were increased (mainly offences of a subversive nature) and new offences were defined in respect of incitement to join unlawful organizations, of aiding, facilitating or arranging escapes from lawful custody and of giving false information.

New or increased powers of search were given to the police in respect of certain specified serious offences and powers of arrest and search similar to those of the police were given to the army when acting in response to a specific request from the police for assistance. The army powers of arrest and search are only exercisable when the Emergency Powers Act, 1976, is in force.

B. Jury service

(articles 7 and 11 of the Universal Declaration)

Substantial changes have been made by the Juries Act, 1976,⁵ in the law relating to jury service. All persons aged 18 years or over and under 70 years who are on the registers of Dáil electors are now qualified and liable. Women are no longer exempt but are liable like men. The right of the prosecution to "stand by" any number of jurors has been abolished and the prosecution and defence are now in the same position as regards challenging jurors.

C. Freedom of information; protection against arbitrary interference with privacy

(articles 12 and 19 of the Universal Declaration)

The Broadcasting Authority (Amendment) Act of 21 December 1976⁶ has two major functions. The first is to clarify and expand the duties of the responsible body, the Radio Telefis Eireann (RTE) Authority, in fulfilling its task of providing a national broadcasting service. The second is to provide greater autonomy and freedom for the broadcasting service within clearly defined statutory restraints and obligations, while at the same time improving public control in certain areas.

Right to privacy

The Broadcasting Authority is precluded, in its programmes and in the means employed to make such programmes, from unreasonably encroaching on the privacy of an individual.

⁴ *Acts of the Oireachtas*, 1976, No. 32.

⁵ *Ibid.*, 1976, No. 4.

⁶ *Ibid.*, 1976, No. 37.

Objectivity and impartiality

It is the duty of the Authority to ensure that:

- (a) All news broadcast by it is reported and presented in an objective and impartial manner and without any expression of the Authority's own views;
- (b) The broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the Authority's own views;
- (c) Any matter, whether written, aural or visual, relating to news or current affairs, including matters which are either of public controversy or the subject of current public debate, which is published, distributed or sold by the Authority is presented by it in an objective and impartial manner.

The requirement that the Authority should not express its own views does not apply to any broadcast in so far as it relates to a proposal concerning policy as regards broadcasting which is of public controversy or the subject of current public debate and which is being considered by the Government or the Minister. The Authority is prohibited from including in any of its broadcasts, or in any written, aural or visual matter published, distributed or sold by it, anything which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.

General duty of the Authority

In performing its functions the Authority is obliged in its programming:

- (a) To be responsive to the interests and concerns of the whole community, to be mindful of the need for understanding and peace within the whole of Ireland, to ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and to have special regard for the elements which distinguish that culture and in particular for the Irish language;
- (b) To uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression; and
- (c) To have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Economic Community.

Supervision

Broadcasts are not subject to pre-censorship. Under the new legislation a statutory body, to be called the Broadcasting Complaints Commission, is to be established not later than 31 March 1977. Its functions are, broadly, to investigate and decide on complaints from members of the public in regard to alleged breaches of:

- (i) The requirements of objectivity and impartiality;
- (ii) The prohibition from broadcasting or propagating anything which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State;
- (iii) The prohibition from unreasonably encroaching upon the privacy of the individual;
- (iv) The requirement to observe directions relating to the broadcasting of matter which, in the opinion of the Minister for Posts and Telegraphs, would be likely to promote or incite to crime or would tend to undermine the authority of the State;
- (v) The Authority's code of advertising standards.

The Commission will prepare an annual report of its activities to be laid before both Houses of the Oireachtas.

D. Protection of the family

(articles 16, 17 and 25 of the Universal Declaration)

*Family Home Protection Act, 1976*⁷

Under this Act, a spouse who owns, or has an interest in, the family home may not sell or otherwise dispose of it without the consent of the other spouse, unless the need for consent is dispensed with by court order on the ground that the refusal to consent would be unreasonable. Criminal and civil sanctions are provided against a spouse who has ignored the rights of the other spouse in this regard. It introduces machinery to protect against the vindictive sale of the family home.

For the encouragement of joint ownership of the family home by both spouses, stamp duty, court fees and registration fees on a transaction transferring ownership of any interest in the home from one spouse to both spouses jointly have been abolished.

The Act also provides ancillary protection for a spouse where the other spouse defaults on mortgage repayments or rent; and it introduces wide-ranging provisions directed at preventing the vindictive sale or removal of household chattels from the family home.

*Family Law (Maintenance of Spouses and Children) Act, 1976*⁸

Further developments in the field of family law have been achieved by this Act, which is primarily concerned with reformulating the principles of law regarding maintenance obligations. It introduces a system of attachment of the earnings of maintenance debtors, amends certain aspects of the law relating to affiliation proceedings and introduces certain other miscellaneous reforms in family law.

The court is empowered to order a spouse to leave the family home where the safety or welfare of the other members of the family requires it. Another provision creates joint ownership between spouses of a household allowance given by one spouse to the other (or of any interest in property acquired out of such allowance) unless the spouses agree otherwise.

E. Right to own property; duties to the community

(articles 17 and 29 of the Universal Declaration)

*Capital Gains Tax Act, 1975*⁹

A tax on capital gains was introduced by the Capital Gains Tax Act, 1975. It is charged on gains made from the disposal of assets by all persons, whether individuals, companies or unincorporated bodies. An alternative basis of charge is permitted to an individual by which he may pay tax as if one half of the first £5,000 of his capital gains and the whole of any excess were income; this is of benefit to a taxpayer with a reasonably low income.

Almost all forms of property, wherever situated, are assets for the purpose of the tax. Disposal includes all changes of ownership of assets and the divesting by a person of his rights in or over assets by sale, exchange or transfer, including a gift. Persons resident in the State are liable on gains made on the disposal of assets wherever situated. Persons who are not resident in the State are liable in respect of gains on the disposal of real estate, mineral rights and business assets in the State.

There are certain exemptions, such as gains up to £500 by an individual in any one year, gains on the disposal by an individual of tangible, movable property worth less than £2,000, on the disposal of assets such as livestock, private cars and durable consumer goods, on securities issued by certain State-sponsored bodies and guaranteed by the Government, on securities and on life assurance policies and winnings on lotteries and sweepstakes.

⁷ *Ibid.*, 1976, No. 27.

⁸ *Ibid.*, 1976, No. 11.

⁹ *Ibid.*, 1975, No. 20.

*Wealth Tax Act, 1975*¹⁰

A wealth tax at the rate of 1 per cent on the net market value of the taxable wealth of a taxpayer was introduced by the Wealth Tax Act, 1975. The thresholds for liability are: £100,000 for a married man, £90,000 for a widow or widower, and £70,000 for a single person. Certain property, notably, a private residence and its contents, bloodstock, live-stock, pension rights, important works of art and other objects of national, scientific or artistic interest are under certain conditions exempt.

*Corporation Tax Act, 1976*¹¹

Under the Corporation Tax Act, 1976, a new, single tax called corporation tax replaces, so far as resident and most non-resident companies are concerned, income tax and corporation profits tax on their income and capital gains tax on their capital gains. Subject to special relief for certain categories of companies, corporation tax is charged at the rate of 50 per cent on the income of companies. This equates with the former combined rate of income tax, corporation profits tax and capital gains tax on any capital gains. Corporation tax is charged for accounting periods and not, as in the case of income tax and capital gains tax, for years of assessment. It is payable in two equal instalments, the first becoming due nine months after the end of the accounting period and the second six months later. Companies subject to this tax are entitled to relief for trading and other losses and for capital expenditure on industrial buildings, machinery and plant. There is a reduced rate of charge on small companies.

F. Right to social security

(articles 22 and 25 of the Universal Declaration)

1. SOCIAL WELFARE*Social Welfare Act, 1975*¹²

This Act made provision for increases from April 1975 in the rates of weekly benefits, pensions and allowances. The Act provided that the weekly rates of social welfare payments would be further increased from the beginning of October 1975 following a review in the light of the rise in the cost of living. It was provided in the Act that these further increases would be fixed by Regulations made by the Minister for Social Welfare with the consent of the Minister for Finance. The means test in the case of non-contributory old-age, blind and widows' pensions and social assistance allowances for deserted wives, prisoners' wives and unmarried mothers was further eased by this Act. The qualifying age for old-age pensions—both contributory and non-contributory—was reduced from 68 to 67 years. As a consequence the qualifying age under the schemes of free travel, free electricity and free television licence was similarly reduced.

The Act also permitted certain persons who ceased to be voluntary contributors as a result of the abolition on 1 April 1974 of the £1,600 remuneration limit for compulsory social insurance to continue their voluntary insurance for old-age (contributory) pension, retirement pension and death grant. The scope of the School Meals Scheme operated by urban local authorities was slightly extended by the Act.

*Social Welfare (Pay-Related Benefit) Act, 1975*¹³

This Act extended the duration of pay-related benefit from 147 days (24½ weeks) to 225 days (37½ weeks), and empowered the Minister for Social Welfare with the consent of the Minister for Finance to extend, by Order, the duration by a further period of up to

¹⁰ *Ibid.*, 1975, No. 25.

¹¹ *Ibid.*, 1976, No. 7.

¹² *Ibid.*, 1975, No. 1.

¹³ *Ibid.*, 1975, No. 8.

78 days and to specify the weekly rate at which pay-related benefit should be payable during that extra period.

*Social Welfare (Supplementary Welfare Allowances) Act, 1975*¹⁴

The purpose of this Act is to replace home assistance, which is payable on a discretionary basis under the Public Assistance Act, 1939, to persons in need, by a new system of supplementary welfare allowances. The new Act provided for the introduction of the scheme by ministerial order.

*Social Welfare Act, 1976*¹⁵

This Act made provision for increases from April 1976 in the rates of weekly benefits, pensions and allowances. It also provided for the extension of unemployment benefit and pay-related benefit for a period of 78 days to a maximum period of 390 days. The Act made provision for an Order to be made limiting the amount of benefits payable to a wholly unemployed person to 85 per cent of his net current earnings. This was done by a regulation of 21 June 1976. Provision was also included in the Act for the revision of the special method of calculating the notional farm means for unemployment assistance purposes in the case of smallholders resident in certain specified areas. The Act provided for payment of a benefit equivalent to the weekly rate of widow's contributory pension to a widower whose wife, immediately before her death, had been in receipt of a retirement pension which included an increase in respect of him. Provision was also made for payment of increases of widow's (contributory) pension in respect of qualified children, grandchildren or stepchildren of the widow or of her late husband or adopted children who came to reside with the widow subsequent to the date of her late husband's death.

*Social Welfare (No. 2) Act, 1976*¹⁶

This Act provided for an extension of the statutory penalties which may be imposed on employers who do not comply with their obligations in relation to payment of social welfare contributions and on persons who abuse the benefits system. The Act also contained a provision eliminating from the residence test for non-contributory old-age pensions (including blind pensions) the discrimination which had previously existed in the treatment of nationals of other States as opposed to Irish nationals.

2. HEALTH

Certain changes affecting the eligibility of persons for health services were made from 1 July 1976. Non-insured persons with a yearly income of £3,000 or less, as well as all insured manual workers and other insured workers whose rate of remuneration does not exceed £3,000 a year are entitled to free hospital in-patient and out-patient services, free maternity services and free infant welfare services. Taking all categories of persons eligible for services, free hospital services are now available to about 90 per cent of the population. Fully free general practitioner services are available for about 37 per cent of the population, and for the remainder of the population the cost of general practitioner care is alleviated under a scheme whereby no family need pay more than £6.50 per month for prescribed drugs and medicines.

G. Labour law

(article 23 of the Universal Declaration)

*Trade Union Act, 1975*¹⁷

The purpose of the Trade Union Act, 1975, is to facilitate the amalgamation of trade unions. It provides also for aid from public funds towards meeting the expenses involved.

¹⁴ *Ibid.*, 1975, No. 28.

¹⁵ *Ibid.*, 1976, No. 6.

¹⁶ *Ibid.*, 1976, No. 28.

¹⁷ *Ibid.*, 1975, No. 4.

The existing procedures for amalgamation were found to be inappropriate to the circumstances of today. Moreover, no legislation existed governing the procedure for the transfer of engagements as between unions. The new Act provides that, in the case of a transfer of engagements, procedures similar to those provided for amalgamation shall be followed.

The new procedures will be supervised by the Registrar of Friendly Societies, who will safeguard the interests of members. They aim to eliminate grounds for dispute concerning the validity of amalgamations or transfers. The procedures will thus be more effective and legal disputes which impeded earlier attempts at amalgamation will be avoided. A special feature of the new Act is the replacement of the onerous voting requirements in earlier legislation. In future, a simple majority of the votes recorded will be sufficient to allow an amalgamation or transfer of engagements to take place.

The Act provides for foreign-based unions operating in the State to have a decision-making executive in the State or in Northern Ireland. A further provision enables the 32-country membership of such unions, if they so wish, to proceed with an amalgamation or transfer of engagements as if that membership itself constituted a trade union.

*Industrial Relations Act, 1976*¹⁸

The Industrial Relations Act of 18 May 1976 provides for the establishment of a Joint Labour Committee for Agricultural Workers to replace the Agricultural Wages Board which has been in operation since 1936. The Committee will have responsibility for the future regulation of the rates of pay and conditions of employment of approximately 34,000 workers.

The new Committee comprises a Chairman, two independent members and an equal number of members nominated by the two sides of the agricultural industry. Employment Regulation Orders setting the statutory minimum wages and conditions of employment will be made by the Labour Court on the basis of proposals emanating from the Committee and the rates of pay and other conditions set down in such Orders will be legally enforceable. The Committee will work towards achieving harmonization between the pay and conditions of agricultural workers and those of industrial employees.

Agricultural Wages (Minimum Rates) Order, 1976

The Agricultural Wages Board made an Order entitled as above which came into operation on 22 November 1976 and prescribed the same weekly minimum rates of pay for male and female agricultural workers. Before this Order took effect, the wage rate payable to men was higher than that for women.

¹⁸ *Ibid.*, 1976, No. 15.

ISRAEL

Introduction

In the period under review no dramatic developments have occurred generally in Israel in the area of human rights. Primarily the reason lies in the fact that for the most part the principles embodied in the Universal Declaration of Human Rights have already been firmly secured by legislation and judicial decision since the establishment of the State on fully democratic foundations. The present period is marked by a continuing expansion, refinement and enforcement of rights already existing.

Several matters are worthy of particular note. The corpus of Basic Laws, which is ultimately to form a written constitution, has seen the addition of two further laws dealing respectively with the economy and the army. The latter solemnly confirms the fundamental principle laid down at the beginning of the State that the military is subject to the civilian arm of government. In areas of special interest today—women's rights, where Israel has traditionally been a leader, and environmental protection, where it has not—significant legislation has been adopted.

One central point emerges from the decisions of the Israel Supreme Court. The Court has always been the forum for reviewing the processes of criminal justice and assuring the rights of defendants. Over the last few years, with increasing frequency, citizens have turned to it, as the high court of justice, to ensure the conduct of administrative agency procedure in accordance with the principles of due process in the fullest sense of the term.

A. Protection of the mentally sick

(article 5 of the Universal Declaration)

In 1975, two amendments of the Treatment of Mentally Sick Persons Law, 1955, were adopted in order to prevent in a positive manner the harsh application of the criminal process to retarded or mentally sick defendants. The effect is that the court may terminate proceedings and hospitalize a person whom on the evidence it considers unfit to stand trial. The court may also on its own initiative or on application order a defendant to be medically examined in order to determine whether he is sick. A hospitalization order may be made in the absence of the person concerned, if the court is persuaded on psychiatric evidence that the hearing cannot be pursued in his presence or that his presence may injure his mental health, provided however that counsel is present; if he has no counsel, one will be appointed for him. Further, in making an order for imprisonment of a person as aforesaid, the court may direct that sentence shall be served in a hospital or in the psychiatric ward of the prison.

B. Equality before the law

(article 7 of the Universal Declaration)

The courts in Israel have always been alert in protecting the right of the individual to equality before the law. A recent case illustrates how this protection extends to the conduct of public bodies in their relationship with the members of the public. In *Ban-Haim v. Israel Land Authority* (1976),¹ the Supreme Court held that the respondent authority could not restrict participation in a public tender to rent or acquire land for establishing a health-care facility by making participation conditional upon the bidder having previously obtained the recommendation of the Ministry of Health. The Court ruled that such a condition was *ultra vires* and therefore unreasonable, and it called for new tenders unrestricted by such a qualification. Judge Witkon observed:

¹ 30 P.D. (1) 412.

“Under section 12 of the Contracts (General Part) Law, 1973, a private individual in negotiating a contract must act ‘in customary manner and in good faith’. *A fortiori* a public agency, such as the respondent, must act likewise, when it conducts commercial transactions as the owner of property. In any commercial transaction by an official body, there is a public aspect which requires it to conduct itself with integrity, fairness and good faith.”

C. Right to an effective remedy

(article 8 of the Universal Declaration)

Under the Small Claims Jurisdiction Law, 1976, a system of small claims courts has been introduced to deal with civil claims up to £1 3,000 (about \$350 as at 1 January 1977). Though these courts will have the status of magistrates' courts, they will operate less formally, with simplified procedures and without being bound by the formal rules of evidence. The goal is to provide a speedy and inexpensive tribunal for prosecuting claims which are frequently forgone because of the time and cost of ordinary litigation. Since the employment of counsel increases costs significantly, the appearance of counsel in the Small Claims Court will require leave; recognized organizations (presumably, for example, trade and like associations) will also be able to obtain leave to represent parties. The law also allows the court, with the consent of the parties, to hear a claim by way of arbitration.

D. Right not to be subjected to arbitrary arrest

(article 9 of the Universal Declaration)

Two developments have occurred in relation to arrests without warrant, one legislative and one judicial.

A 1975 amendment of the Extradition Law of 1954 dealt with a problem that had arisen under the provision permitting detention of a wanted person without warrant pending a request for extradition. In such a case, the detained person had to be brought before a magistrate within 48 hours so as to obtain a warrant of arrest. The latter was only valid for 15 days, except that the Attorney-General might, on proof of special circumstances delaying the extradition process, apply for an additional period. The Supreme Court held that this meant that in no event was the detention effective in excess of 30 days. This ruling created a situation that caused serious difficulties in a number of cases. Under the amendment, the court may now extend a warrant for a period not exceeding 30 days, unless special circumstances are shown to exist, and even then the period of detention may not be more than 60 days *in toto* from the date of the original detention.

In *Begani v. Minister of Police* (1976),² the Supreme Court interpreted section 3(3) of the Criminal Procedure (Arrest and Searches) Ordinance (New Version), 1969, authorizing a police officer to arrest without warrant a person who “has committed in his presence, or has recently committed, an offence punishable... with imprisonment for a period exceeding six months”. *Begani* was arrested without warrant some eight days after the commission of the offence involved and he challenged the arrest as being unlawful. The Court held that “recently” in the above section meant a period counted, not in days, but in hours.

E. Right to a fair and public hearing

(article 10 of the Universal Declaration)

The Supreme Court was called upon several times to review proceedings, both judicial and administrative, in the light of a claim that a tribunal had not provided a fair and impartial disposition of rights. The approach of the Court was consistent in these cases in applying the principle that not only must justice be done but that it must be seen to be done.

² 30 P.D. (1) 337.

In *Yeha v. Taiba Local Council* (1975)³ the applicant for a position as high-school principal challenged the selection made by the appointments committee. He himself had been chosen for the post by a previous committee but that decision had been invalidated by the Ministry of the Interior for violation of the procedure set out in an unpublished Ministry directive to local councils. The Court granted the petition on the ground that administrative regulations have no legal effect until published in the official gazette. It refused, however, to permit the original selection to stand because the petitioner was the brother-in-law of the chairman of Taiba Local Council, who had been a member of both committees and the vigorous supporter of the petitioner. The Court said:

"We do not deal with family relationships but with justice; and from the standpoint of justice there is serious defect when a close family relationship, even if by marriage and not by blood, influences or is likely to influence the judgement of the chairman of the Council or any other committee member to prefer one candidate over another... Even assuming that the chairman of the Local Council acted in good faith, in view of his close family relationship he should have disqualified himself from taking part in the deliberations. As has been said, 'Not only must justice be done but it must be seen to be done'."

Yedid v. State of Israel (1975)⁴ concerned a claim of bias against a traffic court judge. The appellant was a bus driver who had been involved in an accident with a private car. Both drivers were charged with reckless driving. At the trial of the car driver, which was taken first, the defendant was acquitted despite the appellant's evidence. The appellant then stood trial before the same judge, who refused to disqualify himself. In ruling on an appeal against this refusal, the Supreme Court held that the determinative test in cases such as this was the real likelihood of bias and not reasonable suspicion of bias. It therefore ordered the appellant's case to be heard by another judge.

F. Presumption of innocence

(article 11 of the Universal Declaration)

The Criminal Procedure Law, 1965, was amended in 1976 to allow the silence of a defendant (his refraining from testifying in his own defence) to add to the weight of the prosecution evidence and to serve as corroborative evidence when that was required, except in cases of moral offences involving children. The intention is neither to deny the right to silence nor to permit silence to constitute proof itself or a basis for conviction, but to allow the court to attach such weight as it thinks proper to silence when the facts have been independently established. In all cases the court must explain to the defendant the effect of his remaining silent. Since the jury system does not exist in Israel and cases are tried before professional judges, the possible disadvantage of remaining silent is less than it might be in jurisdictions with lay juries.

Another important amendment concerned the right to inspect investigative material. Defendants have always had the right to inspect material in possession of the prosecution. Now, the prosecution has been given a right to inspect and make copies of the defendant's material, such as opinions and medical certificates intended to be produced in defence and the opinions of experts who are to be called in evidence. It was felt that the production of such evidence without prior warning tends to create delay and confusion, to the detriment ultimately of the defendant himself.

³ 29 P.D. (1) 457.

⁴ 29 P.D. (2) 375.

G. Protection of marriage and the family

(article 16 of the Universal Declaration)

The Supreme Court had occasion to reaffirm the importance of monogamy in *State of Israel v. Rubin* (1975).⁵ The defendant married a second woman without divorcing his first wife, apparently keeping the existence of each hidden from the other and misleading the authorities in the process. The prosecution appealed against the leniency of a six months' sentence and a fine of £1 1,000. The Supreme Court granted the appeal in principle but refused to increase the sentence only because of delay in hearing the appeal, the defendant having already completed his sentence and been released. The Court said:

"The State appeals against the leniency of sentence and rightly so. From the moment the State was established, the courts have viewed with seriousness a person who, already married, takes a second wife, even where it was done with the first wife's permission in those sectors of the population where that is customarily done. Over the course of time, we have affirmed sentences ranging from one year to 18 months. In all such cases we have emphasized the severe gravity of this offence as one which undermines the foundations of the normal order of an enlightened society."

H. Freedom of thought, conscience and religion

(article 18 of the Universal Declaration)

The propriety of the right of the Chief Rabbis and the High Rabbinical Council to give advice on political matters was the issue in *Bilt v. The Chief Rabbis* (1975).⁶ Members of the Independent Liberal Party sought to prevent the Rabbinical authorities from advising the National Religious Party whether it should join the coalition which formed the government. The Supreme Court refused to grant an order. The Court said that the Chief Rabbinate and the High Rabbinical Council were subject to the legislature and any restriction on their activities, statutory or otherwise, must be imposed by the legislature and not by the courts. The vesting of certain official authority in these bodies did not derogate from their right and capacity to act as the religious leaders of their community and to give guidance to its members who seek advice on the religious approach to questions which may have political overtones. To hold otherwise, the Court said, would be to interfere with the rights of the individual.

"Every person in Israel is entitled to ask himself if a particular act conforms to or contravenes religious law... If we deprive a person of the opportunity of asking his spiritual leaders or deprive these leaders of the opportunity of responding and instructing, the result is effectively to abolish freedom of speech and even freedom of religion."

I. Freedom of expression

(article 19 of the Universal Declaration)

A storm arose over the film "Night Porter" in 1975. A sub-committee of the Film Censorship Board recommended its approval to the Board, which granted a licence for its public presentation. As a result the distributor incurred considerable expense in promoting the film. Some time later, just prior to its presentation in the cinemas, the Board, in response to complaints from several groups, decided to review its approval and shortly after the film opened withdrew the licence. The distributor contested the Board's action. In *Noah Film Co. v. Film Censorship Board* (1976)⁷ the Supreme Court invalidated the withdrawal of the licence, holding that a public body cannot recall a licence it has granted without first giving the holder a fair opportunity to be heard. Whilst conceding that the propriety of censorship was a matter for the legislature, the Court affirmed that it was competent to review the

⁵ 29 P.D. (1) 166.

⁶ 29 P.D. (1) 98.

⁷ 30 P.D. (1) 757.

workings of the Board to ensure that it acted fairly and not arbitrarily. Judge Witkon had the following to say:

“I cannot accept... [the fact that the Board reversed its original decision because of fear that opposition from certain circles might result in violence] as a legitimate consideration. Let me not be misunderstood. I do not say that members of the Board are forbidden to take account of public opinion. On the contrary, they have been appointed to act as representatives of the public in all its variety and the public speaks through them. But they must decide according to their own discretion what may be shown and what goes beyond the tolerable. Here, once having decided that the film should not be prohibited, it is to be presumed that the decision reflects faithfully public opinion in Israel. In my opinion there was no occasion to go back on this decision and reverse it, out of consideration of the fact that there are groups who are not prepared to reconcile themselves with the view of the Board. The Board knows that in respect of every sensitive subject... there is always a minority or more who would prefer a film not to be shown in public. Those who think that the film should nevertheless be shown will obviously not regard the opposition to it, for all that it is honest, as a sufficient counterweight to the subject-matter of the film. This is the obverse of the mutual toleration which a pluralistic society requires. If fear of disturbance exists, it is matter for the police to maintain the peace and the orderly observance of the law. It is not a consideration which should influence the Board to ban a film which originally it thought fit not to ban.”

J. Right to take part in government

(article 21 of the Universal Declaration)

The Local Authorities (Election and Tenure in Office of Heads and Deputy Heads) Law, 1976, introduces direct personal election of mayors and chairmen of local authorities by secret ballot on the basis of universal and equal suffrage in place of the previous system of election by the parties represented on each council from among themselves. Under the new law, any registered political party or any group of 750 voters or 3 per cent of the total voters, whichever is the less, may submit nominations. Heads of local authorities are empowered to require reconsideration of council decisions in addition to convening and presiding over council meetings. The courts may, on the application of the Attorney-General, order removal from office of a head who has been convicted of a criminal offence involving moral turpitude. A council may itself, by an absolute three-quarters majority, remove its head or any deputy head if satisfied that he has been guilty of unbecoming conduct and is not fit to act and after giving him the opportunity to be heard in special session and obtaining the approval of the Minister of the Interior. The Minister may remove a head who is unable to act for reasons of health. In all cases the removal is subject to appeal.

K. Right to social security

(article 22 of the Universal Declaration)

The process of substantive and regulatory refinement and improvement is particularly evident in the field of social security. During the period under review several amendments have been made to the National Insurance Law (Consolidated Version) of 1968. Apart from changes—generally in favour of the persons entitled to benefits—in the calculation of the degree of work invalidity, the linkage of invalidity pensions and dependants' allowances to the average national wage, the increase and extension of maternity benefits, widows and dependants' benefits, child allowances and so on, perhaps the most important advances have been the following: detailed provisions have been enacted for protecting workers in the event of the bankruptcy or liquidation of their employers, and more specifically their rights in benefit funds to which the employers are required to contribute. On the one hand, benefits, albeit limited, are assured to the workers in lieu of salary and severance pay, and on the other a variety of means are adopted to ensure that employers' contributions to the funds are safeguarded in the event of business failure.

Social security benefits are now available to volunteers of various kinds (those working for recognized social welfare and first-aid organizations or under referral from government offices or official agencies, or in public security, as well as "good samaritans" generally) who are injured or killed in the course of their voluntary service. The idea is not new. Earlier legislation had dealt with specific groups in accordance with their particular circumstances. In view of the essential contribution which volunteers make to the country, a comprehensive law was felt necessary.

A parallel piece of legislation is the Sick Pay Law, 1976. Though many workers had been entitled to sick pay under collective agreements or Ministry or Labour regulations, many had not. The Law entitles them to receive as sick pay a proportion of their regular wages for the period of sickness, calculated at the rate of one and a half days for each month of employment with the same employer or at the same place of employment, up to a maximum of 90 days. An employer may take out insurance to meet his liabilities.

Probably the most innovatory development in this area is the enactment of the Road Accident Victims Compensation Law, 1975, which introduces no-fault liability in road traffic accidents for personal injuries. The scheme is administered through the medium of the insurance companies. A Compensation Fund has been set up to provide benefits in cases where the driver is not insured or his identity is not known or where the insurance company is in liquidation. The Fund is financed by a prescribed percentage of the insurance premiums received by the insurance companies.

L. Education and cultural life

(articles 26 and 27 of the Universal Declaration)

The Public Libraries Law, 1975, provides for the establishment and regulation of free public libraries and ancillary services by local authorities and others throughout the country; charges for delay or failure to return books or their misuse and for special services rendered are allowed under regulatory control. The Treasury will contribute towards the cost of erecting and maintaining these public libraries at a rate to be determined annually in consultation with local authorities. A Public Libraries Council will advise on and initiate plans for implementation of the Law.

M. Protection of the environment

(articles 27 and 29 of the Universal Declaration)

In this area, two pieces of legislation have been enacted. First, the powers of the Minister of the Interior have been extended to declare as a "national site" any structure or structures, together with surrounding land, which are of national or historical importance. At the same time his authority to revoke the designation of any area as a national park, nature reserve or national site has been restricted; any decision to do so must be approved by the Ecology Committee of the Knesset. Secondly, the Maintenance of Cleanliness Law, 1976, makes it an offence, punishable by a fine of £1 1,000 or £1 5,000 depending on the circumstances, to throw waste, debris or scrap in public places or from public places on to private property.

ITALY

Introduction

Further steps were taken to adapt the Italian legal order more closely, not so much to the more general principles of human rights, which have been almost entirely incorporated in the internal legal system and on which the Italian Constitution is already largely based, but rather to those more secondary but equally essential requirements which necessarily complement the more general principles.

For example, Act No. 328 of 28 April 1976¹ authorized the ratification of the European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights, adopted in London on 6 May 1969, and gave full force to its provisions. In addition, by an exchange of letters between the Minister for Foreign Affairs and the Secretary-General of the Council of Europe, the Italian Government recognized for a further period of three years from 1 August 1975 to 31 July 1978 both the competence of the European Commission on Human Rights and the jurisdiction of the European Court of Human Rights.²

Since it is impossible to give a detailed account of the decisions of the various courts, the present survey is based on the new normative provisions and on the decisions of the Constitutional Court.

A. Right to security of person

(article 3 of the Universal Declaration)

Act No. 110 of 18 April 1975³ introduces stricter regulations governing the control of firearms, ammunition and explosives. The Act is designed to reduce the possibility of possessing military weapons and ordinary firearms, and also the possibility of carrying such weapons, or other weapons that can be used for offensive purposes, outside the home. The Act also prohibits the manufacture of toys which, by the use of certain techniques and materials, can be transformed into military weapons or ordinary firearms. There are special provisions governing the granting of licences for carrying firearms and for manufacturing, assembling, trading in, importing, exporting, collecting, repairing and transporting weapons of any type. In particular, before a licence to carry firearms is issued, the technical competence of the applicant must be verified. Other provisions relate to the import and export of firearms, and introduce a system of control over trade in firearms and ammunition.

B. Right to recognition as a person before the law

(article 6 of the Universal Declaration)

An important reform in the legislation concerning the age of majority was introduced by Act No. 39 of 8 March 1975.⁴ Whereas, in accordance with article 2 of the Civil Code, which dates back to 1942, the age of majority was 21, the new law lowered the age of majority to 18. It has, however, proved necessary subsequently to define precisely the effects of this important innovation, in order to bring the new provision into line with other provisions which also concern legal capacity. It has been stipulated that:

“On attaining majority, a person shall acquire the capacity to perform all acts for which another age-limit is not specified. This provision shall be without prejudice to

¹ Ordinary supplement to the *Gazzetta Ufficiale*, No. 146, 7 June 1976.

² See *Yearbook on Human Rights for 1973-1974*, p. 128.

³ *Gazzetta Ufficiale*, No. 105, 21 April 1975.

⁴ *Ibid.*, No. 67, 10 March 1975, special issue.

those special laws which establish a lower age-limit for capacity to accept employment. In this case, the minor shall have the capacity to exercise his rights and perform his functions under the contract of employment.”

An amendment to article 165 of the Civil Code provides that:

“A minor who has the legal capacity to contract a marriage shall also have the capacity to give his or her consent to all the provisions of the contract of marriage and to any transfer of property made thereunder, which shall be valid provided that the minor has been assisted by the parent exercising paternal authority, the guardian or the special trustee...”

Another innovation relates to the appointment of the trustee of a child freed from paternal authority, article 392 of the Civil Code having been amended to read:

“The trustee of a minor married to a person who has attained the age of majority shall be the spouse. If both spouses are minors, the tutelary judge may appoint a single trustee, preferably one of the parents. In the event of annulment of the marriage on grounds other than age, or dissolution or termination of the civil effects of the marriage, or separation of the spouses, the tutelary judge shall appoint as trustee one of the parents if one of them is a suitable person or, failing that, another person. If the minor subsequently remarries, the trustee shall assist him or her also in the matters referred to in article 165.”

The Act expressly provided that the new provisions relating to majority in respect to matrimonial relations apply also to minors whose parents are unknown or to natural children recognized only by the mother in cases where she is unable to provide for their upbringing.

C. Administration of justice

(articles 7-11 of the Universal Declaration)

1. CIVIL PROCEDURE

Under Italian procedural law, it is permitted, in simplified legal proceedings, to request the judge to order the other party to pay the sums due (a summary order to pay). The debtor may appeal against such an order within 20 days of its being served on him. The Constitutional Court has declared unconstitutional that part of article 650, subsection 1, of the Code of Civil Procedure that does not permit an appeal after the time-limit in cases where the person on whom the order is served has taken cognizance of the summary order but has been prevented, by accident or by *force majeure*, from appealing within the period prescribed by the order (decision No. 120 of 7 May 1976). The Court intended in this way to reinforce the principle of the effectiveness of the right of defence.

2. PUBLIC ORDER (*ORDINE PUBBLICO*) AND SECURITY

*Act No. 152 of 22 May 1975*⁵

In view of public concern at the increasing number of crimes which are partly inspired by political ideologies, and also at the delay in the pronouncement of criminal sentences owing to the disproportion between the number of criminal cases and the number of judges available to hear them, Act No. 152 of 22 May 1975 has in some respects made the judicial system more strict, particularly with regard to release on bail, and has strengthened the powers of officers and members of the judicial police and law enforcement services:

Article 1 provides that for offences committed after the Act's entry into force, release on bail shall not be permitted in cases of: wilful murder or attempted murder; attempt against the life of the President of the Republic; attempt to undermine the Constitution of the State; armed insurrection against the State authorities; devastation, pillage or plunder;

⁵ *Ibid.*, No. 136, 24 May 1975.

civil war; formation of and participation in armed bands; massacre; serious railway accident; danger of a serious railway accident; offences against the safety of means of transport; spreading an epidemic with malicious intent; poisoning of water or foodstuffs; robbery with violence in aggravating circumstances; extortion with aggravating circumstances; false imprisonment; offences referred to in articles 1 and 2 of Act No. 645 of 20 June 1952; and any offence involving military weapons, military-type weapons or explosives.

The same article also defines the discretionary powers of the judge to agree to provisional execution of an order if there is a danger that the accused may commit other offences contrary to the requirements for the protection of the community.

Article 3 of the Act, which replaces article 288 of the Code of Criminal Procedure, establishes that:

“Apart from cases where persons are apprehended *in flagrante delicto*, officers and members of the judicial police and the law enforcement services may detain persons in respect of whom there is sufficient evidence that they have committed an offence for which the law prescribes a penalty of not less than six years' imprisonment or an offence involving military or military-type weapons, sawn-off shotguns, ammunition for the aforementioned weapons or explosives, if there is a well-founded suspicion that such persons may attempt to escape from justice. The officials may hold the persons in custody for such time as is strictly necessary for the initial inquiries, after which they must immediately arrange for them to be taken to the court prison or to the district prison if the latter has an isolation cell.”

The police officers are at the same time obliged immediately to inform the Procurator of the Republic or the *pretore* of the detention. The police may also, in cases of exceptional need and urgency, conduct an on-the-spot search for the sole purpose of determining whether the person detained is in possession of weapons, explosives or tools for house-breaking (art. 4).

The first paragraph of provision XII of the transitory and final provisions of the Italian Constitution prohibits reorganization of the dissolved Fascist Party. Article 7 of the Act of 22 May 1975 states that reorganization occurs “when an association, movement or group of no fewer than five persons pursues anti-democratic objectives characteristic of the Fascist Party, by extolling, threatening or using violence as a means of political struggle, by advocating the suppression of the freedoms guaranteed by the Constitution, by denigrating democracy, its institutions and the values of the Resistance, or by promoting racist propaganda, or when it extols the exponents, principles, deeds and methods characteristic of the aforementioned party or holds public demonstrations of a Fascist nature”.

A number of other provisions of the Act permit the judge provisionally to suspend from the administration of personal assets persons who perform preparatory acts which are objectively recognized as being aimed at subverting the organization of the State through the commission of particular offences, persons who belong to political associations which have been dissolved or persons who perform preparatory acts aimed at the reconstitution of the Fascist Party, in cases where the availability of the assets facilitates such socially dangerous activities and behaviour.

The expulsion of aliens is the subject of article 25 of the Act, which provides that, subject to restrictions deriving from international conventions, aliens who do not, at the request of the public security authorities, provide proof of the adequacy and lawfulness of the sources of their support in Italy may be expelled from the State in accordance with the procedures provided for in article 150, second and fifth paragraphs, of the consolidated text of the public security laws approved by Royal Decree No. 773 of 18 June 1931, except as provided for in article 152 of the said consolidated text. The provisions of the foregoing paragraph are not applicable in the case of political asylum as referred to in article 10, penultimate paragraph, of the Constitution.

Finally, certain rules of the Act provide for the possibility of summary trial without preliminary investigation in the case of a number of offences referred to in the Act and regulated thereby.

Act No. 706 of 24 December 1975⁶

This Act introduces a number of innovations with respect to the minor fines prescribed by criminal law. Article 1 of the Act states that violations for which the penalty prescribed is only a minor fine shall not constitute offences and shall be subject to administrative sanctions in the form of the payment of a sum of money. The intention in this case is to relieve the courts of the considerable burden of hearing cases relating to minor offences, especially minor violations of administrative rules.

Act No. 354 of 26 July 1975⁷

In the context of the reorganization of the legal system, mention must also be made of this Act, which contains rules governing imprisonment and measures for the deprivation or restriction of liberty, and of the decree approving the regulations for the application of these rules.⁸

3. CRIMINAL PROCEDURE

Decisions of the Constitutional Court

The Constitutional Court has, by a considerable number of decisions, helped to bring the Italian legal system even more into line with the need to protect the accused person's right of defence. For example, decision No. 236 of 25 November 1976 declared unconstitutional those parts of articles 502 and 503 of the Code of Criminal Procedure which do not specify that defence counsel has the right to be present when the accused is being questioned.

The Court (decision No. 99 of 23 April 1975) declared unconstitutional that part of article 304 of the Code of Criminal Procedure which does not specify that in criminal proceedings against a minor a copy of the indictment must be sent also to the person exercising paternal authority over the minor or to his guardian.

By decision No. 223 of 15 July 1976, the Constitutional Court declared unconstitutional that part of article 2, second paragraph, of Act No. 36 of 14 February 1904 that does not provide for the defence of sick persons in proceedings before the *pretore* concerning temporary admission to hospital, or before a court which hears an appeal against the *pretore's* order.

By decision No. 176 of 12 July 1976, the Court declared unconstitutional that part of article 169, third paragraph, of the Code of Criminal Procedure which does not specify, as an integral and substantial element of the first notice which is served on an accused person who has not been detained, and which is transmitted for this purpose to the process-server or to a person acting in place of the process-server, that the court official must serve the notice on the addressee by registered letter.

The Constitutional Court has also declared unconstitutional those parts of the amended provisions of articles 203, 554 and 553 of the Code of Criminal Procedure which do not permit a decision given in favour of a convicted person after a review of his case to be extended to persons who have been accused of complicity in the same offence, but have been acquitted for lack of evidence (decision No. 236 of 25 November 1976).

The Constitutional Court, by decision No. 5 of 9 January 1975, declared unconstitutional that part of article 152, second paragraph, of the Code of Criminal Procedure which does not include, among the grounds on which the judge is obliged at the preliminary investigation to dismiss a charge on the merits of the case rather than declare that the offence is pardoned by reason of an amnesty, the fact that there is no evidence that the accused has committed the offence in question.

⁶ *Ibid.*, No. 1, 2 January 1975.

⁷ *Ibid.*, No. 212, 9 August 1975.

⁸ Decree No. 431 of 29 April 1976 of the President of the Republic, ordinary supplement to the *Gazzetta Ufficiale*, No. 162, 22 June 1975.

Similarly, by decision No. 70 of 20 March 1975, the Court declared unconstitutional that part of article 512, paragraph 2, of the Code of Criminal Procedure which excludes the right of the accused to appeal against the decision of the *pretore* who has dismissed charges against him by reason of an amnesty following an appraisal of the aggravating and extenuating circumstances of the case.

An important principle was affirmed by the Court in decision No. 52 of 20 April 1975, which declared unconstitutional that part of article 382 of the Code of Criminal Procedure which provides that a plaintiff shall be liable for the costs of the proceedings incurred by the State even in cases where charges against an accused person are dismissed on the grounds that he is not responsible for his acts.

A further reinforcement of principles of a humanitarian nature is to be found in decision No. 146 of 6 June 1975 of the Constitutional Court, which declared unconstitutional that part of article 148 of the Criminal Code which provides that the judge, in ordering the admission to a mental hospital of a prisoner who becomes mentally ill while serving a sentence of deprivation of personal liberty, shall order that the sentence be suspended, and also that part of article 148 of the Criminal Code which provides that the judge shall order suspension of the sentence in cases where a prisoner is admitted to a prison nursing home or a psychiatric hospital.

Extradition treaties

Attention is drawn to the entry into force on 11 March 1975 of the extradition treaty between the Italian Republic and the United States of America, concluded at Rome on 18 January 1973; to the entry into force on 22 May 1975 of the convention on reciprocal legal assistance, execution of judgements and extradition between Italy and Morocco, concluded at Rome on 12 February 1971; and to the entry into force on 10 May 1976 of the extradition treaty between the Italian Republic and Australia, concluded at Canberra on 28 November 1973.

The law concerning conditional release

The institution of conditional release was partly modified by Act. No. 6 of 12 February 1976.⁹ The legislative provision states that the Court of Appeal in whose district the prisoner is serving his sentence shall have competence to rule on the application for conditional release, after hearing the superintending judge. Article 4 states that:

"If conditional release is refused, the application may not be renewed until the expiry of a further period of not less than three months from the date on which the Court of Appeal gave its ruling. In the case of a person sentenced to penal servitude for life, the application may not be renewed until a period of 18 months has elapsed. If, however, release has been refused for a reason other than lack of repentance, the new application may be made at any time."

Reorganization of the prison system

Act No. 354 of 26 July 1975¹⁰ reorganizes the whole prison system and the system for the enforcement of measures for the deprivation or restriction of liberty. The spirit underlying the Act can be judged from the text of article 1, which reads:

"Treatment in prisons shall be humane and shall ensure respect of the dignity of the person. Treatment shall be absolutely impartial, and there shall be no discrimination on grounds of nationality, race, economic or social status, political opinions or religious beliefs. Order and discipline shall be maintained in the institutions. Restrictions which cannot be justified on those grounds or which, in respect of the accused, are not essential for judicial purposes, shall not be adopted. Prisoners and detainees

⁹ *Gazzetta Ufficiale*, No. 44, 15 February 1975.

¹⁰ *Ibid.*, No. 212, 9 August 1975, special supplement.

shall be addressed by their names. Treatment of accused persons must be based strictly on the principle that they are not considered guilty until they have been convicted. Prisoners and detainees shall be given re-educational treatment—including contact with the outside world—designed to reintegrate them into society. The treatment shall be adapted to the individual circumstances of the person concerned.”

On the basis of these guiding principles, the Act ensures that the physical and social conditions of detainees shall be such as to safeguard the principle of respect for the human person and to promote the readaptation of the prisoner and his reintegration into society. There are a number of provisions concerning the characteristics of prison buildings, clothing, hygiene and food. With respect to treatment, article 13 states that:

“Prison treatment shall be designed to meet the particular needs of the personality of each prisoner. The personalities of prisoners and detainees shall be scientifically observed in order to detect psychophysical deficiencies and other causes of maladjustment to society. The observation shall be started at the beginning of, and continued throughout, the period of the sentence. In the light of the results of the observation, instructions concerning the re-educational treatment to be given to each prisoner and detainee shall be prepared and an appropriate programme shall be drawn up, which may be supplemented or modified in accordance with requirements which become apparent in each particular case.”

In addition, procedures for visits and correspondence, information, instruction and employment have been further liberalized.

Finally, chapter VI of the Act deals with measures other than detention, such as probation (article 47), the semi-liberty system (articles 48 and 51) and the granting of leave for good behaviour (articles 52 and 53). The Act under consideration reorganizes the institution of superintending judge, increasing the possibilities for action of a social nature by a social welfare council for assistance during and after imprisonment, and also by voluntary workers and social welfare workers.

4. BANKRUPTCY

By decision No. 127 of 21 May 1975, the Constitutional Court declared unconstitutional those parts of articles 22 and 147 of the Bankruptcy Act (Royal Decree No. 267 of 16 March 1942) which deny the bankrupt the right to request that partners whose liability is unlimited be adjudged bankrupt, and to appeal against a judicial decision rejecting the petition for an adjudication of bankruptcy in respect of partners whose liability is unlimited.

Again on the subject of bankruptcy, the Constitutional Court (decision No. 46 of 20 February 1975) also declared unconstitutional that part of article 21 of the Bankruptcy Act which provides that, in the event of annulment of an adjudication of bankruptcy, the person previously adjudged bankrupt is liable for the costs of the proceedings and for the official receiver's fee even in cases where the conditions for payment of costs have not recurred and where he has not by his conduct given cause to be held liable.

D. Right to a nationality

(article 15 of the Universal Declaration)

Under article 10 of Act No. 555 of 13 June 1912 governing Italian nationality, “a woman of Italian nationality who marries an alien shall lose her Italian nationality in all cases where the husband has a nationality which she also acquires by the mere fact of the marriage”. By its decision No. 87 of 9 April 1975, the Constitutional Court declared this provision unconstitutional since it provided for the loss of Italian nationality regardless of the wish of the woman concerned.

E. Marriage and the family
(*article 16 of the Universal Declaration*)

1. THE REFORM OF FAMILY LAW

The whole general picture of family law has been radically changed by Act No. 151 of 19 May 1975,¹¹ which has four fundamental purposes: to ensure genuine equality of rights as between the spouses; to guarantee equality of rights as between legitimate and illegitimate children; to establish a financial and property régime for the family which is more consistent with modern life and thinking; and to eliminate from the legislative system certain anomalies resulting from the introduction of divorce.

Reference will be made below to only a few of the principal changes, and in some cases simply by way of example.

Domicile

Article 45 of the Civil Code, which is concerned with, *inter alia*, the domicile of wives and minors, used to state that the domicile of the wife who had not been legally separated was the same as that of her husband, and that the domicile of the minor was the same as that of the person exercising paternal authority or guardianship over the minor. The new text provides that:

"Each spouse shall have his or her own domicile in the place in which he or she has established the principal centre of his or her affairs or interests. The domicile of the minor shall be the place of residence of the minor's family or guardian. If the parents are separated, if their marriage has been annulled or dissolved, if the civil effects of the marriage have been terminated or if they do not have the same place of residence, the domicile of the minor shall be that of the parent with whom the minor lives."

Minimum age for contracting marriage

Whereas the former text of article 84 of the Civil Code established the minimum age for contracting marriage as 16 years for a man and 14 years for a woman, the new text sets forth the principle that minors—that is, under Act No. 39 of 8 March 1975 (see sect. B.1 above), those under the age of 18—may not contract a marriage. There is, however, a special procedure whereby persons who have attained the age of 16 may be authorized to marry for compelling reasons.

Remarriage of women

Article 89 of the Civil Code, which used to speak of the "legal period of mourning of a widow", has been amended to read as follows:

"A woman may not remarry within 300 days from the dissolution, annulment or termination of the civil effects of her previous marriage, except in the case of a marriage which has been annulled, within the meaning of article 122, on grounds of the impotence or sterility of one of the spouses. The court may, by an order issued in its council chamber after hearing the *pubblico ministero*, authorize remarriage if it is proved beyond doubt that the woman is not pregnant or if it is clear from the final judgement that the husband did not live with the wife during the 300 days preceding the dissolution, annulment or termination of the civil effects of the marriage."

Separation

In the absence of agreement between the spouses, the previous system governing separation of husband and wife permitted separation only on the following grounds specified by law: adultery, wilful abandonment, fits of rage, cruelty, serious threats or insults,

¹¹ *Ibid.*, No. 135, 23 May 1975, special issue.

conviction for a crime, or failure by the husband to establish a place of residence. In a more liberal spirit, articles 150 and 151 of the Civil Code have been amended to read as follows:

“Article 150—Separation of husband and wife. Separation of husband and wife shall be permitted. The separation may be a legal separation or a separation by consent. The right to apply for a legal separation or for approval of a separation by consent shall rest exclusively with the spouses.

“Article 151—Legal separation. Separation may be applied for when circumstances arise, even independently of the will of one or both of the spouses, that are such as to make further cohabitation intolerable or to jeopardize seriously the upbringing of the offspring of the marriage. The judge, when making a separation order, shall declare, if the circumstances so warrant or if he is requested to do so, to which spouse the separation may be imputed in consideration of his or her behaviour in violation of the obligations arising from the marriage.”

As a result of the liberalization of the régime of separation, the new Act provides improved safeguards for the children of separated parents.

Matrimonial property régime

The property régime of the family was previously based almost exclusively on the principle of separation of property, unless otherwise agreed between the parties. By comparison, the new text of article 159 of the Civil Code reverses the presumption of separation of property since it provides that, in the absence of agreements drawn up under the seal of a public officer, the property régime of the family from the standpoint of the law shall be the régime of joint ownership. New article 177 of the Civil Code provides that:

“The régime of joint ownership shall apply to the following: (a) goods acquired by the two spouses together or separately during the marriage, excluding purely personal effects; (b) earnings which are derived from the property of each of the spouses, and which have been received but not spent at the time of dissolution of joint ownership; (c) income derived from the separate activities of the spouses if, at the time of dissolution of joint ownership, it has not been spent; (d) businesses managed by both spouses and established subsequent to the marriage. In the case of businesses owned by one of the spouses prior to the marriage but managed by both spouses, the régime of joint ownership shall apply only to the profits and accrued income.”

Certain personal property owned prior to the marriage, as well as property necessary for the exercise of professional or commercial activities, is excluded from joint ownership. Article 180 provides that:

“The administration of property under joint ownership and representation in proceedings relating thereto shall be the responsibility of the two spouses separately. The performance of acts other than ordinary administrative acts, the conclusion of contracts whereby personal rights of possession are accorded or acquired, and also representation in proceedings relating thereto shall be the responsibility of both spouses jointly.”

Family enterprises

In addition to a series of less important provisions, an article added to the Civil Code introduces the concept of “family enterprise” in the following terms:

“Article 230 *bis*—Family enterprise. In the absence of any other relationship, a member of a family who continuously works in the family or in the family enterprise shall be entitled to maintenance in accordance with the financial situation of the family and shall, in proportion to the quantity and quality of work performed, participate in the profits of the family enterprise, in the property acquired therewith and in the accrued income of the enterprise and the goodwill it has acquired. Any decisions concerning the use of the profits and accrued income, and also decisions relating to special management questions, production policy or the winding-up of the enterprise shall be taken, by majority vote, by the members of the family participating in the

enterprise. Participating members who do not have full legal capacity to take decisions shall be represented in the vote by the person or persons who exercise paternal authority over them. The work of women shall be considered to be equivalent to that of men. For the purposes of the provision contained in the first clause of this article, the term 'member of the family' shall be understood to include the spouse, blood relatives up to the third degree and other relatives up to the second degree; the term 'family enterprise' shall be understood to mean an enterprise in which the spouse, blood relatives up to the third degree and other relatives up to the second degree participate. The right of participation referred to in the first clause shall be non-transferable, unless it is transferred to members of the family as defined in the preceding clause, with the consent of all the participating members. The right may be surrendered in return for payment if, for any reason, the performance of work is discontinued or if the enterprise is transferred to a third party. Payment may be effected in a number of annual instalments the amount of which, in the absence of agreement, shall be determined by the judge. In the event of the division of property constituting a deceased person's estate, or in the case of the transfer of the enterprise, the participants referred to in the first clause shall have preferential rights to the enterprise, the applicable article in this case being article 732 in so far as it is compatible with the above-mentioned provisions. Tacit family partnerships for the operation of agricultural enterprises shall be governed by practices which are not at variance with the above-mentioned provisions."

Filiation

Amendments have also been made to articles 232-235 of the Civil Code relating to presumption concerning the conception of children during marriage and to proceedings for disownment of paternity. Other amendments relate to a number of matters concerning presumption when separation proceedings are in progress. The right to initiate recognition proceedings is accorded to the mother and to the child once he or she has attained the age of majority; previously, they did not enjoy this right. In addition, children have been accorded the right to initiate proceedings in order to claim filial status.

The institution of natural filiation and the possibilities of exercising the right of recognition are now governed by a more liberal régime. Provision has been made, for example, for the possibility of authorizing the inclusion of a natural child in the legitimate family of one of the parents, with the consent of the other spouse and of the other natural parent. The legal procedure for obtaining a declaration of natural paternity or maternity, which was previously limited to a number of precisely defined cases, has been made much simpler by the new provisions which have replaced articles 269-279 of the Civil Code and which introduce into the Italian legal system some principles that have not hitherto been acknowledged. The new text of article 269 is a case in point:

"Proof of paternity or maternity may be furnished by any means. Maternity shall be demonstrated by furnishing proof that the person claiming to be the child and the person born of the woman asserted to be the mother are identical. A simple statement by the mother and the mere fact of the existence of relations between the mother and the alleged father at the time of conception shall not constitute proof of natural paternity."

Thus an effort has also been made to guarantee the imprescriptibility of action by the child to obtain a legal declaration of natural paternity or maternity. The right of the natural child to obtain maintenance, education and upbringing has been extended; formerly this possibility was limited solely to applications for support, in precisely defined circumstances and situations. In short, the various procedures for recognition, for obtaining a legal declaration of paternity or maternity and for legitimation have been speeded up considerably.

Parental authority

Another important aspect of family law is the authority of the parents. In order to illustrate the spirit of the new provisions, a comparison may be made between the former text of article 19 of the Civil Code, which provided that "Children shall, regardless of their age,

honour and respect their parents", and the new text, which reads: "Children shall respect their parents and shall contribute, in proportion to their means and income, to the maintenance of their family for as long as they live with the family". Furthermore, also in accordance with the principle that children were subject to the authority of the parents until they came of age or became *sui juris*, article 316 of the Civil Code formerly stipulated that such authority should be exercised by the father, and only after the death of the father and in a small number of other cases provided for by law, by the mother. New article 316 of the Civil Code reads as follows:

"Children shall be subject to the authority of their parents until they come of age or become *sui juris*. The said authority shall be exercised by mutual agreement by both the parents. In the event of disagreement on questions of particular importance, each parent may have recourse to the judge without formalities and may indicate the course of action which he or she considers most appropriate. If the child is in imminent danger of serious harm, the father may take such action as is urgent and cannot be postponed. After hearing the parents, and the child if he or she is over 14 years of age, the judge shall suggest the course of action which he considers most advisable in the interests of the child and family unity. If the disagreement continues, the judge shall attribute the power of decision to the parent whom, in the case in question, he regards as better able to protect the interests of the child."

It should be emphasized that this article explicitly confirms the principle of the absolute equality of the spouses and introduces the institution of the "family judge"—an institution which was virtually unknown under the former system and operated only in an extremely limited number of exceptional cases.

Succession

As a result of the far-reaching changes in family law, it has also become necessary to revise the law of succession. Again by way of example in order to illustrate the spirit of the new law, attention should be drawn to the old and new texts of article 566 of the Civil Code. Whereas the old text stipulated that: "The legitimate children shall be entitled to equal shares of the estate of the father or mother", the new text attributes the right of succession to legitimate children and natural children in equal proportions. Under the former provisions, a portion of the estate was reserved to the persons with a legal right to inherit, who were listed in the following order: legitimate children, legitimate ascendants, natural children and the spouse. As a result of the reform, however, these are now listed in the following order: the spouse, legitimate children, natural children and legitimate ascendants.

2. DECISIONS OF THE CONSTITUTIONAL COURT

In an important decision (No. 179 of 14 July 1976), the Constitutional Court declared unconstitutional those parts of articles 131 and 139 of Presidential Decree No. 645 of 29 January 1958 (Approval of the consolidated text of the income tax laws) which provide that the income of a wife who is not legally and effectively separated shall be added to the husband's income in order to establish the gross income on which direct tax is payable on a sliding scale. It also declared unconstitutional those parts of a number of legal provisions which stipulate: (a) that for the purpose of determining gross income, the income of the wife (with the exception of income at the free disposal of a wife who is legally and effectively separated) shall, in addition to the husband's own income, be attributed to the husband as the subject of income tax payable by individuals, and that the earnings of both spouses shall be added together for taxation purposes; (b) that the wife whose earnings are attributed to her husband under article 4 (a) of Presidential Decree No. 597 of 1973 shall not be deemed to be a subject of the tax; (c) that the declaration by individuals shall be a single declaration covering not only the income of the subject of the tax but also his wife's income which is attributable to him under article 4 of Presidential Decree No. 597 of 1973; (d) that the wife who is not legally and effectively separated shall be required to furnish her husband, as the subject of the tax, with such facts, data and information as he may need in order to comply

with his obligation to declare the income attributable to him under the above-mentioned provisions.

By its decision No. 33 of 20 February 1973, the Constitutional Court remedied a situation which was the residuum of a privileged position formerly enjoyed by the head of the family in rural enterprises. The Court declared unconstitutional that part of article 18 of Act No. 1,047 of 26 October 1957 (Extension of disability and old-age insurance to farmers who cultivate their own land and also to sharecroppers and tenant farmers) whereby the right to the reversionary benefit for survivors (widow and orphans) was confined to the head of the family operating the enterprise and any other members of the same family were excluded from consideration as survivors.

F. Right to take part in government

(article 21 of the Universal Declaration)

Taking into account the new age of majority established by Act. No. 39 of 8 March 1975 (see sect. B above), the Act provides that all Italian citizens who have attained the age of 18 are eligible to participate in elections.

G. Right to work; right to just and favourable remuneration; right to an adequate standard of living

(articles 23 and 25 of the Universal Declaration)

1. WAGE LEVELS

The particular economic situation experienced by Italy has made it necessary to guarantee wage levels by public intervention. In particular, Act. No. 164 of 20 May 1975¹² provides, in article 1, that:

“A wage supplement shall be payable in the following cases to workers employed by industrial undertakings if they are laid off or work shorter hours: (1) an ordinary wage supplement shall be payable where production is reduced or suspended—(a) on account of a business situation which is due to temporary events that are not attributable to the employer or the workers, or (b) on account of temporary market conditions; (2) an extraordinary wage supplement shall be payable—(a) in the event of a sectoral or local economic crisis, or (b) in the event of a restructuring, reorganization or conversion of the undertaking.”

The wage supplement is payable at the rate of 80 per cent of the total remuneration that a worker would have earned during any hours not worked.

2. PENSIONS

Act No. 160 of 3 June 1975¹³ contains several important provisions for improving pensions and linking them to wage movements. On the one hand, the new provisions raise the statutory minima for the various categories of pension and, on the other hand, they provide for a constant adjustment of pensions to take into account increases in the cost of living.

3. STRIKES

Under article 503 of the Criminal Code, lock-outs and strikes called for political, and not contractual, reasons were punished by imprisonment and fines. The Constitutional Court has declared this provision unconstitutional since it provides for punishment even for a political strike that is not aimed at subverting the constitutional order or at impeding

¹² *Ibid.*, No. 148, 7 June 1975.

¹³ *Ibid.*, No. 146, 5 June 1975.

or obstructing the free exercise of the lawful powers in which the sovereignty of the people is expressed.

4. PROTECTION OF PUBLIC HEALTH

The narcotic drugs and psychotropic substances sector has been brought under control by Act No. 685 of 22 December 1975,¹⁴ which supersedes almost all the previously existing rules and for the first time regulates, completely and organically, the question of prevention, cure and rehabilitation for the different types of drug dependence. The Act is based to a great extent on the provisions of international conventions to which Italy has acceded. There are very detailed regulations governing: the competence of the central and subsidiary organs responsible for control and supervision; the machinery for the compilation and updating of lists of substances subject to control; permits; the cultivation, production, manufacture and use of, and wholesale trade in, narcotic substances, and the distribution thereof; and importation and transit. The enforcement provisions are based largely on the principle that particularly severe penalties should be imposed on traffickers in narcotic drugs, while, for the first time in the Italian legal system, article 80 states that:

“Persons who illicitly acquire or by whatever means possess narcotic drugs or psychotropic substances listed in the first four schedules of article 12 for the purpose of making personal therapeutic use thereof shall not be liable to punishment provided that the quantity of the substances does not significantly exceed the amount required for the treatment, having regard to the particular condition of the person concerned. Similarly, persons who illicitly acquire or by whatever means possess small quantities of the above-mentioned substances for personal non-therapeutic use, or who have by whatever means possessed such substances exclusively for their personal use, shall not be liable to punishment. However, in the case referred to in the first sentence, any quantities of the substances in excess of the amounts immediately required for the treatment shall be seized and confiscated.”

The intention here is that a cautionary penalty for persons using narcotic drugs should not provide traffickers with an opportunity for exerting pressure on or blackmailing drug users.

¹⁴ *Ibid.*, No. 342, 30 December 1975.

JAMAICA

A. Right to equal pay for equal work

(article 23 (2) of the Universal Declaration)

Although the principle of equal pay for equal work had for a long time been widely accepted in Jamaica, it was recognized that in a large number of instances equality as between men and women in respect of wages and salaries did not apply. This discrimination was eliminated by the Employment (Equal Pay for Men and Women) Act, 1975, which seeks to ensure that male and female workers who perform for the same employer tasks similar in nature and magnitude and requiring similar skill and effort receive equal pay.

B. Right to just and favourable remuneration

(article 23 (3) of the Universal Declaration)

The Minimum Wage Act empowers the Minister to issue an order fixing minimum rates of wages for any occupation in Jamaica, either generally or in a specified area, place or district in any case in which he is satisfied that the wages being paid to any persons employed in such occupation are unreasonably low; and he may, if he is satisfied that it is desirable to do so, fix a national minimum wage applicable to occupations generally.

Orders were issued under the Act fixing minimum wage rates for a number of occupations. On 22 October 1975, however, an order was made declaring a national minimum wage applicable to occupations generally.

C. Right of all children to enjoy the same social protection

(article 25 of the Universal Declaration)

In 1976 the Status of Children Act was passed. Before the passing of this Act children fell into two categories: (i) legitimate children, who were those born in wedlock; and (ii) illegitimate children, who were those born out of wedlock. This distinction provided the basis for discrimination in a number of laws and led to the adoption of certain attitudes towards children falling within the latter category, who found themselves in a disadvantageous position socially. Over the years a few laws were passed which improved the lot of these unfortunate children. It was, however, the recognition of the need for a complete restructuring of the law as it related to the illegitimate child which led to the passing of the Status of Children Act.

This Act seeks to ensure that all children, whether born in or out of wedlock, shall enjoy the same social protection. It abolishes the legal distinction between legitimate and illegitimate children and is designed to eliminate the disabilities of children born out of wedlock.

The Act not only abolishes the status of illegitimacy but operates so as to remove all other disabilities placed upon the illegitimate child by other acts. A major innovation relates to the matter of inheritance. The Act gives illegitimate children the same inheritance rights as legitimate children if their parents die intestate.

JAPAN

A. Protection and promotion of respect for human rights

(Preamble of the Universal Declaration)

The task of protecting the basic human rights of the people and of promoting an understanding of the fundamental freedoms in the minds of all the people cannot be accomplished by the State organs alone but requires extensive co-operation on the part of the people. The Civil Liberties Commissioners are volunteers of good character who are well versed in the state of affairs of the community and have a deep understanding of human rights problems to whom the Minister of Justice entrusts the task of keeping a close watch in their communities to see that the basic rights of the residents are not being violated and of taking appropriate remedial action promptly if they find that they are, and also of disseminating the ideas of freedom and human rights. As of 31 December 1976, there were 10,461 Commissioners, including 1,173 women. They included people working in agriculture, forestry and fisheries, merchants, company executives, officials of organizations and practising lawyers.

In 1976, the Commissioners gave advice and counsel to citizens in 152,086 cases on matters concerning their rights; in addition, they organized various campaigns to promote respect for human rights in their communities.

B. Equality of the sexes

(articles 2 and 7 of the Universal Declaration)

1. PREPARATION OF AN OUTLINE OF THE NATIONAL PLAN OF ACTION

The United Nations General Assembly at its thirtieth session proclaimed the decade 1976-1985 as United Nations Decade for Women and urged all nations to devote every effort to attain the goals of the International Women's Year, that is, equality, development and peace. To accomplish these objectives in Japan, there was established the Government Headquarters for the Planning and Promotion of Policies Relating to Women by a Cabinet decision made on 23 September 1975. The Headquarters decided to clarify the needs and problems peculiar to Japanese women and prepare a plan of action for carrying out the programmes, and it completed the preparation of its outline covering major areas of action.

This outline, drafted in accordance with the World Plan of Action, declares the basic concept that both sexes are equally entitled to enjoy their rights as Japanese nationals, regarding politics, education, employment, health, family life, etc., in accordance with the principle of equality of the sexes guaranteed by the Constitution of Japan, and that both sexes are required to participate in, and contribute to, all fields of national life, and it makes it the general aim of the Plan to create the environment in which this can be accomplished.

To attain these objectives, the policy guidelines in this outline cover: (a) improvement of the legal status of women; (b) increased participation of women in all fields of endeavour, based on the principle of equality of both sexes; (c) due consideration for the woman's function as mother and protection of the health of women; (d) ensuring the economic security of the aged; and (e) promotion of international co-operation.

2. RETENTION OF MARITAL NAME AFTER DIVORCE

Article 750 of the Civil Code of Japan provided that "Husband and wife assume the surname of the husband or wife in accordance with the agreement made at the time of the marriage", but, on the other hand, article 767 of the Code used to provide that "A husband or a wife who has changed his or her surname by reason of marriage resumes, by reason of 'divorce by agreement', the surname which he or she had before the marriage".

In Japan, however, many married couples choose the husband's surname as their surname, so that in most instances it is the wife who suffers the inconvenience or disadvantage of resuming the pre-marriage surname. Also, if the person who resumes his or her pre-marriage surname after divorce has a child to bring up, that person suffers more inconvenience because the surname of the child is different.

In order to put an end to such inconvenience and disadvantage, the Civil Code of Japan has been partially amended so that a divorced person may continue to use his or her pre-divorce surname by making a notification to the municipal office concerned, in accordance with the provisions of the Family Registration Law, within three months from the date of divorce.¹

3. JURISDICTION OVER A SUIT FOR DIVORCE

A suit for divorce used to be subject to the exclusive jurisdiction of the district court located in the jurisdictional area of the husband's residence, if the married couple assumed his surname, or of the wife's residence, if they assumed her surname. However, since most married couples assumed the husband's surname, the wife had to go to the place of residence of her husband in order to file a suit for divorce; thus the wife, who was usually in a financially weak position, was forced to bear a greater financial burden because of the travel involved and was also faced with difficulties in collecting evidence.

Therefore, with a view to promoting the convenience of the parties and making the collection of evidence easier and thus rationalizing the exercise of court jurisdiction, the Law concerning the Procedure of Suits Relating to Personal Status has been amended so that a suit for divorce is subject to the exclusive jurisdiction of the district court of the place of common residence of the husband and wife, if they have such common residence, or of the district court of the last place of common residence of the husband and wife if either husband or wife has residence in its jurisdictional area, or of the district court located in the jurisdictional area of the residence of either husband or wife if they have no common residence.²

C. Legal aid

(articles 10 and 11 of the Universal Declaration)

The legal aid system in Japan is administered by the Legal Aid Association, a juridical foundation supervised by the Minister of Justice. The Association gives financial aid to poor litigants in civil suits by advancing the money necessary for paying the costs of the suit and the lawyers' fees.

In 1975 the Association made decisions to provide legal aid in 2,169 cases. Of these, cases involving monetary claims accounted for 55.6 per cent, cases involving family affairs for 26.9 per cent, cases involving disputes over immovable property for 9.7 per cent, and cases concerning applications for such measures as provisional attachment for 7.8 per cent.

The Government gave a subsidy of 87 million yen to the Association for the fiscal year 1975.

D. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

Family registers, which officially certify the nationality and personal relations of Japanese nationals, are made available to the public and are widely used in various areas of legal life.

However, in some cases these family registers contain information which it is not desirable to make known to others, for example, information regarding the illegitimacy of a

¹ Law for Partial Amendments to the Civil Code, etc. (Law No. 66, 15 June 1976).

² *Ibid.*

child or a past record of divorce. Thus, free access to these registers might incur a violation of the privacy of the person involved.

For these reasons, the Family Registration Law has been partially amended in order to abolish free access by the public to family registers and struck-off family registers. Under the amendments, any person who applies for a full copy or an excerpt of another person's family register must clearly indicate the reason for the application. The mayor of a city or town or the headman of a village who receives such application is now authorized to reject it if the application is clearly made for some improper reason; furthermore, with respect to applications for a full copy or an excerpt of a struck-off register, only those in certain categories, such as the persons who were entered in the struck-off register or those in certain degrees of relationship with them, are now permitted to make such application.³

E. Right to take part in government

(articles 7 and 21 of the Universal Declaration)

As regards the "equality of the value of ballots" cast by voters, the court precedents have not gone so far as to regard it as a constitutional requirement but have regarded it as one element to be considered by the Diet in deciding how and in what proportion it should allocate the fixed number of its members to the various electoral districts. In 1976, however, the Supreme Court declared in a decision that the "equality of the value of ballots" is a constitutional requirement.⁴

The gist of this decision is as follows:

"The Constitution declares that all of the people are equal under the law, thus proclaiming the principle of equality in general and, to materialize its applicability in the realm of politics, it provides for the right to vote. When we look over all these provisions, it is considered that these provisions reflect the result of historical development of the principle of equality of the voting right and, therefore, it is construed that equality under the law, as applied to the voting right, is aimed at complete equalization to ensure that all people should be equal in their political value; and it is proper to interpret this as meaning that, although the above provisions of the Constitution only prohibit, in their wording, discrimination in the qualifications of voters, the constitutional requirements are not limited to this, but are intended to cover the substance of the right to vote, that is, equality of the value of ballots cast by voters.

"The work of setting the framework of an electoral system is left to the discretion of the Diet but, if an electoral system has actually reached such a stage that no justification can any longer be found in it in terms of the equality of value of ballots, it cannot but be held unconstitutional."

Based on the judgement as stated, the Supreme Court held, as regards the concrete claim before it—in which it is asserted that, under the existing Public Office Election Law, which provides for the allocation to each electoral district of the fixed number of members of the House of Representatives, the ratio of the number of voters which one member of the House needs for election to the total number of qualified voters in his electoral district varies from one district to another, the ratio in the most difficult electorate being about five times larger than that in the easiest electorate—that:

"the inequality of value of ballots indicated by this difference has no logical basis, generally speaking, even if some political considerations are admissible, in this respect, to cope with rapid social changes and, moreover, the present condition of inequality goes beyond any logic and there are no reasons to justify it, so, unless rectified within a reasonable period, as the Constitution demands, the provisions concerning the allocation of the fixed number of members of the House of Representatives are in violation

³ *Ibid.*

⁴ Suit Claiming the Nullity of Election (Case *Gyō Tsu* No. 75, 1974; Supreme Court's decision of 14 April 1976).

of the constitutional requirements of equality of the voting right and, therefore, unconstitutional”.

F. Right to free choice of employment; right to favourable conditions of work
(*article 23 of the Universal Declaration*)

Licensing of pharmacies

The provisions of the Pharmaceutical Affairs Law imposing limitations on the location of new pharmacies as a condition for licensing have been deleted.⁵ This was done following a Supreme Court decision of 30 April 1975⁶ to the effect that the provisions of the Law relating to conditions for the licensing of a pharmacy—the so-called “restrictions relating to distance”—were unconstitutional.

In its decision, the Supreme Court ruled, first with regard to the licensing of occupation, that “since a licensing system like this imposes restrictions upon the freedom of occupation, it is required to be a necessary and reasonable measure for protecting important public interest, in order that they may be held constitutional. If it is a measure not for a positive purpose but for such a negative purpose as preventing harm to the public, such system will be allowed only when no other preventive measures, such as the regulation of occupational activities, can be taken”.

From this basic standpoint, the Court went on to rule that the licensing system itself and the standards for the conditions of licensing as prescribed by the Pharmaceutical Affairs Law could be said to be a necessary and reasonable measure with the object of maintaining the public welfare, namely, the protection of the health and safety of the people from the dispensing of substandard drugs and medical supplies.

In this connexion, however, the Court added that “whether or not we can reasonably admit that serious evils related to the supply of drugs have developed to such an extent as to convince us of the necessity and rationality of preventing such evils by imposing restrictions on the location of pharmacies to be newly established, as a condition of licensing, is an issue requiring further examination”.

The gist of the judgement of the Court on this issue is as follows:

(a) Under the existing law, in order to prevent the supply of substandard drugs, the Pharmaceutical Affairs Law provided for various strict controlling measures to guarantee and maintain the quality of drugs throughout the entire process of manufacture, storing and sale. Also, the Pharmacists Law laid down strict provisions to be observed with respect to dispensing. As regards violations of these regulations, there were laws providing for penalties and administrative sanctions as well as for administrative inspection and supervision;

(b) Therefore, in order that, in addition to the above measures, another preventive measure, that is, the restriction of the location of a newly established pharmacy, which entailed substantial limitations on the freedom of occupation, might be upheld as constitutional, there must necessarily be admitted the likelihood that, if such restriction was not enforced, hazards might arise to the health of the people, to the extent of outweighing the restriction on the freedom of occupation imposed by this measure;

(c) It was questionable, however, how much these restrictions on the location of pharmacies could indirectly conduce to their proper geographical distribution, and such a measure as the imposition of restrictions on the location of pharmacies, which extremely limit the freedom of occupation, with the objective of ensuring that there were no areas without pharmacies, remarkably upsets the balance between the end and the means.

The Court therefore ruled that the provisions of the Pharmaceutical Affairs Law imposing restrictions on the location of a pharmacy to be newly established, as a condition for licensing its establishment, could not be regarded as necessary and reasonable regulation

⁵ Law for Partial Amendments to the Pharmaceutical Affairs Law (Law No. 37, 13 June 1975).

⁶ Suit Demanding the Revocation of Administrative Disposition (Case *Gyō Tsu* No. 120, 1968).

aimed at preventing the supply etc. of substandard drugs and medical supplies and, therefore, that those provisions were null and void as they were against article 22, paragraph 1, of the Constitution.

The work environment

The Work Environment Assessment Law,⁷ which aims at securing a proper work environment and maintaining the health of workers, provides for the appointment of persons or groups to assess the work environment of designated places of work. It provides for the testing of work environment assessors and the registration and supervision of work environment organs and lays down the standards of assessment.

G. Right of motherhood and childhood to special care and assistance

(article 25 of the Universal Declaration)

1. MATERNITY LEAVE FOR CERTAIN CATEGORIES OF FEMALE WORKERS

A law of 11 July 1975⁸ provides that when a female teacher in a compulsory education school, or a nurse or nursery governess in a medical or social welfare institution in the national or local public service, is rearing a child less than one year old, the appointing authorities of the worker concerned may, upon receipt of an application from her, grant her a vacation for infant rearing and fix its period. Salary and term-end allowance will not be paid for the period of the vacation but, for purposes of calculating the period required for a raise in salary and the period of service which is used as a basis for calculating the amount of retirement allowance, half of the period of her vacation will be calculated in the above periods. As regards the treatment of female workers in private institutions, the law provides that efforts should be made to take the necessary steps to grant them similar treatment to that prescribed in this law.

2. CHILDREN'S ALLOWANCES

The Law for Partial Amendments to the Payment of Special Child Sustenance Allowance, etc.⁹ provides for increases in the special children's sustenance allowance, the children's sustenance allowance and the children's allowance. It also provides for the payment of a welfare allowance to those who need constant care and protection in their daily life because of serious mental or physical defects.

⁷ Law No. 28, 1 May 1975.

⁸ Law No. 62, 11 July 1975.

⁹ Law No. 47, 27 June 1975.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

Introduction

After the founding of the Lao People's Democratic Republic on 2 December 1975, the Constitution and legislation in force until that date were completely and irrevocably abolished. Pending the promulgation of a new Constitution and new legislation by the People's Supreme Assembly, the laws and regulations now in force are inspired and indeed guided by the broad, universally recognized principles of law. Those principles had been put into effect before in the liberated zone of Laos throughout the long period of struggle for national independence and democracy. These legal guidelines and practices will be embodied in the future Constitution and the new body of law at present being drawn up by the supreme national authority. The major legal policy options of the Lao revolution are to be given the force of law and codified in the near future.

The protection and development of human rights, the gradual enhancement of the material and spiritual well-being of the people and the achievement of a better, harmonious and truly happy new society free from any form of exploitation of man by man—these are the *raison d'être* of the Lao People's Democratic Republic.

With this objective, the Lao revolution and the Lao People's Democratic Republic intend to continue their endeavours on behalf of liberation and of the betterment of the conditions of life, not only for their own sake but also in order to make their modest contribution to the task of emancipating all mankind.

A. Non-discrimination

(article 2 of the Universal Declaration)

For 30 years, women carried on the struggle within the Lao Women's Patriotic Association, on a footing of complete equality with men. Now that peace has been restored, patriotic Lao women are called upon to play an important role for the country's future. In order to enable them to participate actively and fully in the work of building a socialist society, the Party and the Government have continually raised the political, intellectual and technical status of women.

B. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

Every Lao citizen is guaranteed protection of the person, and the right to life and liberty. It is prohibited for any individual, any organization, the army, the police and the administration at all levels to abuse their authority in order to jeopardize life or in order to punish persons exercising democratic freedoms. Any violation of these freedoms is to be severely punished in accordance with the laws of the State.

C. Prohibition of slavery and servitude

(article 4 of the Universal Declaration)

Slavery and the slave trade are strictly prohibited in all their forms. No human being may be oppressed on any grounds or in any form whatsoever.

D. Protection of rights in criminal cases

(articles 5, 9, 10 and 11 of the Universal Declaration)

A person suspected of having committed a criminal offence may not be arrested except on a written order of the competent judicial authorities, except in the case of an arrest *in*

flagrante delicto. The person arrested must be interrogated within 24 hours and, if there is insufficient evidence of his guilt, he must be released immediately. If it is proved that a person is in fact guilty, he may be detained only under a committal order. It is strictly forbidden to strike or to torture physically any person arrested or detained or to subject him to any form of degrading treatment. All the guarantees necessary for the defence of the accused shall be provided. The trial is public. No one shall be held guilty of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. No Lao citizen may be expelled from the national territory for any reason or in any manner whatsoever.

E. Equality before the law

(article 7 of the Universal Declaration)

Despite the fact that the old régime proclaimed this universal principle, traditional practices and abuses of all kinds eventually distorted the very substance of even the most solemnly proclaimed law. The new régime has not forgotten that equality before the law is an illusion when extreme inequality of fortune creates enormous distinctions between individuals. Equality before the law is becoming a reality for the whole of the country; everyone is equal before the law, without distinction as to race or ethnic origin, sex, wealth, religion, educational level or occupation. The State guarantees the equal enjoyment of democratic freedoms to all persons. The Lao State has the further duty to safeguard the rights of all Lao citizens resident abroad.

F. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

No one may be subjected to arbitrary interference with his privacy or family, nor to attacks upon his honour and reputation. The inviolability of the home and correspondence of the citizen are respected and guaranteed.

It is prohibited to enter a person's home or dwelling without an authorization or an order issued by the authority which is competent under the laws and regulations, except in the case of hot pursuit of an offender who enters the house or dwelling. A search of such premises ordered by the competent authorities may be carried out only in day-time between the hours of 6 a.m. and 6 p.m.

G. Freedom of movement

(article 13 of the Universal Declaration)

Every citizen has the right to freedom of movement and to settle where he chooses anywhere in the national territory. It is the duty of the administrative authorities, at all levels, to create favourable conditions facilitating the movement of citizens, the exercise of a profession or occupation, visits and economic and cultural exchanges between the various regions of the country. The road network and telecommunications bring the rural and urban areas into closer touch and will enable members of ethnic minorities to receive the benefit of progress.

H. Right to marry and to found a family

(article 16 of the Universal Declaration)

Practices such as polygamy, the exploitation of women and the exacting, coercive submission of the wife to the husband as lord and master are abolished forever. There will be no more arranged marriages, and the right to marry and to found a family will no longer be subject to any limitation due to race, religion or social status.

I. Right to own property; right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

The right to own property is guaranteed. Every citizen has the right to own property, whether alone or in association with others. It is prohibited for any person, any organization, the army, the police and the administration at all levels to abuse their authority in order to interfere with the property of the people. If, in case of need, private property is requisitioned or expropriated in the public interest, the owner is entitled to fair and equitable compensation. The State accords special protection to such undertakings as are useful for national economic development, the well-being of the people and the building of the foundations of an independent economy, in a word, the socialist economy. Consequently, of the five currently existing forms of enterprise, namely semi-private enterprises, private enterprises, small-scale and scattered enterprises, co-operatives and State enterprises, only the last two are marked out for expansion and a prosperous future. In order to achieve this purpose, either the other enterprises will have to be converted or, if need be, compensation will have to be awarded to the owners of those to be phased out, on the basis of the voluntary and conscious consent of the interested parties themselves.

J. Freedom of thought, conscience and religion

(article 18 of the Universal Declaration)

Everyone has not only the right to freedom of thought, conscience and religion, but also the duty to respect all religions. Places of worship are protected by the State. Non-believers are also protected by the law.

One of the duties of the Ministry of Education, Sport and Religion is to see to it that religious freedom is respected. The right to organize various religious ceremonies is safeguarded provided that such ceremonies do not interfere with noble national traditions and the established order, and do not disturb the peace, jeopardize the solidarity of the multinational people or prejudice the beliefs of others.

K. Right to take part in government

(article 21 of the Universal Declaration)

Considering that the will of the people is the basis of the authority of government, the Lao People's Democratic Republic grants to every citizen the right to vote and to be elected. In order to enable citizens to take part in the government of the country, elections by universal suffrage and secret ballot have been held periodically in the past. These democratic freedoms are guaranteed to everyone without any distinction whatsoever, with the exception of the mentally deficient and persons deprived by the courts of the right to vote and to be elected. Thus in November 1975, the Lao of both sexes took part in the various elections to elect the representatives of the people, and in setting up the revolutionary authorities at all levels. The representatives of the people are first elected to the people's assemblies at various levels. The members of these assemblies then elect the revolutionary administrative committee and the people's court at their respective levels. There is no separation of powers, on the premise that the source of all power is the unity of the working people.

L. Right to work

(article 23 of the Universal Declaration)

Everyone has the right to work and to free choice of employment. In addition, everyone has the right to equal pay for equal work; and to just and favourable remuneration ensuring for himself and his family an existence consistent with human dignity.

Considering that work is the source of all progress, the State not only finds employment for every citizen but also protects every worker. In addition, it considers that it is its honour and duty to find appropriate employment for any person who is compelled, through

incapacity or unfitness, to relinquish his occupation. The State does not permit arbitrary dismissal by either State enterprises or any other enterprise.

M. Right to an adequate standard of living; right of motherhood and childhood to special care and assistance

(article 25 of the Universal Declaration)

In the event of industrial injury or of sickness, the State, through social security, provides the sick or injured person with all the care needed for a prompt recovery.

The social security provides workers of retirement age with all the means for enabling them to enjoy their old age in happiness and dignity.

The protection of motherhood and childhood—social allowances, establishment of day care centres, for example—is organized, supported and extended throughout the country.

N. Right to education

(article 26 of the Universal Declaration)

Everyone has the right to education. In the Republic education is free in the primary, secondary and higher stages. Primary education is compulsory. Education is directed to the full intellectual, moral, physical and artistic development of the human personality.

Intellectuals will no longer turn their backs on agricultural or manual work, as they used to do. The new régime is beginning to deal with the sequels of the neo-colonial and bourgeois past. For example, in the last year or so the Done Thao-Done Nang re-education centre has admitted some 2,000 persons, a third of whom are now returning to normal life.

O. Right to participate in cultural life; protection of copyright

(article 27 of the Universal Declaration)

Artistic and cultural life is experiencing a broad development. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Places of great historic and cultural interest are protected by the State.

LIBYAN ARAB REPUBLIC*

Introduction

A large number of laws and regulations were issued aiming at the protection of the individual and confirming his rights in accordance with the Universal Declaration of Human Rights. The judgements of the Supreme Court have also militated in favour of the protection of the individual in accordance with the Universal Declaration. Equality in dignity and rights was stressed in particular by a decision of the Revolutionary Command Council of 19 April 1976 approving the accession of the State to the International Convention on the Suppression and Punishment of the Crime of *Apartheid*.

Specific rights are dealt with below under headings related to the pertinent articles of the Universal Declaration.

A. Right to an effective remedy; right to a fair trial

(articles 8, 10 and 11 of the Universal Declaration)

Act No. 51 of 1976 concerning the promulgation of the judicial system (adopted on 3 July 1976) endorses the principles laid down in the Universal Declaration with regard to the independence of the judiciary, the right to an effective remedy by the competent tribunals and the right to a fair and public hearing. Article 14 of the Act provides that in the case of all disputes and crimes the final decision shall lie with the courts. Thus, every individual in the State has the right to resort to the courts. The Act also embodies the principle of the independence of the judiciary and the exemption of its members from dismissal (art. 52). It lays down the principle of public hearings and provides, in article 20, that court hearings shall be public unless a court decides to hold closed hearings in order to preserve morality and public order. Judgements must always be handed down at a public hearing.

B. Presumption of innocence

(article 11 of the Universal Declaration)

In many judgements the Supreme Court has confirmed the principle of presumption of innocence—for example, in the judgement handed down in case No. 21/117 at the hearing of 15 April 1975.¹ This judgement states not only that a person is innocent until proved guilty but also that the court concerned must declare the accused innocent when it is doubtful about the authenticity of the accusation or the adequacy of the evidence.

C. Freedom of assembly and association; right to form trade unions

(articles 20 and 23 (4) of the Universal Declaration)

On 13 November 1975, Act No. 16 of 1975 concerning women's organizations was promulgated. Article 1 stipulates that "women in the Libyan Arab Republic are called upon—for the fulfilment of their role in society—to establish revolutionary entities, with a view to mobilizing women competent for revolutionary political action, and they are called upon to form women's assemblies for the purpose of action in the social and cultural fields".

On 16 December 1975, Act No. 17 of 1975, concerning trade unions, was promulgated. Article 1 stipulates that "workers employed in the same profession or industry or in similar professions or industries or interrelated professions or industries or participating in the same

* By a declaration of the General People's Conference on 2 March 1977, the official name of the Libyan Arab Republic was changed to the Socialist People's Libyan Arab Jamahiriya.

¹ *Court Gazette*, Year 12, No. 2, p. 128.

type of production may form among themselves a general union at the republican level, and these unions shall have the right to form a general federation of trade unions. Trade unions formed pursuant to the provisions of this Act and their federation shall have legal personality”.

D. Right to take part in government

(article 21 of the Universal Declaration)

The General People's Conference at its session held from 12 to 24 February 1976 recommended that direct popular authority be made the basis of the political system. Authority belongs to the people and there is no other authority. The people exercises its authority through the people's conferences, trade unions, professional unions and leagues and the General People's Conference.

E. Right to social security

(article 22 of the Universal Declaration)

Act No. 19 of 1976 concerning compensation of workers for occupational injuries, their rights before the General Social Security Board and their protection abroad, was promulgated on 19 April 1976. Article 1 states:

“Without prejudice to the rights of the worker arising from occupational injury and as provided for in the Labour Code and the Social Security Act, an injured worker, or, in the event of death, his heirs, shall have the right to claim compensation for his injury from the person responsible if this was not the employer and from the employer if the injury resulted from his contravention of the labour laws or his failure to take industrial security measures.”

The Act lays down an important safeguard for an injured worker by giving him the necessary compensation in addition to his rights before the General Social Security Board. The State stresses its protection of the worker and gives him all the rights laid down in the social security system, in addition to compensation from the person responsible for his injury. It thus adds something new to the Universal Declaration of Human Rights, article 22 of which merely lays down the right to social security.

F. Right to work; right to just and favourable remuneration

(article 23 of the Universal Declaration)

The Civil Service Act (No. 55 of 1976) guarantees citizens equality of opportunity with regard to employment through the announcement of vacant posts and provides for just remuneration for work without any distinction between men and women on a basis of equal pay for equal work, as laid down in article 23 of the Universal Declaration. The salary system set forth in the Civil Service Act and the Labour Code ensures workers and their families a decent livelihood.

The Supreme Court has confirmed that the right to work is a right of citizens and aliens alike and has stipulated that they should have equal remuneration (judgement in case No. Q22/A of 8 January 1976).² According to the principles of international law, aliens have the freedom to work and to engage in professional or business activity in the private sector inasmuch as the relationship between them and their employers is a contractual one regulated by the Labour Code; usually, however, because of economic considerations, it is necessary for an alien to obtain permission from the State concerned to engage in any specific occupation. The Supreme Court has stated that Act No. 58 of 1970 on labour means that an alien is required merely to obtain a permit to engage in any work or profession and is not subject to any special régime imposing conditions for employment and remuneration.

² *Ibid.*, Year 12, No. 4, p. 34.

An examination of the judgements of the Supreme Court shows quite clearly the extent of its commitment to protection of the right of workers to remuneration and to other ancillary cash perquisites to which a worker is entitled under his contract in addition to his remuneration for work performed, which are regarded as a portion of this remuneration and as being of the same nature. The employer is bound absolutely to pay such additional sums by reason of the worker's entitlement and can discharge this obligation only by payment in cash or in kind. This claim does not become time-barred until the expiry of one year from the time of the termination of the contract, provided that it does not relate to commission, profit-sharing or revenue percentages. The term in respect of the latter begins only from the time at which the employer gives the employee a statement of his entitlements as shown on the books.

In its judgement handed down on 19 January 1975³ the Court confirmed the right of a worker to the additional remuneration provided for in the Labour Code provisions relating to the general salary system and stated that there could be no agreement to relinquish it expressly or implicitly; a worker's statement of such relinquishment was void and could not be used to his disadvantage. If the court concerned found that the wage claimed by the worker was the basic remuneration, the worker was entitled to claim, in addition, the equivalent of the additional remuneration.

The Court ruled in its judgement handed down in case No. Q11/24 of 22 June 1975⁴ that, where an employer brings in a worker from abroad and agrees with him to defray the cost of his return and transportation of his personal effects at the end of his term of service, the liability of the employer for such costs takes effect at the time of the expiry of the term agreed on in the contract or the time of the termination of service before the completion of this term by annulment of the contract for a reason not attributable to fault on the part of the employee, and that the implementation of the obligation is not dependent upon the employee's leaving the country immediately upon the expiry of the term of service, because the obligation has effect by virtue of the contract and does not relate to the fulfilment of this condition. The obligation does not become void if for any reason the employee does not actually leave the country following the expiry of the term of service.

The Court ruled in case No. Q20/29 at the hearing of 1 June 1975⁵ that an employee's departure from the country is not an impediment to his claiming his rights from the date of the expiry of his work contract up to the date on which he claims his right.

G. Right to rest

(article 24 of the Universal Declaration)

The Civil Service Act of 1976 provides that workers have a right to a certain amount of leave and must exercise this right as specified in the Act. It also provides that a worker is entitled at the end of his term of service to cash remuneration for accumulated annual leave and that a worker has the right to sick leave at full pay for the term of his treatment. This shows the Act's humanitarian approach to workers who fall sick, an approach which is in keeping with the general philosophy of a society characterized by realistic compassion and social solidarity.

H. Right to education

(article 26 of the Universal Declaration)

On 6 October 1975 the Compulsory Education Act (No. 95 of 1975) was adopted. Article 1 of this Act provided that "elementary and preparatory education shall be compulsory for all boys and girls as set forth in the Act". Moreover, education was to be free at all stages, including the university stage.

³ *Ibid.*, Year 11, No. 3, p. 125.

⁴ *Ibid.*, Year 12, No. 2, p. 72.

⁵ *Ibid.*, Year 12, No. 2, p. 46.

LUXEMBOURG

Introduction

In 1975 and 1976, the Grand Duchy of Luxembourg adopted numerous laws and regulations concerning human rights. These measures relate more particularly to the administration of equitable justice, to marriage and the family, to the right to own property, to the right to social security, to economic, social and cultural rights and to the protection of persons and property. The most important of these measures are indicated and commented on briefly below. Provisions regarded as less important, i.e. those representing slight amendments of previous laws or regulations, are either reproduced in a more summary manner or simply omitted. It will be noted that the economic situation of recent years has given rise to new legislation on unemployment.

A. Right to recognition as a person before the law

(article 6 of the Universal Declaration)

An Act of 16 May 1975¹ amends certain provisions of Book I, Titles II and VIII, of the Civil Code, particularly article 58. Under that article, any person finding a new-born child is obliged to declare the fact to the registrar of the place of discovery. A detailed report is drawn up: subsequently to and separately from this report, the registrar prepares a certificate which takes the place of a birth certificate. In addition to the usual particulars, the certificate states the sex of the child and the first names and family name given to him; it establishes a date of birth consistent with his apparent age and designates the commune in which he was discovered as the place of birth.

B. Administration of justice

(articles 8-11 of the Universal Declaration)

Under an Act of 19 November 1975² the rates for fines imposable by the criminal courts were increased. Generally speaking, the rates were quintupled, subject to certain derogations allowed for various reasons.

An Act of 21 July 1976³ approved the European Convention on Extradition, signed in Paris on 13 December 1957. The Grand Duchy entered reservations, which are specified in the Act in detail, to several provisions of the Convention, relating, in particular, to article 1, articles 6 and 21, article 7, article 9 and article 28.

An Act of 21 July 1976⁴ approved the European Convention on Mutual Assistance in Criminal Matters signed at Strasbourg on 20 April 1959. Assistance is related to extradition, the subject of the above-mentioned Convention signed in Paris on 13 December 1957. By the Mutual Assistance Convention, the Contracting Parties undertake to afford each other the widest measure of mutual assistance in proceedings in respect of offences the punishment of which falls within the jurisdiction of the judicial authorities of the requesting party. Assistance may be refused in the case of an offence considered a political offence, an offence connected with a political offence, or a fiscal offence. The Grand Duchy reserved the right not to give effect to a request for assistance in the cases defined by the Act.

A ministerial regulation of 16 November 1976⁵ established a reception and information service under the authority of the Minister of Justice. The service is under the control of

¹ *Mémorial A 1975*, pp. 652-657.

² *Ibid.*, p. 1540.

³ *Mémorial A 1976*, p. 718.

⁴ *Ibid.*, p. 727 *et seq.*

⁵ *Ibid.*, p. 1200.

a committee consisting of a representative of the Ministry of Justice, the State Procureur Général, the Bâtonnier and the President of the Conférence du Jeune Barreau, or their representatives.

The task of this service is:

- (a) To receive private individuals and direct them to the competent services by providing them with the necessary information and technical means;
- (b) Generally to provide individuals with information concerning the extent of their rights in relation to the problems posed and concerning ways and means of realizing them;
- (c) To listen to their grievances concerning, and to suggest means of overcoming, difficulties encountered in giving effect to their rights.

An Act of 6 December 1976⁶ regulates the rehabilitation of persons sentenced by a Luxembourg court to penalties of more than five years' imprisonment, of more than five days' and less than five years' imprisonment or of one to five days' imprisonment (*peines criminelles, correctionnelles et de police*). Rehabilitation is either automatic or is granted on request by an order of the Chambre des mises en accusation under the conditions established by the Act.

C. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

An Act of 16 May 1975⁷ amends certain provisions of Book I, Titles II and VIII, of the Civil Code. The amendments relate to civil status records, particularly certificates of birth, affiliation, marriage and death. Any person may obtain extracts from the civil status registers from those in charge of the registers provided the extracts do not reveal the existence of a relationship of illegitimacy or adoption. No one except the authorities or the person whom the certificate concerns, his spouse or widow(er), his legal representative or his ascendants, descendants or legal heirs may obtain a certified copy of a civil status certificate less than 100 years old which reveals a relationship of illegitimacy or adoption unless he establishes a family, scientific or other legitimate interest.

D. Right to a nationality

(article 15 of the Universal Declaration)

An Act of 26 June 1975⁸ made certain amendments to the Luxembourg Nationality Act of 22 February 1968. The amendments relate mainly to Luxembourg nationals by birth, to the acquisition of Luxembourg nationality by naturalization or by option, and to the loss and recovery of Luxembourg nationality.

E. Marriage and the family

(articles 16 and 25 of the Universal Declaration)

An Act of 6 February 1975⁹ radically amended the provisions relating to divorce by mutual consent and to second marriages, and certain provisions relating to divorce on specified grounds and to separation from bed and board. Article I of the Act abrogates articles 275 to 294 of the Civil Code and replaces them by new provisions. These new provisions relate to divorce by mutual consent. By article II of the Act, several other articles of the Code are adapted to the changes in family law.

An Act of the same date¹⁰ altered the provisions of the Civil Code relating to civil majority, parental authority, parental administration of minor children's property, wardship

⁶ *Mémorial A* 1975, p. 1470-1473.

⁷ *Ibid.*, pp. 652-657.

⁸ *Ibid.*, pp. 764-770 and 800.

⁹ *Ibid.*, P. 255.

¹⁰ *Ibid.*, p. 260.

and emancipation. The Act replaced Book I, Titles IX and X, of the Civil Code by modern new provisions. Title IX relates to parental authority vis-à-vis the person of the child (chap. I) and parental authority vis-à-vis the property of the child, whereas Title X deals with minority (chap. I), wardship (chap. II) and emancipation (chap. III).

An Act of 16 August 1975¹¹ relates to abolition of the procedure for the judicial ratification of changes in the marriage property system. Under the new provisions of article 1397 of the Civil Code, the spouses may by notarized deed, within the limits of that article, make any alterations they think fit to their marriage property system, whether contractual or legal, or even change it altogether, after they have applied it for two years.

An Act of 10 December 1975¹² approved the Convention establishing an international booklet delivered to married couples for registration of births and deaths, signed in Paris on 12 September 1974.

Under the provisions of an Act of 21 February 1976,¹³ convictions under articles 387 to 390 of the Penal Code (adultery) were annulled.

F. Right to own property

(article 17 of the Universal Declaration)

An Act of 16 May 1975,¹⁴ which regulates the co-ownership of buildings, replaces in particular article 664 of the Civil Code (ownership by floor). Its provisions relate to any building or group of buildings the ownership of which is divided among a number of persons in lots each consisting of an exclusive part and a quota of shares in a common part. It orders the rights and duties of the co-owners in detail and regulates the administration and use of the common parts of such property.

A Grand-Ducal regulation of 13 June 1975¹⁵ prescribes measures for extending the aforementioned Act.

G. Freedom of the press

(article 19 of the Universal Declaration)

An Act of 11 March 1976¹⁶ instituted annual financial assistance from the State budget for the Luxembourg press. This assistance is to be divided, in the manner laid down in article 3 of the Act, among organs of the press satisfying the criteria of article 2.

H. Right to social security

(article 22 of the Universal Declaration)

The Act of 27 May 1975¹⁷ modified the composition of widows' and widowers' pensions under the various contributory pension schemes by replacing: (i) article 204, paragraph 1, of the Social Insurance Code; (ii) article 47, paragraph 1, of the Amended Act of 29 August 1951 on reform of the pension insurance of private employees; (iii) article 16, paragraph 1, of the Amended Act of 21 May 1951 on the establishment of a pension fund for artisans; (iv) article 16, paragraph 1, of the Amended Act of 3 September 1956 on the establishment of an agricultural pension fund; and (v) article 16, paragraph 1, of the Amended Act of 22 January 1960 on the establishment of a retirement fund for tradesmen and industrial workers.

¹¹ *Ibid.*, p. 1253-1254.

¹² *Ibid.*, p. 2118.

¹³ *Mémorial A* 1976, p. 108.

¹⁴ *Mémorial A* 1975, p. 634.

¹⁵ *Ibid.*, pp. 740 *et seq.*

¹⁶ *Mémorial A* 1976, p. 123 *et seq.*

¹⁷ *Ibid.*, pp. 668 *et seq.*

The Act of 13 June 1975¹⁸ established a compensatory grant chargeable to the National Solidarity Fund in favour of certain categories of persons in receipt of annuities and pensions on the conditions stated in the Act. The grant is exempt from income tax and social security contributions.

The object of a Grand-Ducal regulation of 15 June 1975¹⁹ is to determine the conditions of intervention, the organization and the functioning of the High Risk Fund. The purpose of this Fund, which was set up under the Public Health Department by an Act of 2 May 1974 amending Book I of the Social Insurance Code and the amended Act of 29 August 1951 concerning the sickness insurance of civil servants and employees, is to reimburse the cost of hospitalization and medical treatment rendered necessary by mental illness, tuberculosis, cancer and poliomyelitis, and the services rendered necessary by congenital malformations or by the use of large surgical and medical equipment.

An Act of 26 December 1975²⁰ brought the pensions provided for by the Social Insurance Code and by legislation governing the insurance of private employees and of artisans, tradesmen and industrial and agricultural workers into line with the 1974 level of wages.

An Act of 27 December 1975²¹ introduced a clearing system between contributory pension schemes for the cost of adjusting pensions to the level of wages on the terms laid down in the Act.

I. Right to work

(article 23 of the Universal Declaration)

An Act of 3 July 1975²² organizes the protection of women workers in respect of maternity. It provides for: (i) welfare measures before and after confinement; (ii) grants in kind and in money through the amendment of article 13 of the Social Insurance Code as amended by the Act of 2 May 1974; (iii) prohibition of the dismissal of a wage-earner during pregnancy and for a certain period following confinement.

The Act of 26 July 1975²³ authorized the Government to take measures designed to prevent dismissals for reasons connected with the economic situation and to ensure the maintenance of employment. The measures to be adopted are subject to certain conditions laid down in the Act. They may consist of, *inter alia*, (a) grants to enterprises for the compensation of part-time workers, (b) special work of general utility, (c) other miscellaneous measures.

J. Right to an adequate standard of living

(articles 24 and 25 of the Universal Declaration)

1. PROTECTION OF PUBLIC HEALTH

Two Acts of 4 August 1975²⁴ regulate the manufacture and import of medicaments and the marketing and advertisement of patent medicines and prefabricated medicaments. The substances covered by these Acts affect public health and are placed under the authority of the Minister of Public Health. Implementation of the Acts is ensured by two Grand-Ducal regulations of 12 November 1975.

An Act of 25 November 1975²⁵ regulates the issue to the public of medicaments, which can be obtained only in pharmacies. Stocks of medicaments may, however, be established

¹⁸ *Ibid.*, p. 740.

¹⁹ *Mémorial A 1975*, p. 856.

²⁰ *Ibid.*, p. 2169.

²¹ *Ibid.*, p. 2175.

²² *Ibid.*, p. 808.

²³ *Ibid.*, p. 890.

²⁴ *Mémorial A 1975*, pp. 1484 and 1487.

²⁵ *Ibid.*, p. 1540.

within-clinics; such medicaments may be used only for the patients of those establishments.

An Act of 24 April 1976²⁶ approves the Protocol, signed at Geneva on 25 March 1972, amending the Single Convention on Narcotic Drugs, 1961.

The purpose of an Act of 17 December 1976²⁷ is to guarantee medical and hospital equipment and the distribution of medical services in accordance with the country's needs. In order that its objectives may be achieved, the Act provides for assistance to hospitals at State expense, with a view to ensuring a health infrastructure consistent with real needs and guaranteeing sound hospital management; it also provides for assistance to the medical and paramedical professions with a view to guaranteeing effective medical care for the population. The conditions and procedures governing the grant of such assistance are laid down in the Act.

2. UNEMPLOYMENT

An Act of 30 June 1976²⁸ establishes the Unemployment Fund and regulates the granting of total-unemployment allowances.

The Unemployment Fund is intended to cover expenses resulting from the grant of total-unemployment allowances, the payment of grants to enterprises for the compensation of short-time workers and the institution of special work of general utility.

The Fund obtains its resources from: (a) special contributions from employers; (b) solidarity taxes raised by means of increases in the income tax of physical persons and communities; (c) contributions from the communes.

The total-unemployment allowance is granted to an unemployed worker who is normally occupied full-time by an employer, provided that the worker meets the conditions laid down in the Act. The unemployment allowance is payable for a maximum of 365 calendar days per period of 24 months. In principle, it amounts to 80 per cent of the previous gross salary of the unemployed worker, the maximum payments and the procedure to be followed being laid down in the Act.

The Act also relates (sect. 8) to the social security of the totally unemployed.

The Act includes provisions in favour of unemployed young persons and measures for vocational integration and reintegration through the organization of vocational training courses and general educational courses.

3. THE ENVIRONMENT

An Act of 8 July 1975²⁹ approves the Treaty between the Grand Duchy of Luxembourg and the Land Rhineland-Palatinate concerning the joint performance by communes and other juridical persons of functions relating to the water economy, signed at Echternach on 17 October 1974. The purpose of the Treaty is to encourage joint measures relating to the water economy and, in particular, water supplies and the elimination of sewage in the frontier region of the contracting States.

Two Acts of 21 June 1976³⁰ introduced the campaign against noise and atmospheric pollution. The Acts, which are outline Acts, leave it to Grand-Duchy regulations, to be adopted upon the advice of the Council of State and with the consent of the Labour Commission of the Chamber of Deputies, to spell out the measures to be taken to prevent, reduce or eliminate noise and atmospheric pollution. Infringements of the aforementioned Acts and of the implementing regulations are punishable by imprisonment for from eight

²⁶ *Mémorial A 1976*, p. 394.

²⁷ *Ibid.*, p. 1410.

²⁸ *Ibid.*, p. 593.

²⁹ *Mémorial A 1975*, p. 839.

³⁰ *Mémorial A 1976*, pp. 605 and 607.

days to six months and a fine of from 2,500 to 200,000 francs, or by one of these penalties only.

4. HOLIDAYS AND LEISURE

An Act of 26 July 1975³¹ amended and supplemented on many points the Act of 22 April 1966 making uniform provision for annual holidays with pay for wage-earners in the private sector and the Act of 28 October 1969 concerning the protection of children and young workers. The new provisions mark a substantial improvement on previous measures relating to annual holidays with pay.

5. CIVIL PROTECTION

An Act of 16 June 1976³² approves the Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Kingdom of Belgium concerning mutual assistance in the matter of civil protection, signed at Brussels on 3 July 1970. The civil protection provided for in the Agreement covers all measures and means intended to ensure the protection and service of the population, and the safeguard of the national heritage in case of armed conflict; its purpose is to help people and protect property at all times in the event of calamities, catastrophes or disasters.

The Act of 18 November 1976³³ organizes civil protection in the Grand Duchy. Civil protection includes all measures and means designed to protect and help the population and safeguard the national heritage and property in the event of calamities, catastrophes or disasters, whether or not attributable to an international armed conflict. The measures and means are determined by Grand-Duchy regulations adopted on the advice of the Council of State and with the consent of the Labour Commission of the Chamber of Deputies. These regulations may determine the obligations of inhabitants, communes, public services and any public or private body in respect of the organization and realization of civil protection. A national civil protection service was established to implement the measures and apply the necessary means.

6. SOCIAL PROTECTION OF FARMERS

The Act of 15 December 1976³⁴ approved the European Convention on the Social Protection of Farmers, signed at Strasbourg on 6 May 1974. The purpose of the Convention, which was drawn up by the Council of Europe, is to improve the living conditions of agricultural workers by appropriate measures likely to promote social progress in Europe.

K. Right to education

(article 26 of the Universal Declaration)

An Act of 14 August 1976³⁵ relates to the establishment, opening, activity and operation of private establishments providing higher education of university or post-university standard. The creation of such establishments is subject to an authorization issued by Grand-Ducal decree, adopted on the proposal of the Minister of National Education on the advice of an advisory commission.

An Act of 26 March 1976³⁶ organized physical education and sport. This Act defines its objectives as the right of everyone freely to practise the sport of his choice; it prescribes the competent bodies, namely: (a) the Minister, whose terms of reference include physical

³¹ *Mémorial A 1975*, p. 876.

³² *Mémorial A 1976*, p. 672.

³³ *Ibid.*, p. 1125.

³⁴ *Mémorial A 1976*, p. 1477.

³⁵ *Mémorial A 1976*, p. 911.

³⁶ *Ibid.*, p. 167.

education and sport; (b) a Government commissary for physical education and sport; and (c) a higher physical education and sports council, having an advisory function. It also regulates physical and sports education at school and pre-school level, and competitive sport.

L. Right to participate freely in cultural life

(article 27 of the Universal Declaration)

Two bilateral agreements on cultural co-operation were concluded, one with Yugoslavia in 1975 and the other with Romania in 1976. In addition, an Act of 13 September 1975³⁷ provides for the protection of interpretative or executant artists, producers of sound-records and broadcasting bodies. Malicious or fraudulent attacks on the rights covered by the Act may be punished penally on an action being brought by the injured person.

³⁷ *Mémorial A 1975*, p. 1354.

MADAGASCAR

Introduction

The outstanding development during the period under review was the adoption by referendum, on 21 December 1975, and the promulgation, on 31 December 1975,¹ of the Constitution of the Democratic Republic of Madagascar.

The aim of the Constitution is to secure the exercise of full power by the working people, within the framework of the *fokonolona*, and to bring about a fair distribution of the means of production among all the citizens—which explains the nationalizations that have taken place and the setting up of co-operative, collectivist structures and socialist enterprises.

The Constitution is designed to guarantee to all the free exercise of the fundamental freedoms (freedom of association, of opinion, of religion, of the press, etc.) with no other limitation than that of not obstructing the progress of the socialism that has been adopted in the interest of the collectivity.

The Constitution aims to enable all citizens to benefit from scientific progress and the increase in the national income and thereby to achieve the full intellectual, moral and physical flowering of the Malagasy people. Illiteracy is to be fought through basic education, and education is to be adapted at all levels to the nation's urgent needs.

A. Non-discrimination

(article 2 of the Universal Declaration)

Article 12 of the Constitution prohibits discrimination based on race, origin, religious belief, education, property or sex.

B. Equal protection of the law

(article 7 of the Universal Declaration)

According to article 42 of the Constitution, the law guarantees to all persons the right to obtain justice. Lack of means shall not be an obstacle thereto.

C. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

Ordinance No. 75-030 of 30 October 1975 sets a limit of 20 months to the duration of detention pending proceedings. On the expiry of the 20 months, if the accused has not been tried, he must be released.

Article 42 of the Constitution says that no one may be prosecuted, arrested or detained save in the cases determined by the law and in accordance with the procedures which it prescribes.

D. Right to all the guarantees necessary for defence; non-retroactivity of criminal law

(article 11 of the Universal Declaration)

Under article 42 of the Constitution, the State guarantees the full enjoyment and inviolability of the right to defence before all courts and at all stages of the proceedings.

¹ *Journal Officiel*, vol. 91, No. 1102, 31 December 1975.

The same article says that no one may be punished save in virtue of a law promulgated and published before the commission of the offence.

E. Right to privacy

(article 12 of the Universal Declaration)

Article 42 of the Constitution says that every citizen is guaranteed the inviolability of his home and the secrecy of correspondence. No search may be made save in virtue of the law and under a warrant issued in writing by the competent judicial authority.

F. Freedom of movement

(article 13 of the Universal Declaration)

According to article 38 of the Constitution, every citizen in full possession of his civil and political rights shall have, under the conditions established by the law, the right to settle and the right to freedom of movement anywhere in the national territory.

G. Protection of the family

(article 16 of the Universal Declaration)

Under article 37 of the Constitution, the State shall protect the family, women and children and shall recognize the right of every citizen to found a family and to transmit his personal property by succession.

H. Freedom of conscience and religion

(article 18 of the Universal Declaration)

Article 39 of the Constitution says that freedom of conscience and religion is guaranteed by the neutrality of the State in relation to all beliefs. Religious denominations are to be free to organize and function in conformity with the law.

I. Right to take part in government; equal access to public service

(article 21 of the Universal Declaration)

Under the new Constitution, an important role is assigned to the *fokonolona*, the traditional basic community. The *fokonolona* is a community of persons living in a territorial division called the *fokontany* comprising one or more villages. Everyone belongs to the *fokonolona* of his place of residence, and he may also take part in the proceedings of the *fokonolona* of his birthplace or of the *fokontany* where he owns property. The *fokonolona* is concerned with public order, health, highways and sanitation; it has the powers of a municipality, but is also an economic unit which decides on and carries out economic programmes and participates in the preparation of regional and national development programmes. It also manages common land. It draws up regulations (*dina*), which must be signed by a majority of the members over 18. The *fokonolona* is directed by a committee of five elected for three years. The main aim of the *fokonolona* is to ensure a decentralized direction of the economy, giving local collective action an important part to play and relieving the central administration of many tasks in the spheres of development, justice and public assistance.

Under article 40 of the Constitution, every citizen who satisfies the legal requirements has the right to vote and to be elected.

Article 26 says that access to public service, occupations and employment shall be open to every citizen subject to no conditions other than those of ability and skill.

MAURITIUS

Introduction

Under section 17 of the Constitution of 1968,¹ any person may apply to the Supreme Court for redress if he considers that any of the fundamental rights and freedoms of the individual, as set forth in the Constitution, has been, is being or is likely to be contravened in relation to him.

The position as regards human rights in the period under review is illustrated by a number of Supreme Court judgements which are summarized below.

A. Right to equal protection of the law, without discrimination (article 7 of the Universal Declaration)

*Police v. B. Rose*²

A man prosecuted on the island of Rodrigues for wilfully setting fire to an inhabited house appealed against the judgement on grounds of discriminatory legal proceedings; his counsel objected that the procedure by which such a case was tried before a single magistrate in Rodrigues, when on the main island of Mauritius a similar offence would come before an Intermediate Court of two or three magistrates, was discriminatory, the relevant legislation being, for Mauritius, the Courts (Amendment) Act No. 7 of 1971, and for Rodrigues, section 12 (1) of the Court of Rodrigues Jurisdiction (Extension) Ordinance (Cap. 79). The claim of discrimination by reason of "place of origin" was based on section 16 of the Constitution.

The Supreme Court found that valid geographical and administrative reasons existed for the difference in procedure, and that the purpose of section 12 of the Ordinance in question was to promote the public good, the rules governing evidence and onus of proof and the rights of appeal being identical for all citizens. The Court held that the section was not discriminatory.

*M. R. Jaulim v. The Director of Public Prosecutions*³

The plaintiff, who had been committed for trial for murder, sought redress against sections 42 (1) and (2) of the Courts Ordinance (Cap. 168) on the grounds that the provision for a jury of nine men and no women constitutes discrimination on grounds of sex in the meaning of the Constitution.

The Supreme Court ruled that the plaintiff could not complain of being treated differently on grounds of sex; if there was any discrimination, the objects of it were either women, who were excluded from jury service, or the men who had to render such service and had no exemption from it. Similarly, a white man could not complain of discrimination on the grounds that coloured persons were excluded from the jury which tried his case.

Actually, the Ordinance excluding women from jury service was not discriminatory in the meaning of the Constitution, since sex was not included among the grounds of discrimination enumerated in the section of the Constitution (sect. 16) which provided that no law should contain any discriminatory provisions. In the conditions prevailing in Mauritius, it was an advantage to women to be exempt from jury service.

The application was therefore dismissed.

¹ For extracts from the Constitution, see *Yearbook on Human Rights for 1968*, pp. 270-281.

² Judgement No. 80. 12 April 1976, SCR (Supreme Court Record) 1809.

³ Judgement No. 89, 3 May 1976, SCR 19147.

B. Presumption of innocence*(articles 10 and 11 of the Universal Declaration)**Police v. K. A. Fra*⁴

The appellant had been "prosecuted upon an information charging him, under two counts, with behaving as a rogue and vagabond contrary to section 28 (3) of the Penal Code (Supplementary) Ordinance... as replaced by section 5 of Act No. 26 of 1970.. The particulars of the offence were that he had been found 'within a land' without giving a satisfactory explanation of his presence in such a place".

The contention of the appellant was that that part of the enactment under which the charges were laid was void for inconsistency with section 10 (2) (a) of the Constitution, which provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.

Section 28 of the Penal Code (Supplementary) Ordinance reads as follows:

"28. Every person coming within any of the following provisions shall be deemed a rogue and vagabond -

"...

"(3) every person found ... within any land, pen, garden or park ... without giving a satisfactory explanation of his presence in any such place."

The Court noted that in the previous texts on which this provision was based the corresponding expression had been "within any enclosed or private land without leave of the owner" and "in any enclosed yard, pen, garden or park, for any unlawful purpose". While under the former law the land referred to was private land and the offender had to be shown to be either a trespasser or to have been there for an unlawful purpose, under the present law the land was "any land" and presence within the area was not required to be primarily reprehensible in some sense to make it an offence either by itself or if unexplained.

The Court therefore held "that section 28 (3) of the Ordinance in so far as it enacts that a person shall be deemed to be a rogue and vagabond who is found within any land without giving a satisfactory explanation for his presence there is repugnant to subsections (2) (a) and (11) (a) of section 10 of the Constitution and void to that extent".

The appellant's contention was therefore upheld.

*Police v. R. l'Eonide*⁵

Inconsistency with section 10 (2) (a) of the Constitution was argued in this case, too, and the question had been referred to the Supreme Court at the request of counsel for the accused.

Under section 29A of the Penal Code (Supplementary) Ordinance (Cap. 196), as enacted by section 2 of Ordinance No. 23 of 1965 and amended by section 2 of Ordinance No. 4 of 1968, the accused had been prosecuted for having with him in a public place without lawful authority or reasonable cause an offensive weapon, namely, a penknife.

The Court found that whereas in *Police v. Fra* it had decided that the provision impugned violated the Constitution, since the person charged would have the burden of proving that an innocuous act was not a criminal one, in *Police v. L'Eonide* the prohibition of the act in question, namely, the carrying of an offensive weapon, did not violate the Constitution, since it was permissible for the legislature to make any act an offence, save in specified circumstances and if the prohibition did not infringe the citizen's fundamental rights. A penknife was certainly an offensive weapon within the meaning of the Penal Code; but it was inconceivable that anyone should be required to account for its possession except in suspicious circumstances.

The Supreme Court therefore overruled counsel for the accused on the issue.

⁴ Judgement No. 148, 2 September 1975, SCR 18527.

⁵ Judgement No. 217, 13 October 1975, SCR 19276.

C. Right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

*Islamic Cultural Association v. The Minister of Housing, Lands and Town and Country Planning*⁶

The appeal to the Supreme Court was against a decision by the Minister to acquire a portion of the appellant's land for redevelopment. The Court had to determine whether section 8 of the Land Acquisition Act, No. 54 of 1973, by virtue of which the Minister had issued the notice of compulsory acquisition, was subject to the provisions of Town and Country Planning Ordinance No. 6 of 1954, in particular the provision that outline and detailed schemes must first be approved, as the appellant claimed.

The Court ruled that it was so subject, since the only provision of the Ordinance that had been repealed by the Act was section 17, which had enacted that when an outline or detailed scheme had been brought into effect the Governor-General might, on the advice of the Board instituted by the Ordinance, decide that any land lying within the planning area and required for certain specified purposes, or which had not been developed in accordance with the scheme, should be compulsorily acquired. The other provisions of the Ordinance, particularly those relating to the preparation of outline and detailed schemes, remained in force.

The power of acquisition vested in the Minister by the 1973 Act was made subject to the Constitution, section 8 (1) (a) and (b) of which provided protection from deprivation of property, laying down, among the conditions for compulsory purchase, that it must be "necessary or expedient in the interests of ... town and country planning..." and that there must be "reasonable justification for causing any hardship that may result to any person having an interest in or right over the property". Section 9 of the Constitution provided that a person's property could be entered without his consent for one of the purposes specified in section 8 only by authority of a law that itself provided for that purpose—at present Ordinance No. 6 of 1954.

In finding for the appellant, the Court held that any consistent reading of sections 8 and 9 of the Constitution and the relevant provisions of Ordinance No. 6 of 1954 and Act No. 54 of 1973 must lead to the conclusion that a compulsory purchase of property under the Act for the purpose of town and country planning must, in the present state of the law, be subject to the requirements and procedure set out in Ordinance No. 6 of 1954.

⁶ Judgement No. 100, 11 June 1975, SCR 2638.

NETHERLANDS

A. Non-discrimination

(article 2 of the Universal Declaration)

In its decision of 7 January 1975¹ the Netherlands Supreme Court ruled that article 5 of the Criminal Code (which lays down that Dutch criminal law also applies to a Dutch subject who commits an offence outside the Netherlands, provided that the offence is classified as a crime (*misdrif*) under Dutch criminal law and that it is punishable under the law of the country in which it is committed) does not conflict with article 4 of the European Convention on Human Rights (which guarantees the enjoyment of the rights and freedoms set forth in the Convention without discrimination on grounds such as national origin). Article 5 of the Criminal Code, according to the Supreme Court, must be seen against the background of section 4 of the Extradition Act, which lays down that Dutch nationals shall not be extradited. The Supreme Court regards the prohibition of the extradition of the country's own citizens as an objective and reasonable justification of the controversial provision of article 5 of the Criminal Code. This provision thus implies no discrimination as referred to in article 4 of the European Convention.

B. Right to liberty and to security of person

(article 3 of the Universal Declaration)

In his judgement of 13 November 1975² the President of the District Court in The Hague established that the taking into custody in the interest of maintaining public order, under section 26 of the Aliens Act, of foreigners whose extradition has been ordered does not conflict with article 5 (the right to liberty of person) of the European Convention on Human Rights.

The Act of 26 June 1975³ introduced provisional arrangements for the Criminal Injuries Compensation Fund. Any person who suffers serious physical injury in the Netherlands as a result of a crime of violence committed with intent and who thereby incurs losses which cannot be recovered may be eligible for compensation. Decisions on applications for compensation are made by an independent tribunal.

C. Right not to be subjected to inhuman or degrading treatment

(articles 5, 12 and 19 of the Universal Declaration)

In its judgement of 6 November 1975,⁴ the Almelo District Court established that section 33a, subsection 1, of the Road Traffic Act does not conflict with article 3 of the European Convention (which states that no one shall be subject to torture or to inhuman or degrading treatment), as the Act is based upon the principle of consent as regards the taking of a blood sample from a person suspected of having contravened section 26 of the Road Traffic Act (by driving under the influence of alcohol). Account was taken, among other things, of the great importance of health and road safety, which the obligation contained in section 33a, subsection 1, of the Road Traffic Act is designed to promote. Nor is there any conflict with articles 8 (the right to respect for private life) and 10 (the right to freedom of expression) of the European Convention, since the introduction of the blood test was

¹ *Nederlandse Jurisprudentie*, 1975, No. 206.

² *Ibid.*, 1975, No. 513.

³ *Staatsblad*, 1975, No. 382.

⁴ *Nederlandse Jurisprudentie*, 1976, No. 399.

found to be necessary to provide adequate proof that the offence described in section 26 of the Road Traffic Act had been committed.

D. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

The Act of 26 June 1975⁵ extended the right to compensation for wrongful temporary detention: compensation may now be claimed for wrongful remand in custody pending trial and for non-material losses.

The Act of 10 December 1975⁶ changes the regulations governing release on parole. When a person sentenced to a term of imprisonment has completed two thirds (minimum: nine months) of his sentence, the Minister of Justice may order his release on parole. Under the amended act, the time spent under arrest or in custody before sentencing is taken into account when calculating the date of release on parole. Appeals against refusal or withdrawal of parole may now be made to the Court of Appeal in Arnhem.

The Act of 21 October 1976⁷ amended the 1953 Prison Act in such a way as to improve the legal position of prisoners, who may now lodge with the Supervisory Committee of the institution in which they are held complaints against certain decisions affecting them taken by the institution's administration. Appeals may be made to the Prisons Section of the Central Advisory Council for Prisons, the Care of Criminal Psychopaths and Rehabilitation.

E. Right to privacy

(article 12 of the Universal Declaration)

In its judgement of 9 April 1976,⁸ the Supreme Court stated that the exclusion of children from a denominational primary school on the grounds that, in accordance with their parent's wishes, they refuse to attend the religious education classes on the time-table does not conflict with article 8 (the right to respect for private life) of the European Convention, if there are one or more non-denominational primary schools in the municipality.

In its judgement of 20 September 1976,⁹ the Supreme Court established that section 94a of the Traffic Rules and Signs Regulations, prohibiting the riding of a moped without a crash-helmet, does not constitute a restriction which conflicts with the democratically constituted legal order, but may be regarded as being necessary in a democratic society for the protection of health; this means that any objection that the prohibition conflicts with the first paragraph of article 8 of the European Convention (the right to respect for private life) is counterbalanced by arguments derived from the second paragraph of the same article, which states that interference by a public authority is permitted when it takes place in accordance with the law and is necessary in a democratic society.

F. Freedom of opinion and expression

(article 19 of the Universal Declaration)

In its judgement of 15 April 1976,¹⁰ the Supreme Court ruled that the requirement that a licence be obtained for the sale of oranges from a cart or stall, even if the sale formed part of a demonstration against South Africa, did not conflict with article 10 (the right to freedom of expression) of the European Convention.

⁵ *Staatsblad*, 1975, No. 341.

⁶ *Ibid.*, 1975, No. 684.

⁷ *Ibid.*, 1976, No. 568.

⁸ *Nederlandse Jurisprudentie*, 1976, No. 409.

⁹ *Ibid.*, 1977, No. 28.

¹⁰ *Ibid.*, 1976, No. 23.

G. Right to work, to just and favourable conditions of work and to protection against unemployment

(articles 23 and 25 of the Universal Declaration)

Disability insurance

The Act of 11 December 1975,¹¹ which came into force on 2 December 1976, introduced a compulsory scheme of disability insurance for the whole population: benefits are payable to disabled people who cannot work or whose ability to work is limited. All residents of the Netherlands and all non-residents working in the country are insured under the Act until they reach the age of 65. Insured persons who, as a result of disability, either cannot work when they reach the age of 17 or cease to be able to work later in life are eligible for benefits under the Act when their disability has lasted more than 52 weeks. Provision is not made, however, for disabilities of less than 25 per cent.

The amount of the benefit does not depend on the income of the insured person prior to his disability, since the insurance is in the nature of a basic provision with benefits set at a minimum level. The benefits are calculated on the basis of a figure which was established by the Act and which is revised twice a year in line with the general level of wages. The actual benefits are percentages of this figure and fall into six groups, ranging from 20 per cent where the disability is 25 to 35 per cent up to 80 per cent where the disability is 80 per cent or more.

In addition, insured persons may be helped to retain, recover or improve their ability to work, for example through retraining schemes. Artificial limbs and other appliances are also supplied. The scheme is implemented in each industry by the appropriate Industrial Insurance Board. These Boards have at their disposal a joint medical service which helps them in such matters as determining the extent of disability.

Unemployment benefits

The Unemployment Benefit Act was amended on 16 June 1976¹² to allow people who reach the age of 60 while receiving benefits under the Act to continue receiving them until they are 65. The maximum period for which persons below the age of 58 can continue to receive benefits under the Act remains two years. The decision to amend the Act in this way took account of the present economic situation, in which unemployed people aged 60 or over are very unlikely to find a new job.

Working conditions

The order of 19 June 1976¹³ amending the Agricultural Safety Order requires tractors to be fitted with a suitable cabin, frame or bar in such a way that the driver is adequately protected should be tractor tip over backwards or overturn in some other way. The Order also included a paragraph concerning the elimination or restriction of harmful or objectionable noise and vibration produced by agricultural machinery, tractors and other equipment.

The order of 12 January 1976¹⁴ made it illegal to have available, use, process, pack, or transport propane sulfone in connexion with work. Toxicological studies on laboratory animals have shown that the substance is highly carcinogenic, and although there is no data on the subject it must be assumed that it would also cause cancer in humans.

The high turnover and sickness figures in certain industries and the problems involved in recruiting staff for less pleasant jobs indicated a need to improve the conditions of work: since employers may be deterred by the expense involved from making such improvements—which are not required by law—the Government has introduced a scheme (*Subsi-*

¹¹ *Staatsblad*, 1975, No. 674.

¹² *Ibid.*, 1976, No. 368.

¹³ *Ibid.*, 1976, No. 365.

¹⁴ *Ibid.*, 1976, No. 97.

dieregeling arbeidsplaatsenverbetering) to provide grants to firms which humanize jobs by making working conditions more agreeable.

H. Right to rest and leisure

(article 24 of the Universal Declaration)

The Order of 19 July 1975¹⁵ provided for the phased introduction of the tachograph: this reflected EEC Regulation 1463/70, which requires that from 1 January 1978 all motor vehicles weighing more than 3,500 kg must carry a tachograph. The measure is designed to facilitate the monitoring of the hours worked by drivers.

I. Right to education

(article 26 of the Universal Declaration)

Disadvantaged children

It has been shown that children from disadvantaged groups in society make less use of higher and further education than children from more favoured backgrounds, and that their educational development is in general slower and less successful than that of many other children. The educational development policy is to compensate, through measures taken within the educational system and in collaboration with other agencies, for the children's educational disadvantage so that they have the same opportunities, in reality and not merely formally, as children from more favoured backgrounds.

Educational development policy takes many forms: extra nursery and primary teachers are allocated, the head teachers are relieved of some of their duties, extra books are provided and extra help is given by the school advisory services. Assistance is given on a large scale: some 15 per cent of nursery and primary schools are involved in the development scheme (1976-1977), and this requires an extra 1,400 full-time staff.

The necessary collaboration between education and social work has been achieved in the sense that the measures were introduced after consultations between the Ministry of Education and Science and the Ministry of Cultural Affairs, Recreation and Social Work. Projects involving collaboration between schools, advisory services and agencies coming under the Cultural Affairs Ministry have been set up in five districts: Groningen, The Hague, south-west Drenthe, Helmond and the eastern mining region.

Nursery schools

Nursery school fees were abolished on 1 August 1975.

University administration

The 1970 University Administration Reform Act is an experimental act which democratizes the administrative structure of Dutch universities. It was initially intended that the act should remain in force until 31 August 1976, but after a temporary extension, the Lower House of Parliament further extended its operation until 1 September 1982.

¹⁵ *Ibid.*, 1975, No. 444.

NEW ZEALAND

A. Right to work (article 23 of the Universal Declaration)

1. PROTECTION AGAINST UNEMPLOYMENT AND UNDEREMPLOYMENT

If, under the Industrial Relations Act 1973,¹ an employee claims that he has been dismissed unjustifiably, and his claim is not dealt with, or is not dealt with promptly, by his union or employer in accordance with the procedure, he may, with leave of the Industrial Court, refer his claim directly to the Court for settlement.

For registered unemployed, work is provided under special government work schemes involving hospital boards, local community organizations and local bodies concerned with the development of facilities for recreation and sport. A private-sector employment-subsidy scheme has been developed in employment districts with high unemployment rates.

2. RIGHT TO EQUAL PAY FOR EQUAL WORK

The Equal Pay Act 1972² (and amendments) provided for the classification of all jobs according to the work performed, as measured by certain criteria, and for the fixing of non-sex-differentiated rates. The principle of equal pay is being progressively implemented in New Zealand. The first step towards closing the gap between rates of pay for male and female workers was taken not later than 1 October 1973. Full equal pay will be in operation from 1 April 1977.

3. RIGHT TO JUST AND FAVOURABLE REMUNERATION

Most private-sector wage rates are fixed by awards and collective agreements made under the Industrial Relations Act 1973. The Wage Adjustment Regulations 1974, issued under the Economic Stabilisation Act 1948,³ determine whether or not there can be an increase in the rate of remuneration in any award or collective agreement. The regulations apply equally to the private and public sectors. Under the regulations there can be no increase in wages except through a general wage order by the Wage Hearing Tribunal, or where there are exceptional circumstances. In considering applications for a wage order the Tribunal must give paramount importance to the promotion of the economic stability of New Zealand. Increases under the exceptional-circumstances provision must receive the consent of the Industrial Commission before becoming legally payable. Application for such consent must be made jointly by the parties to the agreement.

Provision is made in the Regulations for exceptions in the case of increases resulting from the introduction of productivity agreements, implementation of equal pay, reconstruction of agreements, individual promotions, individual movements along established salary scales and substantial changes in individual duties and responsibilities.

The Wage Adjustment Regulations expire on 14 May 1977.

4. RIGHT TO FORM AND TO JOIN TRADE UNIONS

There are certain restrictions on trade-union registration which are intended to prevent proliferation (a society cannot be registered if its membership is less than the minimum specified in the Industrial Relations Act 1973 or if its members could conveniently belong to an existing registered union).

¹ *Statutes of New Zealand*, 1973, vol. 1, pp. 173-320.

² *Ibid.*, 1972, vol. 1, pp. 874-892.

³ *Ibid.*, 1948, vol. 1, pp. 347-355.

5. RIGHT TO STRIKE

At common law there is a recognized right to strike, although this is restricted by statutory rules.

Generally speaking, strike action is permissible in pursuit of a new agreement (providing the dispute is not before a conciliation council or the Industrial Commission), although in certain specified industries it is an offence to strike without giving the requisite period of notice of intention to do so (14 days in the case of "essential" industries, three days in the case of export slaughterhouses). Disputes arising during the currency of an award or agreement must be settled in accordance with the specified procedures without any stoppage of work. (This would constitute a breach of the award or agreement and be subject to penalties.) By reason of the Commerce Amendment Act, it is an offence to strike over non-industrial matters, and it also is an offence under this Act to disobey a resumption-of-work order issued by the Industrial Court if the Court considers the strike is contrary to the public interest.

B. Right to an adequate standard of living

(*article 25 of the Universal Declaration*)

1. HOUSING

In 1976, the Property Law Amendment Act⁴ became law, defining more fully the rights and duties of landlords and tenants. At the commencement of tenancy, a dwelling-house is to be in a habitable condition for residential purposes, and is to be maintained in this state throughout the tenancy. Should the landlord find, on reasonable grounds, that the dwelling-house is being damaged by the tenant, he has the right to apply to the Court for an order requiring the lessee to pay repair costs. The obligation otherwise is on the lessor to keep the premises in fit condition.

Notices terminating leases are void in certain circumstances when legal action is taken under other sections of the Act, and the right to distrain for rent under any lease for a dwelling-house is abolished, except in the case of commercial or agricultural property.

2. ASSISTANCE TO DISADVANTAGED PERSONS

The 1975 Social Security Amendment Act⁵ made several changes to the Social Security Act 1964,⁶ widening the provisions for assistance to disadvantaged groups. The changes include the provision of a disability allowance to assist those who have to meet costs associated with their disability. Provision was made in the Act for a broadening of the entitlement for the orphan's benefit to cover those who have lost the support of both parents by reasons other than death; for extension of the sickness benefit for married people irrespective of the spouse's income; and for a new benefit known as the additional benefit to assist those with limited income and assets.

The Disabled Persons Community Welfare Act⁷ introduced in 1975 makes better provision for financial and other assistance to the disabled, and for the support of voluntary and private organizations concerned with providing facilities for the community welfare, sheltered employment, training and day care of disabled persons.

National superannuation was introduced by the 1976 Social Security Amendment Act.⁸ This provides for national superannuation free of income tax, and payable at the age of 60 for those who meet a residential requirement (the Act came into operation on 9 February 1977).

⁴ *Ibid.*, 1976, vol. 2, pp. 1689-1690.

⁵ *Ibid.*, 1975, vol. 2, pp. 948-978.

⁶ *Ibid.*, 1964, vol. 2, pp. 1171-1255.

⁷ *Ibid.*, 1975, vol. 2, pp. 925-947.

⁸ *Ibid.*, 1976, vol. 1, pp. 432-467.

C. Right to education

(article 26 of the Universal Declaration)

1. DEVELOPMENT OF CONTINUING EDUCATION

The development of the policy of continuing education—basically providing more opportunities for more people to continue their education—was a major trend in 1975-1976. Facilities for continuing education and community education have increased and will continue to be developed.

In 1975 the Committee on Secondary Education, also known as the McCombs Committee, was set up to consider desirable directions in secondary education. The Committee's report, the first major official study on secondary education since 1944, is entitled "Towards partnership", its theme being the partnership of all people and groups of people involved in secondary education. The major emphasis of the report is on greater autonomy for schools in co-operation with their communities in developing their own aims and curricula, following national guidelines.

Since the publication of the report, emphasis has been placed on the desirability of developing closer relationships between schools and their communities. Many secondary schools run extensive community education programmes, and much greater use is being made of school facilities outside school hours.

During 1975 and 1976 curriculum development was characterized by a high degree of involvement of all sections of the educational community and, to an increasing extent, of lay people. In May 1975 the idea of a tertiary bursary which would provide a living allowance for full-time students at universities, technical institutes, community colleges and teachers' colleges was approved in principle. The bursary, known as the Standard Tertiary Bursary, was introduced for the 1976 academic year. A review of the bursary has now been undertaken. The Government's long-term goal is the introduction of a "Continuing Education Bursary" for all New Zealanders.

In 1975 the Nga Tapuwae secondary school in Auckland was opened. This was the first school planned from the outset with wider community-education functions as an integral element in its total operation. Experimental admission of adults to secondary schools increased markedly in 1975 to nearly 500 part-time or full-time adult students. Also in 1975 the first secondary college was opened in Hawkes Bay. Community colleges are regional institutions serving a broad spectrum of needs and developing in diverse ways to meet the specific needs of the particular areas they serve. Surveys have been completed on the need for community colleges in other areas.

2. EDUCATION FOR THE DEVELOPMENT OF THE HUMAN PERSONALITY AND THE STRENGTHENING OF RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The school syllabus

A new social studies syllabus for forms 1 to 4 was approved. It offers a programme of social studies which emphasizes people and is designed to help pupils to look at and think about human behaviour realistically, objectively and with sensitivity. The themes to be studied include cultural difference, human interaction, social control and social change.

A second residential conference on moral and religious education in schools was convened during 1975. Interest in the development of moral education in schools is continuing to grow.

In November 1975 a committee on health and social education was established to appraise the role of the school in a broad range of issues. Its terms of reference are to identify the conditions under which the health, growth and development of children may be fostered in primary and secondary schools, and to make recommendations on the studies and activities that should constitute school programmes, and on organization and relationships.

Education for a multicultural society

Progress was made in the development of cultural awareness amongst teachers. There were more leadership courses and courses of study in Maori language and Maoritanga. Much was done to identify the educational needs of Pacific Islanders who have come to live permanently in New Zealand. A significant development was the establishment of the Pacific Islanders Educational Resource Centre in Auckland. The Centre will not only assist Pacific Islanders in their adjustment to New Zealand society but will also help them and other New Zealanders to learn from each other and develop combined approaches to their respective needs in education.

A one-year diploma course in the teaching of English as a second language was established at the Victoria University of Wellington. The course will train up to 12 people each year and will provide an important resource group with the skills needed for teaching English to children and adults for whom it is a second language. A further English-language unit for primary-school-aged children from the Pacific Islands was established at an Auckland school in 1976.

Education for the disadvantaged

There were significant increases in specialist education services to children and adults who are disadvantaged or handicapped. In 1975 the Psychological Service was expanded by the addition of 10 psychologists, and further university training courses were approved for psychologists.

Increasingly, physically handicapped children are attending ordinary schools or are taught in ordinary classrooms at schools where units for physically handicapped children have been established. In 1975 a definitive policy was established whereby all new schools should as far as practicable incorporate provisions for access by handicapped persons. Special arrangements are being made at existing schools, especially where a need is shown to exist.

Planning was continued for additional training programmes for visiting teachers and for teachers of mentally retarded, physically handicapped and emotionally disturbed children. These programmes will be implemented as the necessary resources can be made available.

3. ALTERNATIVE EDUCATION

There is a considerable number of independent primary and secondary schools to which parents may send their children, conducted by either religious bodies or private individuals. An important development was the Private Schools Conditional Integration Act 1975,⁹ which makes provision for the conditional and voluntary integration of private schools into the State system of education on a basis which will preserve and safeguard the special character of the education they provide. The Act provides that integration must proceed on the basis of a phased programme which has now been agreed upon. One private school has now integrated into the State system.

4. EQUALITY OF THE SEXES

In response to changing social opinion regarding the role and status of women, the Department of Education offered to sponsor a conference in conjunction with a working party of the Committee for International Women's Year. As a result, the national conference on "Education and the equality of the sexes" was held in November 1975. Participants proposed a number of developments in education which were directed towards alleviating the disadvantages at present experienced by women and girls. They also put forward a large number of proposals for broadening the social and vocational options open to females and

⁹ *Ibid.*, 1975, vol. 2, pp. 1122-1171.

to males. The report of the conference has been published and is being studied by the Department of Education.¹⁰

Many recommendations were also made during the Conference concerning the early education and care of young children. It was recommended that a thorough investigation of all aspects of child care should be carried out by the Departments of Education and Social Welfare to determine the basis of future child-care policies, and that the responsibility for pre-school child care should be ultimately vested in the Department of Education. These Departments have had discussions on ways of supporting child-care services outside the home. A significant development has been the continuation and extension of staff training courses provided by the Department of Education for child-care-centre personnel.

A number of recommendations at the Conference concerned the elimination of discriminatory educational material and of practices which might limit the children's potential roles. A review of infants' reading books has been undertaken, and all new resources produced by the Department of Education are checked to ensure that sex stereotyping is avoided.

A further recommendation proposed that the Department of Education should consider methods of preparing and training boys as well as girls in various practical aspects of home-making and child-rearing, and that both sexes should be educated in human relations, particularly the marriage relationship, with emphasis on the implications of the marriage partnership.

Practical experience with younger children is being considered as an integral part of education at all levels. Male students in increasing numbers are undertaking training for early-childhood education while at teachers' college.

In primary school, aspects of home-making and child-rearing are introduced in home-economics, social-studies and health courses. These studies are extended in secondary schools as part of the biology, home-economics, social-studies and liberal—or general—studies syllabuses. The importance of the marriage relationship and partnership is not emphasized as a formal element of the curriculum, but is discussed in liberal and general studies. The need for providing resources for these topics is being examined by the Department of Education in the context of the health and social-living programmes currently being considered.

A further recommendation was that immediate consideration should be given to ways and means of extending the entitlement of adults to free education, with particular attention to provisions for women whose opportunities for academic, cultural or vocational advancement were restricted by domestic responsibilities. With the development of facilities for continuing education as described earlier in the report, there were now greater opportunities for women, as well as men, to continue their education.

D. Protection of the cultural heritage

(article 27 of the Universal Declaration)

The Historic Places Amendment Act 1975¹¹ makes it necessary to obtain the consent of the New Zealand Historic Places Trust before damaging, destroying or modifying any archaeological site.

¹⁰ *Education and the Equality of the Sexes* (Wellington, Department of Education, 1976).

¹¹ *Statutes of New Zealand*, 1975, vol. 1, pp. 331-336.

NORWAY

A. Right to an effective remedy (article 8 of the Universal Declaration)

A Royal Decree of 11 March 1976 introduced regulations for the payment of equitable compensation from public funds for personal injury caused by punishable acts.¹ In pursuance of this system, compensation is granted provided that the act took place in 1975 or later. Compensation may be granted to persons who have suffered "wilful bodily injury" or any other punishable offence characterized by an act of violence or duress. In case of death, the dependants of the victim may be granted compensation. The injured party has no legal claim to compensation from public funds. No compensation is paid if the loss incurred amounts to less than NKR 500 and such compensation may not exceed NKR 100,000. Applications for compensation are reviewed and decided upon by a special panel, the secretariat of which is established in the Ministry of Justice.

B. Protection against arbitrary interference with privacy (article 12 of the Universal Declaration)

Prior to the entry into force on 17 December 1976 of Provisional Act No. 99 relating to access to telephone monitoring in the investigation of violations of the legislation on narcotics,² any wire-tapping of telephones could only take place in pursuance of an Act of 24 June 1915, entitling the Government to adopt provisions relating *inter alia* to wire-tapping of telephones when such measures are required for reasons of national security.

Under Provisional Act No. 99, wire-tapping of telephones is also permitted during investigations of gross violations of the anti-drug legislation. In cases of this kind, the community is confronted with an extremely dangerous form of criminal activity which requires the use of the most effective means of investigation possible. It is especially in such cases that wire-tapping of telephones is considered to be a particularly necessary measure to render the investigation process effective, since an essential part of the illicit drug traffic is assumed to take place over the telephone.

On the other hand, the telephone wire-tapping procedure must be regarded as a serious encroachment on a person's integrity, and the Act in question has therefore been framed with a view to safeguarding the constitutional guarantees of the due process of law.

The Act prescribes that wire-tapping of telephones may only take place by order of the Court of Examining and Summary Jurisdiction, and that such an order may only be given for two weeks at a time. In urgent cases, however, where it is impossible to obtain the Court's prior consent, an order from the Public Prosecutor will suffice, but the question must at the same time be submitted to the Court for its decision. The Court's ruling granting permission for wire-tapping is made without the defendant being allowed to state his case and without notifying him of the Court's decision.

The Act permits the police to listen in on calls to and from specific telephone apparatuses if the owner or user of the telephone in question is suspected of gross violations of the applicable anti-drug legislation. The Act specifies that permission may only be granted when it is clear that wire-tapping will be of paramount importance in solving the case and that the success of the investigation would otherwise be considerably impeded.

Furthermore, it is laid down that recordings and notes made during the wire-tapping operation shall be destroyed to the extent that they have no bearing on the investigation of the narcotics case. Basically, the same procedure shall apply to any statement in respect

¹ *Norsk Lovtidend* (Norwegian Law Gazette), 1976, p. 114.

² *Ibid.*, 1976, pp. 900-951.

of which the court, according to the rules on professional secrecy, etc., does not have the right to demand that evidence be taken from the witness concerned.

The Act has been made to apply provisionally up to the end of 1978, when it will be made the subject of review. Quarterly reports must be submitted to the Ministry of Justice on the telephone wire-tapping operations carried out during the period.

C. Right not to be arbitrarily deprived of one's property

(*article 17 of the Universal Declaration*)

A case tried by the Supreme Court in plenary session is relevant to the right to own property.³ In determining compensation in connexion with the expropriation of land for the purpose of building a motorway, certain questions arose concerning the interpretation of Act No. 4 of 26 January 1973 relating to the expropriation of real property;⁴ another question that arose was whether certain of the provisions prescribed in the Act were unconstitutional, that is, contrary to the requirement of section 105 of the Constitution on "full compensation".

The Supreme Court stated that when the courts have to decide on the constitutionality of an act of legislation, the opinion of the Storting on the point at issue will play an important part. The freedom of the courts will depend, *inter alia*, on which articles of the Constitution are at issue and how clearly the lawmaker's intentions are expressed in the text of the act of legislation itself and in the law commission's report on the preparatory legislative drafting stages. If there is any doubt about the interpretation of an act of legislation, the courts undoubtedly have both the right and the duty to apply the act of legislation in a manner which best harmonizes with the Constitution.

The Act of 1973 establishes that the survey valuation of real property in the event of expropriation shall normally be based on the current, lawful use of such property at the time of the valuation, and not on the market value following a possible future change in use, even if such a change might be said to be foreseeable. The Supreme Court accepted that this principle could form the basic point of departure for the valuation. However, the Court majority found that certain modifications would be necessary in relation to this point of departure, in order to allow the requirements of the Constitution in respect of "full compensation" to be satisfied, and that the discretionary rules laid down in the Act did not satisfy these requirements. If a valuation based on the current utilitarian value results in an amount lower than the actual market value (full value in a voluntary sales transaction) of comparable properties in the same area, payment of compensation according to the latter value must be obligatory. With certain reservations, the Court (i.e. the majority) stated that a person subject to expropriation could not be deemed to have received "full compensation" in relation to the provisions of the Constitution if he were not awarded the market value in cases where this value is demonstrably higher than the utilitarian value. Furthermore, the Supreme Court found that the optional rules of the Act, concerning the discretionary power to grant market value compensation in certain cases, went too far in allowing the Public Survey Valuation Panels to base themselves on a concrete discretionary assessment of whether and to what extent it is reasonable to grant such compensation. On this point the Supreme Court decided that, on constitutional grounds, the optional rules of the Act must be applied as if they enjoined the valuation panels to grant compensation according to the market value of the property.

D. Freedom of conscience and religion

(*article 18 of the Universal Declaration*)

The Supreme Court heard a case⁵ concerning a member of Jehovah's Witnesses who was exempt from military service and who had been fined for not acknowledging receipt

³ *Norwegian Case Law Journal*, 1976, p. 1 *et seq.*

⁴ *Norsk Lovtidend*, part I, 1974, p. 606.

⁵ *Norwegian Case Law Journal*, 1976, p. 965.

of an announcement relating to the emergency scheme for the requisitioning of motor vehicles. The Supreme Court did not adopt any standpoint on the issue of whether a person who, on grounds of conscientious objection, is exempted from doing his military service should also, in the event of mobilization, be exempted from driving his motor-car to a specified rendezvous for the purpose of handing it over to the military authorities. In this case the defendant had been instructed to acknowledge receipt of the announcement and had been convicted for failing to comply with these instructions.

E. Freedom of expression

(article 19 of the Universal Declaration)

The Supreme Court, in a case where three persons liable for military service had been sentenced to guardhouse detention for having participated in a legal political demonstration wearing military uniform,⁶ assumed that the Ministry of Defence was entitled to prescribe regulations on the use of uniforms pursuant to sections 3 and 25 of the Constitution, and that the relevant regulation did not violate section 100 of the Constitution (on freedom of expression).

F. Right to work

(article 23 of the Universal Declaration)

Regulations on the introduction of an immigration ban with rules of exemption were adopted on 10 January 1975.⁷ As from 1 January 1975, and for one year thereafter, a general ban was introduced, in pursuance of the Act of 27 July 1956 relating to the Admittance of Aliens to the Kingdom (The Aliens Act), on the right of foreign nationals to obtain employment permits (immigration ban). As a general rule the immigration ban was applied to all persons requiring an employment permit under the provisions in force. During the time the immigration ban remains in force, employment permits may be granted to a foreign national in certain specified cases only, which include spouses and children of Norwegian nationals and of foreign nationals holding a Norwegian employment permit, Norwegian-born foreign nationals, other foreign nationals with long-lasting and special connexions with Norway, as well as refugees and stateless persons who have been forced to leave their own native countries.

The period of validity of the regulations relating to the ban on immigration has since been extended, the last occasion being by Royal Decree of 9 July 1976,⁸ by virtue of which the duration of these regulations is extended "until further notice".

G. Protection of public health

(article 25 of the Universal Declaration)

Section 55 (b) of the Act of 5 April 1927 relating to Alcoholic Beverages⁹ prohibits any advertisements for spirituous liquors, wines, fruit wines and mead and for beer containing over 2.5 per cent alcohol by volume. New regulations, dated 14 March 1975,¹⁰ represent a further implementation of this ban. It is prohibited to promote alcoholic beverages by means of advertisements in printed publications and in other forms of printed matter. Alcoholic products must not appear in advertisements or printed matter promoting other goods or services. Excepted from this ban are advertisements in foreign publications brought into Norway, informative announcements in trade journals for the benefit of retailers, as part of the normal distribution process for alcoholic beverages, and informative announcements relating to sales outlets, taprooms etc.

⁶ *Ibid.*, 1976, p. 351.

⁷ *Norsk Lovtidend*, 1975, pp. 11, 39, 167 and 947.

⁸ *Ibid.*, 1976, p. 581.

⁹ *Norges Lov* (Norwegian Statute Book), 1927, No. 7.

¹⁰ *Norsk Lovtidend*, 1975, p. 140.

PANAMA

Chapter I of title III, "Individual and social rights and duties", of the Constitution of Panama is entitled "...Fundamental guarantees".¹ The articles of this chapter are summarized below, under headings related to articles of the Universal Declaration.

A. Non-discrimination

(article 2 of the Universal Declaration)

Article 19 of the Constitution states that there shall be no personal privileges or distinctions or discrimination because of race, birth, social class, sex, religion or political ideas.

B. Right to life

(article 3 of the Universal Declaration)

In Panama, there is no penalty of death (art. 29).

C. Prohibition of torture and cruel, inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

The application to prisoners of measures injurious to their physical, mental or moral integrity is prohibited by article 27.

D. Right to an effective remedy

(article 8 of the Universal Declaration)

Article 49 provides that every person against whom a public official issues or executes a mandatory order or an injunction violating the rights and guarantees established by the Constitution has the right to have the order revoked upon his own petition or that of any other person. Protection of the constitutional guarantees to which the article refers shall be sought through summary proceeding and shall be within the jurisdiction of the courts of law.

Every person has the right to present respectful petitions and complaints to public officials, for reasons of social or private interest, and to obtain a prompt decision. An official to whom a petition, inquiry or complaint is presented must decide it within a period of 30 days (art. 40).

E. Right not to be subjected to arbitrary arrest- detention or exile

(article 9 of the Universal Declaration)

Under article 21, no one may be deprived of his liberty, except by virtue of a written order of a competent authority issued in accordance with legal formalities and for a reason previously defined by law. Those executing such orders are obliged to give a copy thereof to the interested person, if he requests it. An offender surprised *in flagrante delicto* may be apprehended by any person and must be delivered immediately to the authorities. No one may be detained for more than 24 hours without being placed at the disposal of the competent authority; public officials who violate this precept are to be punished by the loss of their employment, without prejudice to other penalties established by law for this purpose. There may be no imprisonment, detention or arrest for debts or purely civil obligations.

¹ The National Political Constitution of Panama went into effect in 1972; owing to a technical error, mention was not made of it in the *Yearbook* for that year.

Under article 22, any individual detained on grounds outside the cases or without the formalities prescribed by this Constitution or the laws must be placed at liberty on his own request or that of any other person through the remedy of habeas corpus, which may be sought by means of summary judicial proceedings immediately after the detention and without regard to the applicable penalty.

The State may not extradite its nationals (art. 23).

In Panama, there is no penalty of expatriation (art. 29).

F. Right to a fair trial; non-retroactivity of criminal law

(articles 10 and 11 of the Universal Declaration)

No one may be tried except by competent authority and in accordance with legal formalities, nor more than once for the same penal, police or disciplinary offence (art. 31).

Article 30 provides that only those acts shall be punished which have been declared punishable by a law antedating their perpetration and precisely applicable to the imputed act. Article 42 provides that in criminal matters, a law favourable to the accused always has priority and retroactivity, even though the judgement may have become final.

G. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

The domicile and residence are inviolable; no one may enter them without the consent of the owner, except by written order of a competent authority for specific purposes, or to assist the victims of a crime or disaster (art. 25).

As provided by article 28, correspondence and other private documents are inviolable and may not be seized or examined except by order of a competent authority for specific purposes, in accordance with legal formalities. In all cases secrecy is to be maintained with respect to matters extraneous to the object of the seizure or examination. Private telephone communications also are inviolable and may not be intercepted. The examination of documents must always take place in the presence of the interested person or of a member of his family, or if they are absent, before two honourable residents of the same place.

H. Freedom of movement

(article 13 of the Universal Declaration)

Article 26 states that every person may travel freely through the national territory and change domicile or residence without restrictions other than those which the traffic, fiscal, health and immigration laws or regulations may prescribe.

I. Right of asylum

(article 14 of the Universal Declaration)

The State may not extradite aliens who are sought for political offences (art. 23).

J. Right to own property

(article 17 of the Universal Declaration)

Private property acquired in accordance with law by natural or juridical persons is guaranteed (art. 43). Private property implies obligations on the part of its owner by reason of the social function which it must fulfil. For reasons of public utility or of social interest as defined by law, there may be expropriation pursuant to special judgement and with compensation (art. 44).

K. Freedom of thought, conscience and religion

(article 18 of the Universal Declaration)

Under article 34, the profession of all religions is free, as is the practice of all forms of worship, without any limitation other than respect for Christian morality and public order. Under article 35, religious organizations have legal capacity and they manage and administer their property within the limits prescribed by law, the same as other juridical persons.

L. Freedom of opinion and expression

(article 19 of the Universal Declaration)

Every person may freely express his opinion orally, in writing or by any other means, without subjection to prior censorship, though legal liability is incurred when by any of these means the reputation or honour of persons is assailed or when security or public order is attacked (art. 36).

M. Freedom of peaceful assembly

(article 20 of the Universal Declaration)

All inhabitants of Panama have the right to assemble peacefully and without arms for lawful purposes. Outdoor demonstrations or meetings are not subject to permission; only prior notice to the local administrative authorities, 24 hours in advance, is required (art. 37).

N. Right to work

(article 23 of the Universal Declaration)

Article 39 provides that everyone is free to practise any profession or trade, subject to such regulations as the law may establish with respect to qualifications, morality, social welfare and social security, professional affiliation, public health, unionization and compulsory dues. No tax or assessment may be imposed on the practice of the liberal professions, trades or arts.

O. Protection of the interests arising out of scientific, literary or artistic work

(article 27 of the Universal Declaration)

Every author, artist and inventor enjoys the exclusive ownership of his work or invention during the time and in the manner prescribed by law (art. 48).

PAPUA NEW GUINEA

Introduction

On 16 September 1975 Papua New Guinea was declared an independent country. This declaration brought into operation the Constitution of the independent State of Papua New Guinea. The Constitution is the source of Papua New Guinea's laws, and it, together with the "organic laws" (which are extensions of the Constitution and are made in compliance with a stringent procedure), is the supreme law. Other legislation (Acts of Parliament or of the provincial government assemblies) is to be read subject to the Constitution and the organic laws.

The rights of persons under the Constitution are divided into "fundamental rights" and "qualified rights". The fundamental rights are the right to life, freedom from inhuman treatment and protection of the law. The qualified rights fall into two groups: rights of all persons (liberty of the person, freedom from forced labour, freedom from arbitrary search and entry, freedom of conscience, thought and religion, freedom of expression, freedom of assembly and association, freedom of employment and the right to privacy); and special rights of citizens (right to vote and stand for public office, right to freedom of information, right to freedom of movement, protection from unjust deprivation of property, and equality of citizens).

The qualified rights are governed by section 38 of the Constitution, which expressly lays down the circumstances in which they can be restricted by legislation. Any such law must be in a special form and must be passed by an absolute majority of the members of the National Parliament. It can only be passed if it gives effect to the public interest in defence, public safety, public order, public welfare, public health (including animal and plant health), the protection of children and persons under disability (whether legal or practical) or the development of underprivileged or less advanced groups or areas, or is necessary for protection of the exercise of the rights and freedoms of others, or if it makes reasonable provision for cases where there is a conflict of rights, and then only to the extent that the law is "reasonably justifiable in a democratic society having a proper respect for the rights and dignity of mankind".

Section 39 of the Constitution describes in detail how the expression "reasonably justifiable in a democratic society having a proper respect for the rights and dignity of mankind" should be defined. The question whether a law is so justifiable is a question to be decided only by the courts, in the light of the circumstances obtaining at the time when the decision is made.

The court may have regard to:

"(a) The provisions of this Constitution generally, and especially the National Goals and Directive Principles and the Basic Social Obligations; and

"(b) The Charter of the United Nations; and

"(c) The Universal Declaration of Human Rights and any other declaration, recommendation or decision of the General Assembly of the United Nations concerning human rights and fundamental freedoms; and

"(d) The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, and any other international conventions, agreements or declarations concerning human rights and fundamental freedoms; and

"(e) Judgements, reports and opinions of the International Court of Justice, the European Commission of Human Rights, the European Court of Human Rights and other international courts and tribunals dealing with human rights and fundamental freedoms; and

“(f) Previous laws, practices and judicial decisions and opinions in the country; and

“(g) Laws, practices and judicial decisions and opinions in other countries; and

“(h) The Final Report of the pre-Independence Constitutional Planning Committee dated 13 August 1974 and presented to the pre-Independence House of Assembly on 16 August 1974, as affected by decisions of that House on the report and by decisions of the Constituent Assembly on the draft of this Constitution; and

“(i) Declarations by the International Commission of Jurists and other similar organizations; and

“(j) Any other material that the court considers relevant.”

In an emergency situation in which part X of the Constitution comes into operation, section 233 limits the power of the National Parliament to undermine those provisions of the Constitution concerning human rights after an emergency is declared. Certain rights are unassailable, and all have the protection of the provision that any such act must be “reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind”.

Throughout the Constitution and the organic laws are provisions specifically dealing with the matters contained in the Universal Declaration of Human Rights. This note will discuss the articles of that Declaration in numerical order.

A. Protection of human dignity

(preamble to the Universal Declaration)

The preamble to the Constitution sets out the moral basis on which the country is to be founded. The “national goals and directive principles” contained in it enjoin high standards of behaviour upon all and the duty to work for the advancement of all the basic rights and basic social obligations. Parts of the preamble list the freedoms to which all are entitled and the duties that are proper to people ambitious for the common good.

The preamble also states that respect for the dignity of the individual and community interdependence are basic principles of the society.

B. Freedom, equality and brotherhood

(article 1 of the Universal Declaration)

Section 32 of the Constitution delimits the freedom of the individual as follows. Freedom based on law consists in the least amount of restriction on the activities of individuals that is consistent with the maintenance and development of Papua New Guinea and of society, in accordance with the Constitution and, in particular, with the “national goals and directive principles” and the “basic social obligations” (para. 1). Every person has the right to freedom based on law, and accordingly has a legal right to do anything that (a) does not injure or interfere with the rights and freedoms of others and (b) is not prohibited by law; and no person is obliged to do anything that is not required by law or may be prevented from doing anything that complies with the provisions of (a) and (b) (para. 2). Paragraph 3 of section 32 states that the section is not intended to reflect on the extra-legal existence, nature or effect of social, civic, family or religious obligations, or other obligations of an extra-legal nature, or to prevent such obligations being given effect by law.

C. Non-discrimination

(article 2 of the Universal Declaration)

The Constitution guarantees the following rights for all: life (sect. 35), freedom from inhuman treatment (sect. 36), protection of the law (sect. 37), liberty of the person (sect. 42), freedom from forced labour (sect. 43), freedom from arbitrary search and entry (sect. 44), freedom of conscience, thought and religion (sect. 45), freedom of expression (sect. 46),

freedom of assembly and association (sect. 47), freedom of employment (sect. 48) and the right to privacy (sect. 49).

Citizens have special additional rights, *viz*: the right to vote and stand for public office (sect. 50), the right to freedom of information (sect. 51), the right to freedom of movement (sect. 52), and protection from unjust deprivation of property (sect. 53). Citizens may also acquire freehold land (sect. 56). Citizens' rights are further protected by section 55, which states:

"(1) Subject to this Constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex.

"(2) Subsection (1) does not prevent the making of laws for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged or less advanced groups or residents of less advanced areas.

"(3) Subsection (1) does not affect the operation of a pre-Independence law."

D. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

The Constitution guarantees the right to life (sect. 35), liberty of the person (sect. 42) and freedom from arbitrary search and entry (sect. 44).

E. Prohibition of slavery and servitude

(article 4 of the Universal Declaration)

Section 253 of the Constitution states that slavery and the slave trade in all their forms, and all similar institutions and practices, are strictly prohibited.

F. Prohibition of torture and cruel, inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

According to section 36 (1) of the Constitution, no person is to be submitted to torture (whether physical or mental), or to treatment or punishment that is cruel and otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person.

G. Equal protection of the law

(article 7 of the Universal Declaration)

Section 37 (1) of the Constitution provides that every person has the right to the full protection of the law.

H. Right to an effective remedy

(article 8 of the Universal Declaration)

Section 57 (1) of the Constitution provides that a right or freedom referred to in division 3, "Basic rights", of part III is protected by, and enforceable in, the Supreme Court or the National Court or any other court prescribed for the purpose by an Act of Parliament, either on its own initiative or on application by any person who has an interest in its protection and enforcement, or in the case of a person who is, in the opinion of the court, unable fully and freely to exercise his rights under section 57, by a person acting on his behalf, whether or not by his authority.

I. Right not to be subjected to arbitrary arrest, detention or exile

(article 9 of the Universal Declaration)

Freedom from arbitrary arrest and detention is granted by section 42 of the Constitution.

With regard to exile, section 52 (2) provides that no citizen may be expelled or deported from the country except by virtue of an order of a court made under a law in respect of the extradition of offenders, or alleged offenders, against the law of some other place.

J. Right to a fair hearing; right to all the guarantees necessary for defence

(articles 10 and 11 of the Universal Declaration)

Section 37 (1) of the Constitution provides that every person has the right to the full protection of the law and states that the succeeding provisions of the section are intended to ensure that that right is fully available, especially to persons in custody or charged with offences.

Section 37 (2) provides: "Except, subject to any Act of the Parliament to the contrary, in the case of the offence commonly known as contempt of court, nobody may be convicted of an offence that is not defined by, and the penalty for which is not prescribed by, a written law."

Under section 37 (3), a person charged with an offence must, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time, by an independent and impartial court.

Section 37 (4) provides *inter alia* that a person charged with an offence shall be presumed innocent until proved guilty according to law, but a law may place upon a person charged with an offence the burden of proving particular facts which are, or would with the exercise of reasonable care be, peculiarly within his knowledge (subpara. (a)); that he must be informed promptly in a language which he understands, and in detail, of the nature of the offence with which he is charged (subpara. (b)); that he must be given adequate time and facilities for the preparation of his defence (subpara. (c)); that he must be permitted to have without payment the assistance of an interpreter if he cannot understand or speak the language used at the trial (subpara. (d)); and that he may defend himself before the court in person or by a legal representative of his own choice or, if entitled to legal aid, by a legal representative assigned to him (subpara. (e));

According to section 37 (11), the determination of civil rights or obligations is to be made by an independent and impartial tribunal or other authority prescribed by law or agreed to by the parties.

Section 37 (12) provides that proceedings shall normally be held in public.

K. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

Section 44 of the Constitution provides protection against arbitrary search and entry, and section 49 states that every person has the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects, except to the extent that the exercise of that right is regulated or restricted by a law that complies with section 38, "General qualifications on qualified rights".

L. Freedom of movement

(article 13 of the Universal Declaration)

The citizen's right to freedom of movement is entrenched in section 52 of the Constitution, and personal liberty generally is protected by section 42.

Freedom of movement in and out of the country is protected for citizens by section 52 of the Constitution, and for all by section 42.

M. Extradition

(article 14 of the Universal Declaration)

Extradition comes within the field of the nation's general treaty-making powers, which are dealt with in section 117 of the Constitution; and provision is made in section 42 (1) (g)

for deprivation of personal liberty "for the purpose of preventing the unlawful entry of a person into Papua New Guinea, or for the purpose of effecting the expulsion, extradition or other lawful removal of a person from Papua New Guinea, or the taking of proceedings for any of those purposes". Papua New Guinea is in the process of negotiating extradition treaties with a number of countries.

N. Right to a nationality

(article 15 of the Universal Declaration)

Citizenship is dealt with in part IV of the Constitution. Basically, all persons who had two grandparents born in the country gained Papua New Guinea citizenship on Independence Day. Other persons may apply for citizenship after fulfilling certain requirements, including requirements as to residence and character (sect. 67).

The only way in which a citizen can lose his citizenship is by performing acts tantamount to obtaining the citizenship of another country (sect. 70 of the Constitution), or by renunciation of citizenship for the purpose of obtaining the citizenship of another country (sect. 72).

O. Right to marry; protection of the family

(article 16 of the Universal Declaration)

There are no provisions in any legislation restricting the right of men and women of full age to marry. Section 20 (1) (d) of the pre-Independence Marriage Act requires the real consent of both parties and makes the marriage void if it was "obtained by means including distress or fraud". Clause 6 of Schedule 2 to the Constitution adopts all pre-Independence laws as Acts of Parliament, subject to certain provisions. The relevant clauses of the Marriage Act 1963 were so adopted.

Clause 1 (5) of the national goals and directive principles, as set forth in the preamble to the Constitution, calls for "the family unit to be recognized as the fundamental basis of our society, and for every step to be taken to promote the moral, cultural, economic and social standing of the Melanesian family"; and clause 2 (12) calls for "recognition of the principles that a complete relationship in marriage rests on equality of rights and duties of the partners, and that responsible parenthood is based on that equality".

P. Right to own property

(article 17 of the Universal Declaration)

Section 56 of the Constitution states that only citizens may acquire freehold title to land, and section 53 establishes their right to protection from unjust deprivation of property.

Q. Freedom of thought, conscience and religion

(article 18 of the Universal Declaration)

Section 45 of the Constitution provides that every person has the right to freedom of conscience, thought and religion and the practice of his religion and beliefs, including freedom to manifest and propagate his religion and beliefs in such a way as not to interfere with the freedom of others, except to the extent that the exercise of that right is regulated or restricted by a law that complies with section 38, "General qualifications on qualified rights" (para. 1).

No person may be compelled to receive religious instruction or to take part in a religious ceremony or observance, but this does not apply to the giving of religious instruction to a child with the consent of his parent or guardian or to the inclusion in a course of study of secular instruction concerning any religion or belief (para. 2).

No person is entitled to intervene unsolicited into the religious affairs of a person of a different belief, or to attempt to force his or any religion (or irreligion) on another, by harassment or otherwise (para. 3).

No person may be compelled to take an oath that is contrary to his religion or belief, or to take an oath in a manner or form that is contrary to his religion or belief (para. 4).

A reference in this section to religion includes a reference to the traditional religious beliefs and customs of the peoples of Papua New Guinea (para. 5).

R. Freedom of opinion and expression; freedom of the press

(article 19 of the Universal Declaration)

Freedom of expression is protected by section 46 of the Constitution and "freedom of expression and publication" is defined by section 46 (2) as including "freedom to hold opinions, to receive ideas and information and to communicate ideas and information, whether to the public generally or to a person or class of persons", and also as including freedom of the press and of other media.

S. Freedom of assembly and association

(article 20 of the Universal Declaration)

Freedom of assembly and association is protected by section 47 of the Constitution.

T. Right to take part in government; right of access to public service

(article 21 of the Universal Declaration)

Section 50 of the Constitution gives all citizens who are not under sentence of death or imprisonment for a period of more than nine months, or have not been recently convicted of an electoral offence, the right to take part in the conduct of public affairs, either directly or through freely chosen representatives.

Section 48 of the Constitution states that every person has the right to freedom of choice of employment in any calling for which he has the qualifications, and this is taken to include access to the public service.

Section 99 of the Constitution states that "the power, authority and jurisdiction of the People shall be exercised by the National Government", which consists of three arms: (a) the National Parliament; (b) the National Executive; and (c) the National Judicial System.

The powers of these three arms are to be kept separate: Under section 105, elections are to be held every five years, unless an earlier election is precipitated by a vote of no confidence, or the Parliament decides on one. Section 126 (3) provides that the members of the Parliament shall be elected under a system of universal, adult, citizen suffrage in accordance with section 50, and the voting age is 18 years. Section 50 states, *inter alia*, that citizens have the right, and shall be given a reasonable opportunity, to vote for, and to be elected to, elective public office at genuine, periodic and free elections. The Organic Law on National Elections, which implements the election provisions of the Constitution as set forth in sections 125 and 126, provides for the procedures which guarantee a secret ballot, i.e. ballot papers unmarked except by the names and photographs of the candidates (sect. 125) and, on the back, the initials of the officer presiding at the polling place (sect. 126), security of ballot boxes (sect. 130), right to receive ballot-papers (sect. 136), marking of vote in private (sect. 138), and scrutiny during polling (sect. 127) and at the subsequent count (sect. 152).

U. Free development of the personality

(article 22 of the Universal Declaration)

In the statement of the national goals and directive principles, as set forth in the preamble to the Constitution, the people of Papua New Guinea call for, *inter alia*, in clause 1 (1) under the heading "Integral human development",

"everyone to be involved in our endeavours to achieve integral human development of the whole person for every person and to seek fulfilment through his or her contribution to the common good;"

and, in clause 2 (4) under the heading "Equality and participation",

"equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations".

V. Right to work

(article 23 of the Universal Declaration)

Freedom of employment is guaranteed under section 48 of the Constitution. Clause 2 (3) of the national goals and directive principles set forth in the preamble to the Constitution calls for every effort to be made to achieve an equitable distribution of incomes. Industrial organizations are protected by section 47 of the Constitution and encouraged by section 48.

W. Right to rest and leisure

(article 24 of the Universal Declaration)

There has been no legislation in the period under review in this field, but a variety of employment and arbitration Acts covering this area were taken over under Schedule 2.6 of the Constitution, by which the pre-Independence laws were adopted.

X. Protection of children

(article 25 of the Universal Declaration)

Parents are enjoined, under paragraph (h) of the "basic social obligations" set forth in the preamble to the Constitution, to support, assist and educate their children, whether born in or out of wedlock. The "qualified rights" may be regulated or restricted for the purpose of giving effect to the public interest in the protection of children and persons under a disability (whether legal or practical) (sect. 38 (1) (a) (i) (F) of the Constitution).

Y. Right to education

(article 26 of the Universal Declaration)

Education is not restricted at any level in Papua New Guinea except by educational qualifications. The Constitution does not deal in detail with it. Schedule 2.6 of the Constitution adopted the pre-Independence Education Act, section 19 (i) (xi) of which gives to a National Education Board the functions of imposing tuition or such other fees as are necessary. The circumstances of Papua New Guinea at this time do not permit compulsory education.

Clause 1 (2) of the national goals and directive principles set forth in the preamble to the Constitution calls for "education to be based on mutual respect..., and to promote... motivation to achieve our National Goals through self-reliant effort".

Section 7 (2) (a) of the Education Act specifically recognizes "the right of parents to obtain the education which they wish for their children".

Z. Right to participate in cultural life; protection of copyright

(article 27 of the Universal Declaration)

Clause 2 (1) of the national goals and directive principles set forth in the preamble to the Constitution calls for "an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country".

The Constitution did not adopt the legislation relating to copyright, trade marks and patents, which, prior to Independence, was Australian legislation extended to Papua New Guinea. The reasons for this decision include the desire to develop legislation relevant to Papua New Guinea and the uncertain and unsatisfactory nature of the international situ-

ation in this field, especially in regard to developing countries. It is expected, however, that copyright legislation will be introduced in the near future.

AA. Right to a social order in which human rights can be realized

(article 28 of the Universal Declaration)

The preamble to the Constitution asserts:

“that all power belongs to the people—acting through their duly elected representatives;

“that respect for the dignity of the individual and community interdependence are basic principles of our society;

“that we guard with our lives our national identity, integrity and self-respect;

“that we reject violence and seek consensus as a means of solving our common problems;

“that our national wealth, won by honest, hard work be equitably shared by all.”

BB. Duties to the community and limitations on rights

(article 29 of the Universal Declaration)

According to the “Basic social obligations” set forth in the preamble to the Constitution, all persons in the country have the obligation” (b) to recognize that they can fully develop their capabilities and advance their true interests only by active participation in the development of the national community as a whole”.

The question of the definition of the expression “reasonably justifiable in a democratic society” as applied to the limitation of rights has been referred to in the introduction to this statement (see pp. 218 and 219 above).

PHILIPPINES

Introduction

Although, during the period under review, the country was still under martial law, the basic human rights continued to be respected, and that applies not only to the rights from which, under article 4 (2) of the International Covenant on Civil and Political Rights, no derogation is permissible even in times of public emergency, but also to the right to freedom of expression and the right of peaceful assembly. "Most of the rights guaranteed in the Bill of Rights (contained in the Constitution proposed in 1972 and promulgated on 17 January 1973¹), indeed more than the irreducible minimum prescribed by the Covenant in times of public emergency, are being enforced in the Philippines today."²

A. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

In view of the vague and veiled accusations in some countries that the Government of the Philippines is guilty of violating human rights, the Government has waived the protection offered by the domestic jurisdiction clause of the Charter of the United Nations and has invited the Islamic Conference to send a fact-finding mission to the Philippines and see for themselves the falsity of the charges made by some countries that the Government was committing genocide against the Muslim population.

B. Prohibition of torture

(article 5 of the Universal Declaration)

Although there have been allegations of torture, they appear to be isolated cases. These have been immediately investigated and the guilty parties have been punished according to the law.

C. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

Under article IX, section 12, of the Constitution, the Prime Minister, as Commander-in-Chief of the Armed Forces, is empowered to "call out such armed forces to prevent or suppress lawless violence, invasion, insurrection or rebellion"; or in case of invasion, insurrection or rebellion or imminent danger thereof, when the public safety requires it, to "suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law".³

It is clear from the decision of the Supreme Court in the case of *Aquino v. Ponce Enrile*⁴ that the proclamation of martial law automatically suspends the writ of habeas corpus which is enshrined in the Bill of Rights of the Constitution. But this is not to say that the totality of the Bill of Rights is also automatically suspended.

Associate Justice Enrique Fernando, in a paper submitted to the World Peace through Law Conference, entitled "The rule of law under martial rule: the Philippine experience",

¹ *Constitution of the Republic of the Philippines* (Manila, Bureau of Printing, 1972).

² Address by Mr. José D. Ingles, Acting Secretary of Foreign Affairs, delivered on 10 December 1976 on the occasion of Human Rights Day in the auditorium of the Philippines Women's University; a copy of this address was transmitted by the Government to form the basis for the present article.

³ *Constitution of the Republic of the Philippines* (Manila, Bureau of Printing, 1972).

⁴ 59 SCRA 183 (1974).

said: "From a brief survey of the opinions in *Aquino Jr. v. Military Commission No. 2*,⁵ it does appear clearly that in the Philippines the Supreme Court is of the unanimous view that a military tribunal is called upon to respect the constitutional guarantees of an accused person".

⁵ 63 SCRA 546 (1975).

POLAND

Introduction

The most important instrument issued in the field of the safeguarding of human rights was the law of February 1976 amending the Constitution of the Polish People's Republic.¹ The amendments introduced into the Constitution emphasized and strengthened the following principles, which were already in force in Polish law:

(a) Equal rights for all citizens of the Polish People's Republic, irrespective of sex, birth, education, occupation, race, religion and social background or status (cf. article 2 of the Universal Declaration);

(b) Further development of social-insurance benefits for sickness, old age and disablement, development of State-organized health care, free medical service for all working people and their families, care of the disabled (cf. article 25 (1) of the Universal Declaration);

(c) Equalization of the rights of children born out of wedlock with those of children born in wedlock (cf. article 25 (2) of the Universal Declaration);

(d) Guarantee of the realization of rights and the fulfilment of obligations in respect of alimony (cf. article 25 of the Universal Declaration);

(e) Guarantee of free general and compulsory primary education, expansion of secondary education and development of higher learning (cf. article 26 of the Universal Declaration);

(f) Strengthening of the status of women in society, especially mothers and working women (cf. article 25 of the Universal Declaration).

Judgements of the Supreme Court

In the period under review the most important decisions from the point of view of the realization of human rights were made in matters dealing with family-protection and with shaping proper attitudes towards work relations.

A. Equality of rights in marriage; protection of the family

(article 16 of the Universal Declaration)

The Law of 19 December 1975 modifying the Family and Guardianship Code² introduced changes in and amendments to the previously existing provisions, particularly in the following respects:

(a) Ensuring persons contracting marriage equal rights in choosing their surname;

(b) Limitation of the extent to which the common property may be used for meeting the debts and obligations of either spouse;

(c) Expansion of guardianship and educational resources, and strengthening of the institution of adoption.

On 9 June 1976 the Supreme Court in Full Assembly of the Civil Court adopted decisions which increased family protection (III CZP 46/75).³ The purpose of these directives is to strengthen the principles that characterize the structure and functions of the socialist family—shaped by 30 years of judgements of the Supreme Court of the Polish People's Republic—and to oblige judges to raise the level of their judgements in family cases. In its directives, the Supreme Court draws attention to such matters as the equality of the spouses

¹ *Dziennik Ustaw* (Law Gazette), 1976, No. 5, item 29.

² *Ibid.*, 1975, No. 45, item 234.

³ *OSNCP*, 1976, No. 9, item 184.

as regards their rights and obligations, common property as a factor strengthening the family, and the stability of marriage.

An illustration of the implementation of the aforementioned principles is the resolution of the Full Assembly of the Civil Court of 30 November 1974 (III-CZP 1/74),⁴ which contains directives on jurisdiction and court practice in observing rules on the division of the spouses' common property in cases where that property includes the right to a co-operative flat. In this resolution, the Supreme Court, taking into account different solutions applicable to the division of property, stated emphatically that "the rule should be to grant the right to the co-operative flat to that one of the spouses who, living in a common flat, has their children under his or her direct care".

On 9 June 1976, the Supreme Court, at a session of its Criminal Court in Full Assembly, adopted guidelines on jurisdiction and court practice regarding penal measures in matters relating to the protection of the family (VI KZP 13).⁵

Although, in the Polish legal system for the protection of the family, penalties are a final measure and the application of criminal law in family matters should be treated only as a necessary evil, such a measure is nevertheless indispensable in the comprehensive social policy of Poland, which takes into account the implementation of the provisions of the Universal Declaration of Human Rights.

The family requires protection both from its members and from other persons if its well-being is imperilled by criminal acts, especially those characterized by a high degree of social danger or of an especially serious nature, including in particular ill-treatment of members of the family, accustoming minors to drinking, and evasion of obligations in respect of alimony.

The guidelines represent an important step forward, because, by laying down standard principles for the application of the rules governing responsibility for these crimes, they provide for a uniform policy of prosecution, punishment and prevention. Thus, they effectively enhance the individual and social impact of legislation concerning the family and help to give the family special protection.

B. Right to social security

(article 22 of the Universal Declaration)

1. DEVELOPMENTS IN RESPECT OF CERTAIN CATEGORIES OF PERSONS

Ex-combatants and former inmates of concentration camps

Provision was made for further increases in benefits, including increases in old-age and retirement pensions.⁶ The new law creates the State Fund for Ex-Combatants and Former Concentration Camps Inmates, which dispenses emergency financial assistance to such persons and finances the construction and maintenance of sanatoria and other institutions and homes for them.

Victims of industrial accidents and occupational diseases

A new Act⁷ broadens the circle of people eligible to receive benefits, introduces compensation for persons who are seriously disabled and provides for the granting of pensions even to those who return to work. The Act also provides for: (a) the granting of benefits to workers who sustain accidents in special circumstances unconnected with their work and even to accident victims who are not employed, such as students; and (b) the establishment of a minimum pension rate for workers who, due to an accident, are deprived of the opportunity to reach higher posts and therefore to command higher earnings in the future.

⁴ *Ibid.*, 1975, No. 3, item 37.

⁵ *OSNKW*, 1976, No. 7-8.

⁶ *Dziennik Ustaw*, 1975, No. 34, item 186.

⁷ *Ibid.*, 1975, No. 20, item 105.

Members of collective farms and farm co-operatives

New social-insurance legislation⁸ was introduced, providing for maternity and medical services, cash benefits in the event of sickness and maternity, family allowances, old-age and retirement pensions, benefits for accidents sustained at work or on the way to or from work, burial allowances and benefits in kind arising from eligibility to old-age or retirement pensions and also old-age or retirement pension bonuses.

Teachers and academics

The basic rates of old-age and disability pensions for certain categories were increased.⁹

Craftsmen, etc.

New social-insurance legislation was introduced for craftsmen and certain other categories of persons in gainful employment.¹⁰ The benefits granted to these persons and to members of their families include medical and maternity benefits (provision of medications, etc.), cash benefits in the event of sickness and maternity, family allowances, old-age benefits, cash benefits in case of accidents at work or of occupational diseases, old-age and retirement pension bonuses, burial allowances and benefits in kind arising from eligibility to old-age or retirement pensions.

Persons working for institutions of the socialized economy

Under a new social-insurance law,¹¹ persons working for institutions of the socialized economy under contracts of agency or commission were granted the same benefits as the craftsmen, etc., mentioned above.

2. SUPREME COURT JUDGEMENTS

Material responsibility of employees

The Labour Code which has been in force in the Polish People's Republic since 1 January 1975 introduced a number of new norms designed to secure, *inter alia*, the rightful interests of the employed. In this respect, the resolution of the Full Assembly of the Labour and Social Insurance Court of 29 December 1975 (V PZP 13/75),¹² which contains directives on jurisdiction and court practice in regard to the material responsibility of employees, is of the greatest significance. The Supreme Court points out that the Labour Code embodies the principle that a contract of employment is not concerned only with results but requires the exercise of due care. An employee bears responsibility for damage done to an employing institution, according to the principle of guilt. Within the framework of legal responsibility, the Code treats responsibility for damage caused unintentionally, as a result of failure to observe the obligations resting upon employees, or to observe them properly, differently from responsibility for damage resulting from the appropriation of common property or caused intentionally by an employee in some other way. The Supreme Court has underlined that an employee bears no risk connected with the activities exercised by the institution which employs him.

Termination of employment contracts

The most typical of the judgements concerning ways and means of terminating a contract of employment is that of 10 November 1975 (I PRN 34/75),¹³ the main thesis of which is the following:

⁸ *Ibid.*, 1976, No. 10, item 54.

⁹ *Ibid.*, 1976, No. 21, item 134.

¹⁰ *Ibid.*, 1976, No. 40, item 235.

¹¹ *Ibid.*, 1975, No. 45, item 232.

¹² *OSNCP*, 1976, No. 2, item 19.

¹³ *Ibid.*, 1976, No. 7-8, item 175.

"The authorities that deal with an employee's appeal against a decision to terminate his contract of employment should in each case determine whether the termination was justified, after careful assessment of the reasons for termination and having regard to the rightful interests of the employing institution and the employee as well as to the purposes and nature of the labour relation."

In a resolution of 11 July 1975 (I PZP 19/75)¹⁴ it was ruled that:

"The employing institution cannot revoke the terms of employment and remuneration of an employee who, on what would be the date of issue of the notice of revocation, would be two years or less away from retirement age, if his length of service is such as to entitle him to a retirement pension on reaching that age."

In a judgement of 15 December 1975 (I PRN 27/75),¹⁵ it was decided that:

"Consent to the termination of a contract of employment held by a woman who is pregnant or on maternity leave (Labour Code, art. 177, para. 1) shall be given by the employing institution's works committee or its presidium."

C. Right to an adequate standard of living (article 25 of the Universal Declaration)

1. SOCIAL INSURANCE

Some of the provisions of the Act of 17 December 1974 relating to the cash social-insurance benefits payable in the event of sickness and maternity¹⁶ have been modified so as to make the level of sickness benefits dependent on the duration of employment. In addition, changes have been made in the methods of calculating basic rates of sickness, confinement, maternity and compensation allowances.

Under the new provisions, the monthly sickness benefits amounts to 100 per cent of the employee's wages in the case of persons with more than eight years' service, 80 per cent in the case of persons with three to eight years' service and 75 per cent in the case of persons with less than three years' service. The sickness benefit amounts to 100 per cent of wages, however, irrespective of the length of service, in cases of disablement caused by accidents at or on the way to work or by occupational diseases, with incapacity lasting over 30 days (starting on the thirty-first day of such incapacity).

As from 1976, mothers on unpaid leave granted to them for the purpose of bringing up small children of up to four years of age have had the right to engage in studies during that period at secondary schools or institutions of higher learning, or to pursue post-graduate or Ph.D. studies, or to take a part-time job or work under a contract of agency or commission.¹⁷

2. PROTECTION OF PUBLIC HEALTH

The changes in the organization and administration of the local health-care centres introduced by Ordinance of the Minister of Health and Social Welfare of 4 July 1975 relating to the organization and model statutes of health-care centres¹⁸ have served to make the health services rendered to people in Poland more accessible and of higher quality.

The change-over, on 1 June 1975, to a two-level system of State administration and the increase in the number of voivodships to 49 have made for better-organized health-care centres and have facilitated full integration of social and health care at the voivodship level. In keeping with the Ordinance of the Minister of Health and Social Welfare of 4 July 1975,¹⁹

¹⁴ *Ibid.*, 1976, No. 4, item 76.

¹⁵ *Ibid.*, 1976, No. 7-8, item 179.

¹⁶ *Dziennik Ustaw*, 1975, No. 34, item 185.

¹⁷ *Ibid.*, 1975, No. 43, item 219.

¹⁸ *Regulations Gazette of the Ministry of Health and Social Welfare*, 1975, No. 12, item 38.

¹⁹ *Ibid.*, 1975, No. 12, item 39.

a unified organizational model of health and social care at the voivodship level, based on a voivodship general hospital, has been introduced.

Much has been done during the last two years to improve the distribution of medical staff in the country. The introduction of a one-time installation grant for medical-academy and nursing-school graduates taking up work in areas where there is a shortage of medical staff has had a positive effect in reducing disparities in the distribution of these cadres. The Ministry of Health and Social Welfare Ordinance of 17 September 1975 gives a list of areas in which there is a shortage of medical cadres.²⁰

Through the State Health Inspectorate, preventive inspections are conducted daily to ensure that proper health conditions exist in the country. With a view to improving this supervision, new regulations concerning the organization and performance of inspections have been introduced. This matter has been dealt with by the Ordinance of the Minister of Health and Social Welfare of 26 November 1975²¹ relating to the stationing and competence of the State, local and harbour health inspectors, and the Ordinance of the same Minister of 27 April 1976²² relating to the organization of health and epidemiological centres.

A number of steps have also been taken to improve the health of children and young workers, and to fight diseases of social significance. Under Ministry of Health and Social Welfare Ordinance of 24 June 1976,²³ a modern system of statistics with screening examinations at the ages of 2, 4, 6, 10, 14 and 18 was introduced. This system permits the intensification of health-service activities, particularly in the field of children's and adolescents' disease prevention, through earlier detection and treatment.

D. Right to education

(article 26 of the Universal Declaration)

In this field, the period under review marked the next step in the nation-wide implementation of the provisions of the Charter of the Rights and Obligations of Teachers, adopted on 27 April 1972.²⁴ It was also an important stage in preparations for introducing the reform of the educational system.

Further progress was made in ensuring appropriate material conditions of employment for teachers. By means of a rise in salaries in three annual stages, the average teacher's salary has been increased by 40 per cent over the last three years. In 1975, the fourth stage of the social fund for persons working in education, allocated for holiday leave, children's holiday camps, sport, tourism and cultural activities, was completed. Over one fourth of all teachers benefited from rent-free flats on account of their employment in towns and villages of not more than 2,000 inhabitants.

A system of special training has been established for children and young people who are physically and mentally handicapped or who exhibit behavioural disorders.

It provides for special kindergartens and primary schools, special classes in primary schools, special vocational schools and special secondary and technical schools for some categories of handicapped young people. The aim is to create conditions for all-round development corresponding to each child's capabilities and to prepare the children and young people concerned for an occupation and a self-reliant life in society.

The realization of these goals is guaranteed by provisions included in Ministry of Education Ordinance of 29 November 1973 on the expansion of special training and assistance for mentally and physically handicapped children, as amended on 27 March 1976.²⁵

²⁰ *Dziennik Ustaw*, 1975, No. 21, item 76.

²¹ *Ibid.*, 1975, No. 41, item 215.

²² *Regulations Gazette of the Ministry of Health and Social Welfare*, 1976, No. 10, item 26.

²³ *Dziennik Ustaw*, 1976, No. 25, item 150.

²⁴ *Ibid.*, 1972, No. 16, item 114.

²⁵ *Regulations Gazette of the Ministry of Education*, 1973, No. 16, item 123, and *ibid.*, 1976, No. 4, item 18.

In addition, the Minister of Education issued the Ordinance of 30 May 1975 on the entitlement of handicapped children to appropriate forms of special education or corrective treatment, based on the Ordinance of 30 September 1974 on the qualification of children as unable to study in ordinary schools.

The aforementioned legislation embodies a comprehensive approach to the programming and organizational problems of education and care for handicapped children and young people.

E. International instruments

(article 28 of the Universal Declaration)

During the period 1975-1976, Poland became a party to a number of international agreements affecting human rights. In addition to the International Convention on the Suppression and Punishment of the Crime of *Apartheid* (see p. 354 below) and the Universal Copyright Convention (see p. 367 below), these included the Convention establishing the World Intellectual Property Organization of 14 July 1967, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972, and three conventions of the International Labour Organisation: the Maternity Protection Convention (Revised, 1952) (No. 103), the Guarding of Machinery Convention, 1963 (No. 119) and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).

PORTUGAL

Introduction

During the period under review, human rights in Portugal acquired legal protection, the details of which are embodied in the Constitution of the Portuguese Republic,¹ promulgated on 2 April 1976.

A: Equality of rights

(article 1 of the Universal Declaration)

The principle of equality is taken up in article 13 of the Constitution, paragraph 1 of which states that all citizens have the same social dignity and are equal before the law.

B. Non-discrimination

(articles 2 and 7 of the Universal Declaration)

Under article 13, paragraph 2, of the Constitution, no one may be privileged, favoured, injured, deprived of any right or exempted from any duty by reason of his ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status.

C. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

The Constitution proclaims that human life is inviolable. There is no death penalty in Portugal (art. 25).

Article 27 provides that no one shall be deprived of his freedom except as a result of a court judgement convicting him of an offence punishable by law by a prison sentence or as a result of judicial application of a security measure. An exception to this principle shall be deprivation of freedom, for the period and in the circumstances laid down by law, in the following cases:

(a) Remand in custody where a person is taken *in flagrante delicto* or where there is strong evidence that he has committed a deliberate offence punishable by a severe penalty;

(b) Arrest or detention of a person who has unlawfully entered the national territory or against whom extradition or deportation proceedings have been instituted.

Anyone deprived of his freedom must be informed, without delay, of the reasons for his arrest or detention.

D. Prohibition of torture and cruel, inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

The Constitution affirms that the moral and physical integrity of citizens is inviolable and that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 26).

E. Right to recognition as a person before the law

(article 6 of the Universal Declaration)

The right of everyone to recognition everywhere as a person before the law is taken up in article 12 of the Constitution:

¹ *Diário da República*, series I, No. 86, 10 April 1976, pp. 738-775.

"1. All citizens shall enjoy the rights and be subject to the duties laid down in the Constitution.

"2. Bodies corporate shall enjoy such rights and be subject to such duties as are compatible with their nature."

F. Right to an effective remedy

(article 8 of the Universal Declaration)

Article 20 of the Constitution protects citizens from acts violating their fundamental rights. This article prescribes that everyone shall have access to the courts for the defence of his rights, that justice shall not be denied for lack of financial means, and that everyone shall have the right to resist any order which infringes his rights, freedoms or safeguards and to repel by force any form of aggression when recourse to public authority is impossible.

G. Prohibition of arbitrary extradition or expulsion

(article 9 of the Universal Declaration)

Portuguese citizens may not be extradited or expelled from the national territory.

No one may be extradited for political reasons; furthermore, no one may be extradited for crimes punishable by the death penalty under the law of the applicant State.

Extradition and expulsion shall be decided by judicial authority only. (Constitution, art. 23.) (See also sect. C above.)

H. Administration of justice

(article 10 of the Universal Declaration)

The assignment to the courts of the exercise of the judicial function is also prescribed in the Constitution, in articles 205 and 206, which state that the courts are the sovereign organs competent to administer justice in the name of the people and that, in administering justice, the courts shall ensure the defence of those rights and interests of the citizens that are protected by law, punish violations of democratic legality and settle public and private conflicts of interest.

I. Presumption of innocence; non-retroactivity of criminal law

(article 11 of the Universal Declaration)

Articles 29 and 32 of the Constitution read as follows:

"Article 29

"1. No one shall be convicted under criminal law except by virtue of existing legislation declaring the act or omission to be punishable, and no one shall be subjected to a security measure involving deprivation of freedom on grounds not laid down in existing legislation.

"2. The provisions of the foregoing paragraph shall not prevent the punishment, within the limits of internal law, of an act or omission which, at the time it is committed, is regarded as a criminal offence by virtue of the commonly recognized general principles of international law.

"3. No penalties or security measures involving deprivation of freedom other than those expressly provided for in existing legislation shall be applied.

"4. No one shall be subjected to a penalty or security measure involving deprivation of freedom more severe than those provided for at the time the act or omission occurred. Criminal laws more favourable to the accused person shall apply retroactively.

"5. No one shall be tried more than once for the same offence."

"Article 32

"1. Criminal proceedings shall provide all necessary safeguards for the defence.

"2. Everyone charged with an offence shall be presumed innocent until his conviction has acquired the force of *res judicata*.

"3. Any accused person shall have the right to be assisted by counsel at all stages of the proceedings. The cases and stages in which such assistance shall be mandatory shall be specified by law.

"4. A judge shall have jurisdiction throughout the preliminary investigation, and the cases in which this shall involve the hearing of both parties shall be specified by law.

"5. Criminal proceedings shall be accusatory in structure, and the trial itself shall be governed by the principle that both parties shall be heard.

"6. Any evidence obtained by torture, coercion, violation of the physical or moral integrity of the individual or unlawful interference with privacy, the home, correspondence or telecommunications shall be invalid.

"7. No case shall be withdrawn from a court which has jurisdiction under existing legislation."

J. Protection of privacy

(article 12 of the Universal Declaration)

Everyone has the right to his personal identity, his good name and to privacy in his personal and family life. Article 33 of the Constitution also specifies that effective safeguards against the wrongful use, or use contrary to human dignity, of information concerning individuals and families shall be provided by law.

K. Freedom of movement

(article 13 of the Universal Declaration)

The right to freedom of movement, inside and outside the national territory, is also safeguarded by the Constitution (art. 44). All citizens are guaranteed the right to travel and to settle freely anywhere in the national territory, as well as the right to emigrate or leave the national territory and the right to return to it.

L. Right of asylum

(article 14 of the Universal Declaration)

Article 22 of the Constitution guarantees the right of asylum to foreigners and stateless persons persecuted as a result of their activities on behalf of democracy, social and national liberation, peace among peoples, freedom and the rights of the individual. The status of political refugees is to be defined by law.

M. Marriage and the family

(article 16 of the Universal Declaration)

Article 36 of the Constitution deals with marriage, the family and filiation.

Everyone has the right to found a family and to marry on terms of complete equality (para. 1). The conditions for and effects of marriage and its dissolution by death or divorce are to be regulated by law, without regard to the form of solemnization (para. 2). Spouses have equal rights and duties with regard to civil and political capacity and the maintenance and education of their children (para. 3). Children born out of wedlock may not, for that reason, be subjected to any form of discrimination, and discriminatory designations of filiation shall not be used by the law or by government departments (para. 4). Parents have the right and duty to bring up their children (para. 5). Children must not be separated from

their parents unless the latter fail to perform their fundamental duties towards them, and then only by judicial decision (para. 6).

Article 67 of the Constitution specifies that the State shall recognize the institution of the family and assure its protection and that it has a particular responsibility to:

- (a) Promote the social and economic independence of the family unit;
- (b) Develop a national network of assistance to mothers and children and carry out a policy for the aged;
- (c) Co-operate with parents in the education of their children;
- (d) Promote, by all necessary means, the wider knowledge of family planning methods and set up the legal and technical structures permitting planned parenthood;
- (e) Assess taxes and social security benefits on the basis of family responsibilities.

N. Right to own property

(article 17 of the Universal Declaration)

The right of everyone to private property and to its transfer, during life or by death, is guaranteed by article 62 of the Constitution.

Other than in the cases provided for in the Constitution, expropriations in the public interest are subject to the payment of fair compensation.

O. Freedom of conscience and religion

(article 18 of the Universal Declaration)

Article 41 of the Constitution provides that freedom of conscience, religion and worship are inviolable and that no one shall be persecuted, deprived of rights or exempted from civil obligations or duties because of his beliefs or religious practices.

P. Freedom of opinion and expression

(article 19 of the Universal Declaration)

Article 37 of the Constitution prescribes that everyone has the right freely to express and make known his thoughts by word, image or any other means and the right to obtain information without hindrance or discrimination, and that the exercise of these rights shall not be impeded or restricted by any form of censorship. It further provides that offences committed in the exercise of these rights shall be punishable by ordinary law, the courts of law having jurisdiction to try them, and that all natural or legal persons shall be equally and effectively assured of the right of reply.

Q. Freedom of peaceful assembly

(article 20 of the Universal Declaration)

The freedom of assembly is guaranteed by article 45 of the Constitution. Citizens have the right to assemble peacefully and without arms, even in public places, without requiring any authorization. The right of all citizens to demonstrate is recognized.

R. Right to take part in government

(article 21 of the Universal Declaration)

Article 48 of the Constitution reads as follows:

“1. All citizens have the right to take part in the political life and in the management of the affairs of the country, directly or through freely elected representatives.

“2. Suffrage shall be universal, equal and secret; it shall be granted to all citizens over 18 years of age, except in cases of incapacity as provided in general law; its exercise shall be personal and shall constitute a civic duty.

"3. All citizens have the right to objective information concerning acts of the State and other public bodies and to be informed by the Government and other authorities about the management of public affairs.

"4. All citizens have right of equal and free access to public service."

S. Right to social security

(article 22 of the Universal Declaration)

Article 63 of the Constitution recognizes the right of everyone to social security. This system, or set of programmes, provides citizens with protection in old age, sickness, disability, widowhood, orphanhood, unemployment and all other situations in which means of subsistence or capacity to work are lacking or diminished. The right to material assistance for persons involuntarily unemployed, which is guaranteed by article 52 (a) of the Constitution, should be considered as part of the concept of the right to social security.

Similarly, economic security for handicapped persons, provided for in article 71, paragraph 2, of the Constitution, and economic security for the aged, which is provided for in article 72, as one of the objectives of the policy for the aged, should also be regarded as forming part of the concept of social security.

The following are among the legislative texts which have been promulgated in connexion with the right to social security:

(a) Order No. 144/75, of 3 March, which provided for the granting of a supplementary pension to seriously disabled persons;

(b) Legislative Decree No. 169-D/75, of 31 March, which established an unemployment benefit system for the first time in Portugal;

(c) Legislative Decree No. 174-B/75, of 1 April, which introduced changes in the special rural welfare scheme;

(d) Legislative Decree No. 668/75, of 24 November, which updated pensions for industrial accidents and occupational diseases;

(e) Legislative Decree No. 761/75, of 31 December, which extended the period for the granting of the unemployment benefit introduced by Legislative Decree No. 169-D/75, of 31 March;

(f) Order No. 789/75, of 31 December, which established minimum pensions for the disabled, the aged and survivors;

(g) Legislative Decree No. 112/76, of 7 February, by which the granting of maternity benefits became a general practice;

(h) Legislative Decree No. 269/76, of 10 April, which enabled relief schemes other than the general scheme set up under Legislative Decree No. 169-D/75 of 31 March to be established in special unemployment situations;

(i) Decree No. 494/76, of 23 June, which prescribes the manner of calculating the qualifying period for benefits;

(j) Legislative Decree No. 560/76, of 16 July, which established the rules for integrating rural workers still under the special welfare scheme into the general welfare scheme;

(k) Legislative Decree No. 635/76, of 28 July, which amended the text of article 17 of Legislative Decree No. 169-D/75, of 31 March (period during which unemployment benefit is paid);

(l) Legislative Decree No. 839/76, of 4 December, which deals with the situation of beneficiaries of funds who, for political reasons, have been prevented from exercising their profession;

(m) Order No. 775/76, of 21 December, which increased disability and old-age pensions for rural workers.

T. Right to work; right to rest and leisure
(articles 23 and 24 of the Universal Declaration)

Articles 51, 52 and 53 of the Constitution refer to the right to work.

Everyone has the right freely to choose his occupation or type of work, save where there are restrictions imposed by law in the interests of the community or arising from his own capacity.

It is the duty of the State, by implementing plans for economic and social policy, to safeguard the right to work, ensuring: (a) the implementation of a policy of full employment and the right to material assistance for persons who are involuntarily unemployed; (b) security of employment, dismissals without good reason or for political or ideological motives being prohibited; (c) equality of opportunity in the choice of occupation or type of work, and conditions ensuring that access to any post, work or professional category is not prohibited or restricted by reason of a person's sex; (d) cultural, technical and vocational training for workers, combining manual and intellectual work.

All workers, regardless of age, sex, race, nationality, religion or ideology, are entitled to: (a) remuneration for their work, on the basis of its quantity, nature and quality and of the principle of "equal pay for equal work", so as to assure them a decent living; (b) organization of work in conditions of social and individual dignity; (c) sanitary and safe working conditions; (d) rest and leisure, a limit to the length of the working day, a weekly rest day and holidays with pay.

U. Right to an adequate standard of living
(article 25 of the Universal Declaration)

Articles 63 (see sect. S above) and 64 to 66 of the Constitution are concerned with this question.

1. HEALTH

Article 64 deals with matters relating to health:

Everyone has the right to protection of his health and the duty to safeguard it (para. 1).

The right to protection of health is to be realized by the establishment of a universal, general and free national health service, by the creation of economic, social and cultural conditions which ensure the protection of children, the young and the old, and by the systematic improvement of living and working conditions, as well as by the promotion of physical culture and sports for schoolchildren and for the population generally and by the development of health education among the population (para. 2).

To ensure the right to health protection, the State shall give priority to:

- (a) Assuring access by all citizens, regardless of their economic situation, to preventive and curative medical care and rehabilitation;
- (b) Providing rational and effective medical and hospital services throughout the country;
- (c) Channelling its activity towards the socialization of medicine and of the medico-pharmaceutical sectors;
- (d) Regulating and supervising group and private medical practices, co-ordinating them with the national health service;
- (e) Regulating and supervising the manufacture, marketing and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis (para. 3).

With regard to the development of legal rules concerning the right to the protection of health, it should be noted that the instruments published are administrative in character and are essentially designed to pave the way for the establishment of the national health service envisaged in the Constitution. Mention should be made of the following:

(a) Legislative Decree No. 488/75, of 4 September, which set up district offices for the health services;

(b) Order No. 428/76, of 7 July, which laid down rules governing the functioning of district health offices;

(c) Order No. 431/76, of 20 July, which merged the health services of provident societies into the medico-social services of their respective zones.

2. HOUSING

Housing is dealt with in article 65 of the Constitution.

Everyone has the right, for himself and for his family, to a dwelling of adequate size, which meets the requirements of hygiene and comfort and preserves personal and family privacy (para. 1).

In order to safeguard the right to housing, it is the duty of the State to:

(a) Draw up and implement a housing policy which forms part of the national development plans and is based on urban planning providing for the establishment of an adequate network of transport and social facilities;

(b) Encourage and support initiatives by local communities and the population to solve their housing problems and encourage self-help construction and the setting up of housing co-operatives;

(c) Encourage private building, subject to the interests of the community (para. 2).

The State and the local authorities shall exercise effective control over the use of urban land, by expropriation proceedings, if necessary (para. 4).

3. THE ENVIRONMENT

Article 66 of the Constitution provides that everyone shall have the right to a healthy and ecologically balanced human environment, and the duty to protect it (para. 1).

It is the duty of the State, acting through appropriate bodies and appealing to popular initiative, to:

(a) Prevent and control pollution and its effects and harmful forms of erosion;

(b) Arrange national development in such a way as to obtain biologically balanced areas;

(c) Create and develop nature reserves and parks and recreation areas, and classify and protect landscapes and sites so as to ensure the conservation of nature and the preservation of cultural assets of historical or artistic interest;

(d) Encourage the rational use of natural resources while safeguarding their capacity for renewal and ecological stability (para. 2).

Any citizen whose rights under paragraph 1 are threatened or infringed may, in accordance with the law, call for an end to the causes of violation and apply for appropriate compensation (para. 3).

The State shall promote the progressive and rapid improvement of the quality of life of all Portuguese people (para. 4).

4. PROTECTION OF MOTHERHOOD AND CHILDHOOD

In addition to the general protection granted to the family under article 67 (see sect. M above), the Constitution guarantees protection to motherhood (art. 68), childhood (art. 69) and youth (art. 70).

Under article 36, paragraph 4, of the Constitution (see sect. M above), children born out of wedlock shall not, for that reason, be subjected to any form of discrimination.

V. Right to education

(article 26 of the Universal Declaration)

The right of everyone to education and culture is specified in article 73 of the Constitution. The State is required to promote the democratization of education and conditions in which education, imparted at school or by other means of instruction, contributes to the development of the personality and the advancement of a democratic and socialist society.

The State shall also promote the democratization of culture, by encouraging and securing access for all citizens, particularly the workers, to the enjoyment of culture and cultural creation, through popular local organizations, cultural and recreational associations, public information media and other appropriate means.

W. Freedom of cultural creation; protection of copyright

(article 27 of the Universal Declaration)

Article 42 of the Constitution specifies that intellectual, artistic and scientific creation shall be unrestricted. This freedom includes the right to invention, production and dissemination of scientific, literary or artistic works, including legal protection of copyright.

REPUBLIC OF KOREA

Right to social security

(articles 22 and 25 of the Universal Declaration)

There were several developments in the different branches of the country's social security system during 1976. Specifically, they covered insurance, pensions and a medical aid programme, details of which are provided below.

1. INSURANCE

The Industrial Accident Insurance Programme in force during this period covered for the most part those employed in workshops with 16 or more workers; the range of occupations covered included manufacturing, electricity, gas and transportation. Cash benefits amounting to 60 per cent of earnings are paid for temporary disability requiring absences of more than eight days from work, and for partial or permanent disability a lump sum is paid; in the first case it may vary from 50 to 1,190 days' wages and in the second is equal to 1,340 days' wages. Full medical and hospital care are provided until complete recovery. A special welfare agency, sponsored by the Office of Labour Affairs, has been established to take care of workers involved in industrial accidents or suffering from occupational diseases. In the case of death, the insured workers' survivors receive a lump sum equal to 1,000 days' wages. The Industrial Accident Insurance Programme is financed solely by employers and is supervised by the Director-General of the Office of Labour Affairs.

As regards the Medical Insurance Programme, the Medical Insurance Act was revised during this period and the actual payment of premiums and benefits was to begin on 1 July 1977. Sickness allowances and funeral expenses are provided in addition to medical care. In addition, maternity benefits are paid for a period of six months. Premiums, which range from 3 to 8 per cent of the respective payrolls, are fixed by the medical insurance society concerned and are equally shared by employee and employer. Those residents subject to voluntary coverage pay a fixed premium and the Government subsidizes part of the costs from the national budget. The Ministry of Health and Social Affairs runs the programme in collaboration with the medical insurance societies established within the firms and industrial estates covered and, in the case of residents subject to voluntary coverage, with the medical insurance society established within their respective administrative districts.

2. PENSIONS

The Private School Teachers' Pension Programme covers professors and teachers in private institutions. It provides payments in respect of old-age pensions and disability and death benefits; it also provides medical care and related services and sickness and maternity benefits. The programme, which is financed by the teachers, the institutions for which they work and the Government, is run by a special corporation under the supervision of the Ministry of Education.

As regards new legislation, the National Welfare Pension Law enacted in 1975 is soon to become effective.

3. MEDICAL AID PROGRAMME

The Medical Aid Programme was established on the special order of the President of the Republic on 15 June 1976 to provide the needy with necessary medical care. This programme covers those who are incapable of supporting themselves and those in the low-income brackets. The Government will pay the medical expenses of those who are unable to pay their own on account of their poverty and for those in the low-income brackets it will bear the entire cost of out-patient treatment and up to 30 per cent of all hospitalization costs.

ROMANIA

A. Right to take part in government

(article 21 of the Universal Declaration)

In order that the part played by the masses in formulating and implementing the domestic and foreign policy of the State be better organized, the Act relating to Congress, the Legislative Chamber and the Conferences of People's Councils was adopted in 1975,¹ and Act No. 57/198 concerning the organization and functioning of the people's councils² was the subject of several amendments in 1976.³

The first-mentioned Act provided for the following types of participation by the chairmen and deputies of people's councils and the representatives elected by the masses in the discussion of problems relating to the efficient organization of the work of the local organs of State power and administration: the Congress of People's District Councils and of Chairmen of People's Councils; the National Conference of Chairmen of People's Councils; District Conferences of Deputies of Municipal, Urban and Communal Councils. The same Act established the Legislative Chamber of People's Councils as a standing deliberative organ of the people's councils. The Legislative Chamber examines and pronounces on draft local plans and budgets and on draft bills concerning the improvement of the organization and functioning of local State organs, the participation of citizens in government, and other proposals of local interest; it also has the right to initiate legislation on matters within its terms of reference.

The major additions to the Act concerning the organization and functioning of the people's councils are aimed at increasing opportunities for the masses and the individual citizen to participate in the management of economic and socio-political activity at the local level. They provide, *inter alia*, for the following: (a) inclusion among the functions of the executive committees and executive bureaux of the people's councils of responsibility for organizing citizens' participation in the management of public affairs at the local level; (b) institutionalization of citizens' assemblies, which are granted broad deliberative powers in regard to such matters as the carrying out of public works; (c) election of village delegates to defend the interests of their village within the communal, urban or municipal people's councils.

The Congress of Political Education and Socialist Culture (June 1976) formed part of the series of meetings organized at the national level with participation by the directly elected representatives of the masses for the purpose of discussing and defining methods of carrying out certain measures in vital sectors of economic, socio-political and cultural life. At this meeting, it was decided that the Congress would be convened every five years, as a popular forum in which to debate ideological and cultural questions.

Pursuant to a decision adopted by the Central Committee of the Romanian Communist Party in July 1976,⁴ several measures have been taken with a view to improving efforts to solve the problems of workers, including the legislative framework, in order continually to strengthen and develop this form of contact with the masses.

¹ Act No. 5 of 23 July 1975 (*Official Bulletin*, No. 82, 29 July 1975), amended and supplemented by Act No. 3 of 16 April 1976 (*ibid.*, No. 36, 24 April 1976).

² *Official Bulletin*, No. 168, 26 December 1968. For this Act, see *Yearbook on Human Rights for 1968*, pp. 326-327.

³ Act No. 5 of 2 July 1976 (*Official Bulletin*, No. 66, 8 July 1976).

⁴ *Official Bulletin*, No. 73, 20 July 1976.

B. Right to work; right to just and favourable remuneration
(*article 23 of the Universal Declaration*)

Decree No. 54/1975 established criteria regarding the placement within the production process of graduates of higher educational establishments who have followed daytime courses.⁵ According to the provisions of the Constitution concerning the right to work, the State guarantees graduates of higher educational institutions a job which corresponds to their training.

Another legislative measure designed to ensure that the right to work is exercised as fully as possible, taking into account the level of economic development, is Act No. 24/1976, relating to the recruitment and distribution of the labour force.⁶ The Act aims at meeting citizens' wishes for the support of State organs with regard to vocational training and recruitment. Recruitment is at the request of the persons concerned, who apply directly to the socialist units. Those who are not engaged in this way will be given help by the competent organs of the Ministry of Labour in finding appropriate employment, taking into account the requirements of the labour market and the training, aptitudes and preferences of those concerned. Subordinate socialist units must ensure the availability of an adequate work force by making use of technical schools, on-the-job apprenticeship, high schools, vocational training courses at the place of work, etc.

Act No. 25/1976⁷ reaffirms and applies the principles of the Constitution and the provisions of the Labour Code according to which every citizen has the right and the obligation to perform work useful to society, while the State ensures every citizen, according to his training, the opportunity to work in the economic, socio-cultural or administrative field. The Act imposes an obligation on persons who are fit to work, and who are not following educational or vocational training courses or are not employed, to register with the competent organs of the Ministry of Labour. These organs are responsible for ensuring the placement of such persons in the production process, or for arranging for them to acquire qualifications at the place of work, bearing in mind their training and aptitudes and the work force requirements of the socialist units. In order to combat any sign of social parasitism, the unions and youth, and women's and other mass organizations are legally required to engage in ongoing educational activity in this field.

The Act relating to remuneration for work in agricultural co-operative units (Act No. 27/1976)⁸ is the first over-all regulation of the principles and forms of remuneration for work in the agricultural sector. The Act provides for work in agricultural co-operative units to be remunerated on the basis of the socialist principle of distribution according to the quantity, quality and social importance of the work performed, and in proportion to the economic results achieved by each unit. The remuneration fund is to be distributed within each unit in such a way as to ensure that the difference between minimum and maximum incomes is justly proportioned, while strictly adhering to the principle of socialist equality. As regards establishment of the amount and forms of remuneration, the provisions of the Act are in accordance with the general principles and regulations applicable to all categories of workers. The Act also specifies that in addition to receiving remuneration for work performed and results achieved, members of agricultural production co-operatives should benefit from the State Consumers' Fund for Education, Health Protection and Culture and should receive pensions, material aid during temporary inability to work or pregnancy, family assistance and other social entitlements.

⁵ *Ibid.*, No. 50, 30 May 1975.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*, No. 109, 28 October 1975.

C. Right to health

(article 25 of the Universal Declaration)

Measures to improve public health include Decree No. 116/1975,⁹ which strengthened the role of the Higher Health Council. This State organ is responsible, *inter alia*, for formulating long-term programmes for the continuous improvement of the health of the population and the development of preventive and curative medical aid; analysing activities regarding disease prevention and protection of the quality of air, soil, water and food products and introducing measures to protect and promote public health; analysing and improving the system of protection and medical assistance for mothers, children and young people; conducting periodic analyses of health protection methods at places of work; and taking steps to improve working conditions and to prevent and combat occupational diseases.

D. Right to education

(article 26 of the Universal Declaration)

The provisions of Decree No. 14/1976, on the establishment, organization and functioning of production, research, planning and service units designed to integrate higher education with production and scientific research,¹⁰ are aimed at improving the system of training young people, while still at school, in the practical knowledge required in the job which they will perform at the end of the various forms of education. The decree provides unitary regulations for integrating higher education with production and scientific research and provides for direct participation by teachers and students in the management and execution of the activities needed to achieve such integration.

With the aim of assuring an organizational and legal framework for the active participation of parents in steadily improving the education of pre-school children and pupils, Decree No. 362/1976 relating to parents' civic committees and councils of parents' civic committees¹¹ widens the responsibilities of these bodies as a source of support and a means of control by society over higher education. These committees must help to implement measures designed to bring about a sustained improvement in the process of instruction and education to guide pupils in their choice of academic studies and occupation, to integrate the young generation into society, and to instruct parents on dealing with problems concerned with their children's education.

⁹ *Ibid.*, No. 119, 31 December 1976.

¹⁰ *Ibid.*, No. 6, 4 February 1976.

¹¹ *Ibid.*, No. 92, 3 November 1976.

SEYCHELLES

Introduction

The Republic of Seychelles was established on 29 June 1976 by The Seychelles Independence Order 1976.¹ The Constitution of Seychelles, which came into effect on the day of independence, is set out in schedule I to the Order.

Chapter III (arts. 12-29) of the Constitution is devoted entirely to matters relating to the protection of the fundamental human rights and freedoms of the individual. In particular, in article 12 it is recognized and declared that in Seychelles there have existed and shall continue to exist without discrimination by reason of 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, each and all of the following human rights and fundamental freedoms, namely:

- (a) The right of the individual to life, liberty, security of the person and the protection of the law;
- (b) Freedom of conscience, of expression, of assembly and association; and
- (c) The right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation.

Other provisions of the Constitution that concern human rights and fundamental freedoms are briefly described below.

A. Non-discrimination

(articles 2, and 7 of the Universal Declaration)

Article 24 of the Constitution states that no law shall make any provision that is discriminatory either of itself or in its effect and that 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. The expression "discriminatory" is interpreted to mean 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.

No person may be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses, licensed premises 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.

B. Right to life and liberty

(article 3 of the Universal Declaration)

According to article 13 of the Constitution, no person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted. A person shall not be regarded as having been deprived of his life in contravention of the article 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.

Under article 55, where any person has been sentenced to death for any offence, the question of the exercise of the President's prerogative of mercy is considered by an advisory

¹ *Supplement to Seychelles Gazette*, 14 June 1976, No. 894.

committee established for the purpose of advising the President regarding the exercise of the powers conferred upon him by article 54 of the Constitution (see sect. G below).

Article 14 provides that no person shall be deprived of his personal liberty, save as may be authorized by law in certain specified cases.

C. Prohibition of slavery and servitude

(article 4 of the Universal Declaration)

Article 15 of the Constitution stipulates that no person shall be held in slavery or servitude, nor required to perform forced labour. For the purposes of the article, however, the expression "forced labour" does not include labour required in consequence of the sentence or order of a court, nor that normally required of a lawfully detained person; neither does it include service of a military character or any national service required by law of conscientious objectors, nor labour required during a period of public emergency.

D. Prohibition of torture and cruel, inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

No person may be subjected to torture or to inhuman or degrading punishment or other such treatment (Constitution, art. 16).

E. Right to an effective remedy

(article 8 of the Universal Declaration)

Under article 26 of the Constitution, if any person alleges that any of the provisions regarding the protection of fundamental human rights and freedoms of the individual (Constitution, chap. III) 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.

The Supreme Court has original jurisdiction, but it may decline to exercise its powers 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.

Any person who is unlawfully arrested or detained by any other person is entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting (Constitution, art. 14, para. (4)).

F. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

Under article 14 of the Constitution, any person who is arrested or detained must be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention. Any person who is arrested or detained

- (i) for the purpose of bringing him before a court in execution of the order of a court;
 - (ii) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence; or
 - (iii) upon reasonable suspicion of his being likely to commit a breach of the peace,
- and who is not released, must be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court.

If any person arrested or detained as mentioned in subparagraph (ii) above is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he must 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.

If any person arrested or detained as mentioned in subparagraph (iii) is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour, then, without prejudice to any further proceedings that may be brought against him, he must be released unconditionally.

Article 25 of the Constitution states that where a person is detained under emergency laws, 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. Not more than 14 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. 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 legally qualified person appointed by the Chief Justice. 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. At the hearing of his case by the tribunal he shall be permitted to appear in person or be represented by a legal representative of his own choice.

**G. Right to a fair trial; presumption of innocence;
non-retroactivity of criminal law**

(articles 10 and 11 of the Universal Declaration)

Article 19 of the Constitution lays down that if any person is charged with a criminal offence, his case must, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Except with the agreement of all the parties concerned, all proceedings are to be held in public. This does not prevent the court from excluding from the proceedings (except the announcement of the decision of the court) persons other than the parties thereto and their legal representatives to such extent as the court may by law be empowered to do so 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 18 years or the protection of the privacy of persons concerned in the proceedings, or may by law be empowered or required to do so in the interests of defence, public safety or public order.

Every person who is charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty; he shall be informed as soon as reasonably practicable in a language that he understands and in detail of the nature of the offence; he shall be given adequate time and facilities for the preparation of his defence. 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. He shall be permitted to defend himself in person, or, at his own expense, within a reasonable time, by a legal representative of his own choice, or, where so prescribed, by a legal representative provided at the public expense; he shall be afforded facilities to examine, in person or by his legal representative, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; he shall have the free assistance of an interpreter if he cannot understand the language used at the trial. No person who is tried for a criminal offence shall be compelled to give evidence at his trial.

On payment of a reasonable fee specified by law and within a reasonable time after judgement, an accused person may obtain a copy of any record of the proceedings.

No person shall be held 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 the offence at the time when it was committed.

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

No person may be tried for a criminal offence if he shows that he has been granted a pardon by a competent authority for that offence. Under article 54 of the Constitution, the President may grant a pardon, either free or subject to lawful conditions; he may grant a respite of the execution of any punishment or may substitute a less severe form of punishment; he may remit the whole or part of any punishment or of any penalty or forfeiture otherwise due to the Government on account of any offence. Article 55 specifies that there shall be an advisory committee on the prerogative of mercy which shall consist of such persons as may be appointed by the President.

H. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

Protection of the privacy of the home and other property is guaranteed by article 18 of the Constitution. Except with his own consent, no person may be subjected to the search of his person or his property or the entry by others on his premises. However, nothing done under the authority of any law shall be held to be inconsistent with or in contravention of article 18 to the extent that the law in question is shown to be reasonably justifiable in a democratic society, and in the public interest, and relates to such matters as town and country planning, nature conservation, or the development or utilization of mineral resources, including oil. An authorized entry upon premises may be made for purposes of tax assessment or, by order of a court, for the purpose of enforcing a judgement or order of a court in civil proceedings.

Freedom from interference with correspondence or other means of communication is laid down in article 21 of the Constitution, which also states that the provision regarding freedom of expression (see sect. M below) shall not be inconsistent with any law that makes provision for the purpose of protecting the reputations of others or the private lives of persons concerned in legal proceedings.

I. Freedom of movement

(article 13 of the Universal Declaration)

In accordance with article 23 of the Constitution, no person may be deprived of his freedom of movement, meaning the right to move freely throughout Seychelles, the right to reside in any part of Seychelles, the right to enter and to leave Seychelles and immunity from expulsion from Seychelles, except in certain specified conditions and as provided by law.

J. Right to a nationality

(article 15 of the Universal Declaration)

Chapter II (arts. 4-11) of the Constitution contains detailed provisions relating to citizenship of Seychelles.

K. Right not to be arbitrarily deprived of one's property

(article 17 of the Universal Declaration)

Protection from the deprivation of property is guaranteed under article 17 of the Constitution, which states that 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 in certain specified conditions, which include the requirements of defence, public safety, public health, nature conservation, and town and country planning.

There must be reasonable justification for compulsory acquisition that causes hardship to any person having an interest in or a right over the property, and provision must be made for the prompt payment of adequate compensation and for securing the right of appeal.

L. Freedom of thought, conscience and religion

(article 18 of the Universal Declaration)

In accordance with article 20 of the Constitution, no person, except with his own consent, may be hindered in the enjoyment of freedom of conscience, which is understood as including freedom of thought and 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. However, no law which makes provision for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief, may be held to be inconsistent with this article. Except with his own consent (or, in the case of a minor, the consent of the guardian), no person attending any place of education may 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. Furthermore, no religious community may be prevented from or hindered in 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. Finally, no person may be compelled to take any oath that is contrary to his religion or belief.

M. Freedom of opinion and expression

(article 19 of the Universal Declaration)

Article 21 of the Constitution states that, except with his own consent, no person may be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference.

N. Freedom of assembly and association; right to form and to join trade unions

(articles 20 and 23 (4) of the Universal Declaration)

Article 22 of the Constitution states that, except with his own consent, no person may 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, trade unions or other associations for the protection of his interests, except under a law that makes provision in the interests of defence, public safety, order, morality or health, or for the purpose of protecting the rights or freedoms of others.

O. Right to take part in government

(article 21 of the Universal Declaration)

Article 57 of the Constitution states that "the legislative power of the Republic shall vest in the Parliament of Seychelles which shall consist of the President and a National Assembly". Article 58 stipulates that the National Assembly shall consist of 25 elected members or such other number as may be described by or under an Act of Parliament.

In accordance with article 65, every citizen of Seychelles who has attained the age of 20 years, or such age as Parliament may by law prescribe, who has the necessary residence qualifications (residence in Seychelles for any continuous period of 12 months; residence in the constituency on the qualifying date) and is not otherwise disqualified, shall, for the purpose of elections to the National Assembly, be entitled to be registered as a voter.

Article 60 states that a person shall be qualified to be elected as a member of the National Assembly if he is a citizen of Seychelles, has attained the age of 21 years, has resided in Seychelles for a period of, or periods amounting to, not less than 24 months before the date of his nomination for election, is registered or qualified to be registered as a voter at elections to the National Assembly and is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take part in the proceedings of the National Assembly.

In accordance with article 30, the President is the Head of State. Article 32 lays down that a person shall be qualified for election as President if he is a citizen of Seychelles and is qualified for election to the National Assembly. His nomination must be supported by not less than 1,000 persons registered as voters for the purposes of elections to the National Assembly.

P. Limitations on the exercise of rights and freedoms

(article 29 of the Universal Declaration)

Article 12 of the Constitution declares that the provisions regarding the protection of fundamental human rights and freedoms of the individual (Constitution, chap. III) shall have effect for the purpose of affording protection to the said 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.

Under article 14, the right to liberty may be restricted in certain specified cases, for instance to prevent the spread of an infectious or contagious disease.

Certain other rights (e.g., right to privacy, right to own property, freedom of opinion and expression, freedom of assembly and association) may be subject to limitations in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedoms of others.

SINGAPORE

A number of fairly significant changes took place in Singapore touching on questions of human rights. A brief description of the changes is given below under headings related to specific articles of the Universal Declaration of Human Rights.

A. Administration of justice

(articles 10 and 11 of the Universal Declaration)

Significant changes have been made in the laws governing the administration of justice by the enactment of the Criminal Procedure Code (Amendment) Act, No. 10 of 1976,¹ and the Evidence (Amendment) Act, No. 11 of 1976.² These amendments, which were to enter into force on 1 January 1977, were prompted by the desire to rectify the past imbalance and to achieve a balance between the right of the vast majority of the population to live in peace and security and the need to ensure that the criminal elements are not denied their human rights. They were not made to infringe upon the right to a fair trial. They seek to ensure that as far as possible the result of the trial is the right one. The following are the main changes:

(a) The so-called Judges Rules, under which any statement obtained from a person under arrest in violation of the Rules may be rejected as evidence, have been abolished. Instead, under the new law, when a person is charged with an offence or officially notified that he might be prosecuted for it, he must be served with a notice setting out the charge and the following advice:

“Do you wish to say anything in answer to the charges? If there is any fact on which you intend to rely, in your defence in court, you are advised to mention it now. If you hold it back till you go to court your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now and you would like it written down, this will be done.”

Under the previous law, it seemed somewhat incongruous that, when the police had a duty to question suspects to ascertain the truth, they should be required to warn them that they need not answer.

(b) The accused's right to make a statement from the dock without having taken an oath or made an affirmation and without being subject to cross-examination has been abolished. The accused must now give evidence on oath or affirmation. If he refuses to do so, adverse inferences may be drawn against him. But an accused who is not represented by counsel may address the court otherwise than on oath or affirmation on any matter on which, if he were so represented, his counsel could address the court on his behalf.

(c) The rather peculiar rule requiring a court to warn itself about convicting an accused on the uncorroborated testimony of an accomplice has been abolished. However, the court is required to identify the accomplices in the case and to treat their evidence with caution.

(d) The rule of law or practice providing that in criminal proceedings the evidence of one accomplice cannot corroborate another has been abrogated.

(e) In criminal trials, certain out-of-court statements, statements contained in certain kinds of records and information from computers are now admissible.

¹ *Government Gazette, Acts Supplement*, No. 11, 1976, pp. 129-151.

² *Ibid.*, No. 12, 1976, pp. 153-162.

B. Right to security in the event of disability

(article 25 of the Universal Declaration)

The Workmen's Compensation Act, No. 25 of 1975,³ entered into force on 1 October 1975. It repealed the then existing Workmen's Compensation Act and re-enacted it with modifications. The special features of the new Act are the following:

(a) New procedures to facilitate the early payment of compensation to an injured workman or his family are introduced.

(b) The amounts of compensation payable for injuries or death have been raised to a more realistic level to take account of inflation. The maximum compensation payable in cases where death results from the injury has been raised from \$S 21,600 to \$S 35,000 and in permanent incapacity cases from \$S 28,800 to \$S 45,000.

(c) A Workers' Fund has been established for the purposes, *inter alia*, of financing rehabilitation schemes for injured workers so that they can return to productive labour and other projects for the general advancement of the welfare of workers in Singapore. The establishment of this Fund underlines the importance which the Singapore Government attaches to the role workers play in the national economic development.

³ *Ibid.*, No. 30, 1975, pp. 211-246.

SPAIN

Introduction

Important changes were made in Spanish legislation with regard to the human rights set out in the Universal Declaration of Human Rights.

These changes are based on a greater respect for the dignity of the human person and the exercise of public freedoms on which, in general, with the exception of acts that are unlawful under the Penal Code, no restrictions are placed; the articles of the Code relating to the exercise of such rights were revised in order to bring their provisions into line with present social and political conditions in Spain.

A. Right to a nationality; rights relating to marriage

(articles 15 and 16 of the Universal Declaration)

With a view to ensuring a more just structuring of the legal situation of the married woman, with the consequent recognition of a greater degree of freedom and of capacity to act on her own behalf, consistent with the dignity of the person, certain articles of the Civil Code and the Commercial Code have been amended, pursuant to the Act of 2 May 1975.¹

The amendments to the Civil Code are concerned fundamentally with two aspects: the nationality of the married woman and the legal régime governing her capacity to act.

Under previous legislation the principle of the unity of the family had been rigorously applied, so that, on marrying, a woman automatically acquired her husband's nationality; in practice this gave rise to situations that seemed to be in conflict with natural justice: it frequently happened that Spanish women who married aliens, even without leaving Spanish territory, were regarded within Spain as aliens, suffering such serious consequences as loss of employment or posts that they had held in their own country.

The reform deleted that automatic feature of the legislation and specified that change of nationality as a result of marriage must always be on a voluntary basis (Civil Code, art. 21, as amended).

With regard to the legal régime governing the married woman's capacity to act, the reform sought to place the spouses on an equal footing so far as possible, since the essential basis of the new legislation is that marriage should not have a restrictive effect on the capacity to act of either spouse. Consequently, neither spouse can claim to be the legal representative of the other, unless so authorized by the latter. Each spouse can therefore carry out legal acts and exercise his or her rights of a private or exclusive nature (Civil Code, arts. 57-65, as amended).

The amendments to the Commercial Code are based on the same criteria which prompted the amendments to the Civil Code and seek to bring the provisions of the Commercial Code into line with the new developments in matters relating to the exercise of business activities by married women (Commercial Code, arts. 6-11, as amended).

B. Freedom of conscience and religion

(article 18 of the Universal Declaration)

As a guarantee of the exercise of the right to freedom of conscience in the case of persons who because of their religious convictions are opposed to the use of arms, and with a view to reconciling such convictions with their duties as citizens, a Royal Decree dated

¹ Act of 2 May 1975, No. 14/75 (Office of the Chief of State). Civil Code—Commercial Code: amendment of certain articles concerning the legal status of married women and the rights and duties of spouses (*Boletín Oficial del Estado*, 5 May 1975 (No. 107), R.913).

23 December 1976² provides an alternative whereby they can make a personal contribution in work of civic value, thus fulfilling their duties as citizens and avoiding the risk of becoming involved in illegal activities.

C. Freedom of peaceful assembly and association

(article 20 of the Universal Declaration)

The exercise of the right of peaceful assembly and association, recognized in article 16 of the "Fuero de los Españoles" (Spanish fundamental law) was the subject of a new legislative provision designed to bring the relevant regulations into line with the present social and political situation in Spain, with a view to facilitating democratic coexistence compatible with the stability of public authority and to guaranteeing the active, free and institutionalized participation of all groups representing different programmes, ideological trends, aspirations and beliefs concerning questions relating to the organization, management and administration of the State as well as political activities in general.

The right to freedom of assembly for legitimate purposes is governed by the Act of 29 May 1976.³ Under the Act, "legitimate purposes" are those which are not punishable under criminal law (art. 1); a distinction is made between public meetings held in a closed or in an open place; for the former, the administrative authority concerned merely has to be notified at least 72 hours in advance (art. 4); meetings to be held in an open place require authorization by a government authority (art. 5). The Act provides positive guarantees for the exercise of the freedom of assembly by specifying that if decisions by government authorities prevent or limit the exercise of this right, they must be accompanied by a statement and may be appealed; once this procedure has been exhausted, they may be brought before an administrative tribunal (art. 13).

The normal and democratic exercise of the right of political association is governed by the Act of 14 June 1976.⁴ This Act is based on scrupulous respect for the realities of political pluralism, which should not be weakened by any attempt to ascribe predetermined doctrinal and ideological patterns to political associations. Political groups, associations or parties which are created or are protected under the Act will be guaranteed participation on a basis of freedom, justice and equality, provided that their activities are carried out with respect for constitutional order and democratic forms and procedures. The only associations prohibited are those classified as unlawful in the Penal Code (art. 1). Political associations may be organized by any adult Spaniard who enjoys the full exercise of civil and political rights (art. 2).

With regard to the regulation of the exercise of the right to freedom of peaceful assembly and association, certain articles of the Penal Code which place restrictions on the exercise of this right have been revised and amended with a view to adapting the penal standards to current political and social realities in Spain, thus continuing in general to defend the fundamental bases of the democratic order of the State. This amendment of the Penal Code was brought into force by the Act of 19 July 1976.⁵

² Decree of 23 December 1976, No. 3011/1976 (Office of the President). Military Service: deferment of mobilization in the armed forces because of conscientious objection on religious grounds (*Boletín Oficial del Estado*, 5 January 1977 (No. 4), R.33).

³ Act of 29 May 1976, No. 17/1976 (Office of the Chief of State). Right of assembly: Regulations (*Boletín Oficial del Estado*, 31 May 1976 (No. 130), R.1035).

⁴ Act of 14 June 1976, No. 21/1976 (Office of the Chief of State). Political associations: Regulations (*Boletín Oficial del Estado*, 16 June 1976 (No. 144), R.1188).

⁵ Act of 19 July 1976, No. 23/1976 (Office of the Chief of State). Penal Code: amends various articles relating to the right of assembly, association, expression of ideas and freedom in respect of work (*Boletín Oficial del Estado*, 21 July 1976 (No. 174), R.1377).

D. Right to take part in government

(article 21 of the Universal Declaration)

The most important and outstanding national event in Spain during the period under consideration in this report was undoubtedly the political reform, which had the status of a fundamental law.

On 18 November 1976, in plenary session, the Spanish Cortes approved a draft act on political reform which, the nation having been consulted, was ratified by a large majority of votes in the referendum held on 15 December 1976 and entered into force, as an Act of the Office of the Chief of State, on 4 January 1977.⁶

In the text of the Act on political reform, it is stated that democracy in the Spanish State is based on the supremacy of the law, which is the expression of the sovereign will of the people, and that the fundamental rights of the individual are inviolable and binding upon all the bodies of the State, the power to elaborate and adopt laws being vested in the Cortes (art. 1).

The Cortes consists of the Congress of Deputies and the Senate. The deputies are elected by adult Spaniards by universal, direct and secret suffrage. The senators are elected as representatives of the territorial units. The duration of the term of office of deputies and senators is four years (art. 2).

E. Right to work; right to strike

(article 23 of the Universal Declaration)

The most important innovation in the treatment of collective labour conflicts, introduced by the decree-law of 22 May 1975,⁷ was the legalization of strikes, as an extreme measure, in the event of a breakdown in negotiation procedures or, as the case may be, of procedures for a peaceful agreement between the parties. Consequently, such procedures must first have been exhausted and the decision must be taken by the workers who are going to be affected by the work stoppage and who will have to bear its consequences.

The penal provisions guaranteeing the right to work have been revised by the Act of 19 July 1976,⁸ which amended and redrafted certain articles of the Penal Code, as a result of the existence and increasingly aggressive activity of organized groups, calling themselves "strike extension pickets", which mistreat or intimidate workers, thereby constituting not only an infringement of freedom in respect of work but also of the very right to strike, which is based on the personal freedom of the worker.

F. Right to education; use of regional languages

(articles 26 and 27 of the Universal Declaration)

With a view to incorporating regional characteristics in the Spanish cultural heritage, a decree dated 30 May 1975⁹ authorized, on an experimental basis, the voluntary inclusion of languages native to Spain in educational courses for pupils at pre-school and basic general education institutions.

⁶ Act of 4 January 1977, No. 1/1977 (Office of the Chief of State). Act on political reform (*Boletín Oficial del Estado*; 5 January 1977 (No. 4), R. 29).

⁷ Decree-law of 22 May 1975, No. 5/75 (Office of the Chief of State). Collective labour conflicts: Regulations (*Boletín Oficial del Estado*, 28 May 1975 (No. 127), R.1043).

⁸ See foot-note 5, above.

⁹ Decree of 30 May 1975, No. 1433/75 (Ministry of Education and Science). Basic general education—pre-school education. Incorporation of native languages in programmes (*Boletín Oficial del Estado*, 1 July 1975 (No. 156), R.1319).

Subsequently, by a decree of 31 October 1975¹⁰ steps were taken to give a more general character to the regulation of the use of Spanish regional languages by the national Administration and by organizations, bodies, and private individuals.

The criterion underlying this regulation is that of respecting and encouraging the use of regional languages, without detracting from the importance of Castilian as the official language.

¹⁰ Decree of 31 October 1975, No. 2929/75 (Office of the President). Regional languages: governs their use (*Boletín Oficial del Estado*, 15 November 1975 (Nó. 274), R. 2275).

SURINAME

Introduction

The new Constitution of Suriname came into force on 25 November 1975 with the country's attainment of sovereignty. It preserves the freedoms and guarantees acquired in the past. The sections on basic rights were inspired by developments in international law in recent decades, such as the Universal Declaration of Human Rights, the American Declaration of Human Rights and Duties, the United Nations treaties which followed upon the Universal Declaration of Human Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

A. Equality of citizens; non-discrimination *(articles 1 and 2 of the Universal Declaration)*

The preamble to the Constitution states the principle of the equality of all citizens, without distinction of race, sex, religion, political opinion or creed.

B. Right to recognition as a person before the law; equal protection of the law *(articles 6 and 7 of the Universal Declaration)*

Under article 1 of the Constitution, everybody in Suriname is recognized as a person before the law and is entitled to equal protection of the law as to person and property; and no one is to be accorded privileges or discriminated against on the grounds of race, sex, religion, political opinion or creed.

Under article 13 of the Constitution, civil death may not be imposed as, or result from, the punishment of a convicted person.

C. Right to an effective remedy; right not to be subjected to arbitrary arrest or detention; right to a fair and public hearing *(articles 8, 9 and 10 of the Universal Declaration)*

Under article 4 of the Constitution, every citizen has the right to file a written petition with the competent authority and is entitled to its being given fair treatment.

Article 9 of the Constitution reads: "Everyone is entitled, within a reasonable time, to a fair and public hearing of his complaint by an independent and impartial tribunal, in case of violation of his rights."

Under article 12 of the Constitution, no person may be deprived of his liberty save as may be authorized by law. A person who has been deprived of his liberty other than by order of a court has the right to appeal to a court for his release. In that case he must be heard by a court within a statutory period and released if his detention is considered unlawful. Compensation is payable for unlawful arrest or detention.

Article 135 of the Constitution provides that there shall be no interference in the affairs of the court.

D. Right to all the guarantees necessary for defence *(article 11 of the Universal Declaration)*

Under article 11 of the Constitution, everyone is entitled to seek legal assistance, and the law must provide for the extension of legal assistance to persons of small means.

E. Protection against arbitrary interference with privacy

(*article 12 of the Universal Declaration*)

Under article 14 of the Constitution, everyone is entitled to the protection of the law against interference with his privacy and family, subject to restrictions to be laid down by law. No one's home or premises may be entered against his will, save by order of a competent legal authority and in accordance with the procedure laid down by law. The secrecy of the letter, telephone and telegraph services cannot be violated, save in the cases provided for by law and by order of a competent legal authority.

F. Freedom of movement and residence

(*article 13 of the Universal Declaration*)

Article 2 of the Constitution provides that all citizens may enter the country and are immune from expulsion therefrom. They enjoy freedom of movement and residence within the country, subject to restrictions to be imposed by law.

G. Right to a nationality

(*article 15 of the Universal Declaration*)

Under article 2 of the Constitution, the question who is a citizen of Suriname is to be decided by law.

An agreement between the Netherlands and Suriname on national status was concluded on Suriname's attainment of sovereignty to preclude either double nationality or statelessness after 25 November 1975; and an Act on Nationality and Citizenship, based primarily on the *jus soli* principle, i.e. place of birth and domicile of the parents, but also recognizing *jus sanguinis*, came into force on that date.

H. Right to own property

(*article 17 of the Universal Declaration*)

The right to own property, subject to the provisions of the law, is recognized by article 15 of the Constitution. Expropriation is permissible only in the public interest, in accordance with the law and against compensation, which, except when an emergency necessitates immediate expropriation, must be previously assured. Compensation may be claimed if, in the public interest, property is destroyed or made unusable, or if any restriction is imposed on the exercise of the right to own property.

Article 13 of the Constitution provides that forfeiture of goods cannot be imposed as, or result from, the penalty for an offence.

I. Freedom of thought, conscience and religion

(*article 18 of the Universal Declaration*)

Under article 5 of the Constitution, everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief and, either alone or in community with others and in public or in private, to manifest his religion or belief in teaching, practice, worship and observance, subject to his responsibility before the law.

J. Freedom of opinion and expression; freedom of the press

(*article 19 of the Universal Declaration*)

Article 7 of the Constitution includes in freedom of opinion and expression the freedom to seek, receive and impart information, subject to responsibility before the law; restrictions may be imposed by law for reasons of public order, morality and health. Freedom of the press is recognized subject to the same proviso, and preventive censorship

is to be prohibited, except for films: Legal provision is to be made for the granting of licences for radio and television broadcasting, with due regard for the importance of a diversified broadcasting system.

K. Freedom of assembly and association; right to form and to join trade unions

(articles 20 and 23 (4) of the Universal Declaration)

Article 8 of the Constitution states that everyone has the right of assembly, demonstration and association, including the right to set up and belong to trade unions. It provides that the right to strike shall be recognized, subject to such restrictions as may be imposed by law.

L. Right to take part in government; equal access to public service

(article 21 of the Universal Declaration)

The Constitution provides in Chapter III that members of Parliament are to be elected by free and secret ballot with universal suffrage, all citizens domiciled in Suriname who have reached the age of 21 being entitled to vote. Under article 55 of the Constitution, the right to vote is forfeited by those who have been disqualified by an irrevocable sentence imposed by a court, are serving a term of imprisonment or have been either certified insane or declared insolvent.

Eligible for election are citizens who have reached the age of 23 and have not forfeited their voting rights (art. 56). Under article 68, members of Parliament may resign at any time, and they must vacate their seats if circumstances arise which would have disqualified them for election, or if, unless a different term has been fixed by law, they have been away from the country for five months or more.

Under articles 27 and 48 of the Constitution, candidates for election as President, or as a minister or vice-minister, must be citizens of Suriname, have reached the age of 30 and not have been disqualified for election as a member of Parliament.

Under article 3 of the Constitution, every citizen has the right of equal access to the public service.

M. Right to social security; right to work

(articles 22, 23 and 25 of the Universal Declaration)

According to article 17 of the Constitution, it is the concern of the State to provide social security and employment for the population, with related guarantees of freedom and justice, including security for those unable to provide for themselves owing to circumstances beyond their control.

N. Education and cultural life

(articles 26 and 27 of the Universal Declaration)

Under article 16 of the Constitution, it is the concern of the State to see that education is directed to the full development of the human personality, that it is accessible to all and that everyone can participate in the cultural life of the community and share in scientific advancement and its benefits. Parents in turn have the right to secure for their children an education which is in agreement with their religious convictions or view of life.

Article 6 of the Constitution provides that everyone is free to give education, subject to such requirements as may be imposed by the State in respect of competence, morality and health.

Lastly, under article 128 of the Constitution, public education is to be regulated by law, with due respect for the religion or belief of the individual. In particular, denominational education, provided it is in conformity with the legal requirements, is to be State-supported on the same basis as public elementary education.

O. Limitations on the exercise of rights and freedoms

(article 29 of the Universal Declaration)

Article 18 of the Constitution stipulates that in the exercise of any fundamental right a person shall be subjected only to such limitations as are required in a democratic society and do not encroach upon the essence of the right.

P. Protection of rights and freedoms

(article 30 of the Universal Declaration)

Article 19 of the Constitution provides that: "Nothing in the articles of this chapter may be interpreted as implying any right for persons or groups, even though they might act in the exercise of an official duty, to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms granted by this Constitution, or to restrict such rights and freedoms any more than is provided for by this Constitution."

SWEDEN

General

Chapter 2 (on fundamental freedoms and rights) of the Constitution was amended in 1976, with effect from 1 January 1977.¹ The number of constitutionally guaranteed fundamental freedoms and rights has been enlarged, and safeguards against amendments restricting the right to form opinions freely have been introduced. Basic principles concerning the activities of the authorities have been formulated. Aliens have to a large extent been guaranteed the same status as Swedish citizens.

The work and organization of the Office of the Parliamentary Ombudsmen have been the subject of reforms. By virtue of the Act² amending the Riksdag Act and of the Act³ with instructions for the ombudsmen, the number of ombudsmen has been increased from three to four. One of them is responsible for the administration of the work of the Office and decides on the general principles of the activity of the Office. The ombudsmen's authority to take action in disciplinary matters concerning civil servants and to appeal against decisions by disciplinary authorities in such matters has been extended.

A. Principle of equal treatment

(article 2 of the Universal Declaration)

In February 1975 Government Bill No. 1975/26 on guidelines for immigration and minority policy was approved by the Riksdag. The goals for the immigration and minority policy may be summarized in the words equality, freedom of choice and co-operation.

Equality implies continued efforts to afford to immigrants the same opportunities, rights and obligations as the rest of the population. It also implies that all groups shall have the same opportunities to develop their native tongues and to carry on cultural activities.

Freedom of choice implies that immigrants and minorities should be given the opportunity to choose themselves to what extent they wish to become absorbed into the Swedish culture or to retain and develop their original identity.

Co-operation implies that mutual and extensive co-operation ought to be realized between the various groups of immigrants and the majority of the population. This goal includes mutual tolerance and solidarity between the immigrants and the native population as well as increased possibilities for the immigrants to influence decisions that concern their own situation.

B. Prohibition of inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

A new Act on the treatment of detained and arrested persons and others has been adopted.⁴ It replaces an act of 1958 and aims at easing the situation of detained or arrested persons. These persons may, however, still be kept in isolation if it is necessary for security reasons or if communication with others would endanger the results of the pre-trial investigation of a crime. The new provisions are intended to prevent the application of such restrictions to a greater extent than is called for in view of the purpose of the detention as well as order and security.

¹ *Svensk författningssamling*, hereinafter referred to as *SFS* (Swedish Code of Statutes), 1976: 871.

² *SFS*, 1974:1056.

³ *SFS*, 1975:1057.

⁴ *SFS*, 1976:371.

The Act on the institutional treatment of offenders,⁵ as amended in 1976,⁶ no longer permits the keeping of an inmate separated from other inmates during the period of planning of the institutional treatment of the inmate. The so called "isolation penalty", i.e. solitary confinement used as a disciplinary punishment, has been abolished.

C. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

The Penal Code has been supplemented with a provision on unlawful listening.⁷ A person who, in a case not considered a breach of postal secrecy or "tele-secrecy", unlawfully and secretly by means of technical devices for the reproduction of sounds listens to or records private talks, conversations between others or negotiations at a meeting or any other gathering to which the public is not admitted and in which he is not participating or which he is attending without proper authorization, shall thus be sentenced for unlawful listening to pay a fine or to imprisonment for at most two years. The installation of devices for such purposes is also a criminal offence.

The Act concerning surveillance by closed circuit television⁸ was adopted by the Riksdag in 1976 and will enter into force on 1 July 1977. The Act is applicable to television cameras mounted in such a way that they can be operated from a distance and be used for the observation of persons. It includes a general provision to the effect that monitoring cameras must be used with due regard to the privacy of the individual, as well as a provision charging the person using the monitoring camera to give notice of the camera and its use. Violation of the latter provision is a punishable offence. The Act provides also that, without special permission, a monitoring camera may not be mounted in such a way that it can be aimed at a place which is open to or otherwise used by the general public. According to the Act, permission for the use of a monitoring camera may only be granted if the camera is necessary for the purpose stated in the application for the permit and there is no reason to anticipate any improper intrusion on privacy.

D. Right of asylum

(article 14 of the Universal Declaration)

By virtue of the Act⁹ amending the Aliens' Act,¹⁰ increased protection has been afforded to political refugees and other aliens who do not want to return to their home countries in view of the political situation there.

E. Right to a nationality

(article 15 of the Universal Declaration)

By an Act¹¹ amending the Swedish Nationality Act¹² *inter alia* the provisions on naturalization have been amended. Aliens who are not citizens of another Nordic country may, upon request, be naturalized after having resided in Sweden for at least five years. The same period applies for citizens of the other Nordic countries who wish to obtain Swedish citizenship by declaration. On the other hand, citizens of the Nordic countries may, upon request, be granted naturalization after having resided in Sweden for two years.

A child of a Swedish woman can no longer be born stateless. Furthermore, children may obtain Swedish citizenship by independent naturalization more easily than before.

⁵ SFS, 1974:203.

⁶ SFS, 1976:506.

⁷ SFS, 1975:238.

⁸ SFS, 1977:20.

⁹ SFS, 1975:1358.

¹⁰ SFS, 1954:193.

¹¹ SFS, 1976:469.

¹² SFS, 1950:382.

F. Protection of the family

(article 16 of the Universal Declaration)

The provisions on the custody of children and paternity have been amended by the Act¹³ amending the Family Code. The parents will, if they agree, be able to share the legal custody of their children even if they are not married or if they are divorced. If they disagree, the court will, on the request by one of the parents, decide which one of them shall have the custody of the children.

A child born shortly after a divorce will no longer be automatically considered as the child of the former husband. The paternity is instead determined by acknowledgement or by a judgement of the court.

G. Freedom of the press

(article 19 of the Universal Declaration)

The Act¹⁴ amending the Freedom of the Press Act extends, on certain conditions, the protection that the latter offers also to mimeographed or photocopied works or works reproduced in similar manner. Furthermore, the rules concerning the liability of the informant are defined more exactly. Only when the informant intentionally violates his duty to observe secrecy as defined in a special act will he be liable to punishment. The court proceedings will in that case follow the rules laid down in the Freedom of the Press Act. Finally, the protection of any person who acquires or gives information intended for publication has been strengthened.

H. Right to take part in government

(article 21 of the Universal Declaration)

A reform of the election laws was introduced in 1976. It grants aliens the right to vote and to be elected in municipal, county and ecclesiastical elections, provided that they have been residing in Sweden for at least three years before the election.

The possibilities for Swedish citizens abroad to vote in Swedish elections have, furthermore, been extended.

I. Right to social security; right of children to special care and assistance

(articles 22 and 25 of the Universal Declaration)

1. OCCUPATIONAL INJURY INSURANCE

The Act¹⁵ on occupational injury insurance of 26 May 1976 will enter into force on 1 July 1977 and will replace the 1954 Act on the same subject. The new legislation is based on the principle of full compensation for loss of income to a person suffering injuries while at work. All injuries or diseases caused by accidents at work or by the harmful influence of working conditions are considered to be so-called occupational diseases. The system under this Act will be co-ordinated with that under the general national insurance scheme.

Like the present occupational injury insurance scheme, the scheme applying under the new Act will be financed completely by means of employers' contributions.

2. INSURANCE FOR INJURY CAUSED BY MEDICINES

A government commission has submitted a report suggesting that an insurance scheme covering liability for personal injury caused by medicines be introduced. The

¹³ SFS, 1976:612.

¹⁴ SFS, 1976:955.

¹⁵ SFS, 1976:380.

responsibility of the insurer shall not be based on the existence of liability for damages on the part of the manufacturer or on the part of any other person. The insurance is to be collective and will in principle be paid for by the manufacturers and the importers.

3. PENSIONS

The Act¹⁶ on partial pension insurance entered into force on 1 July 1976. This insurance scheme offers new possibilities for reducing work during the final phase of working life and is based on opinions expressed by doctors, psychologists, sociologists and scientists as well as on views expressed by trade unions. According to the trade unions, the scheme should be established in such a way that there would be no reduction in the old-age pension from the AFP (basic pension) and the ATP (national supplementary pension) schemes.

All salaried employees and wage-earners are covered by the new scheme; self-employed persons are not. To obtain a partial pension, the insured person must have been in employment and covered under the ATP scheme (in force since 1960) for at least 10 years after the age of 45 and have worked a minimum of five of the last 12 months.

The partial pension may be obtained between the ages of 60 and 65, provided that the insured person transfers to part-time work. In this context, part-time work means part-time compared with previous work. Working time must, on average, be reduced by at least five hours per week and the remaining working hours must average at least 17 per week.

The pension level is 65 per cent of the income loss sustained (up to the "ceiling" under the National Insurance Act) when the person transfers to part-time work.

4. PARENTAL LEAVE

The Act on the right to parental leave¹⁷ was to enter into force on 1 January 1977. It introduces new rules on the right of parents to leave of absence from their employment without forfeiting the protection against discharge. The right to leave of absence implies *inter alia* that both the father and the mother have such a right during a total of seven months in connexion with the birth of the child and are entitled to some further days each year for temporary care of children.

Special rules govern leave of absence in connexion with the adoption of a child.

5. CHILD CARE

The Act on child care¹⁸ was to enter into force on 1 January 1977. The child care provided by the community comprises pre-school activities and leisure activities. The municipal authorities must under the Act carry on such activities for those children who are registered within the municipality or who are staying there permanently.

Following an agreement concluded by the Government and the Swedish association of municipal authorities, a programme has been adopted for the expansion of child-care facilities during the coming five years. This programme provides for 100,000 new places in day nurseries and 50,000 new places in leisure centres and an increase in the number of places available in municipally sponsored family day-care activities.

J. Right to just and favourable conditions of work

(article 23 of the Universal Declaration)

The Act on co-determination in working life of 1976¹⁹ was to enter into force on 1 January 1977. Compared to the previous legislation, the most important new feature is the introduction of rules making it possible for employees, through negotiations or collec-

¹⁶ SFS, 1975:380.

¹⁷ SFS, 1976:280.

¹⁸ SFS, 1976:381.

¹⁹ SFS, 1976:580.

tive agreements, to gain influence on questions relating to management and the supervision of work. This right may be invoked in all questions concerning the relations between the employer and the employees. Another important new feature is that in disputes relating to the duty to work and the application of an agreement on co-determination, the trade unions responsible for the collective agreements are given what is called interpretative preference—that is, their view is valid until otherwise decided by a court. Furthermore, the interpretative preference of the employer in the case of a dispute concerning wages has been restricted.

The employer is obliged to negotiate with the trade unions on his own initiative before deciding questions relating to important changes at the place of work or changes of importance for the individual employee. In other questions the employer may have to negotiate, if the union requests negotiations. The employer is, in principle, obliged to postpone the decision or its execution until the negotiations have been finalized. The primary right to negotiation has been coupled with a right to information. The employer must inform the competent local trade unions responsible for collective agreements about the economic and productivity development of the activities as well as of the guidelines for the staff policy.

During the reporting period, completely new and comprehensive legislation on labour welfare has been prepared. A government bill on the subject was to be submitted to the Parliament in March 1977.

K. Right to education

(article 26 of the Universal Declaration)

An important reform decided upon by the Riksdag in early 1976 concerned the teaching of immigrant children in their native tongue (understood in this connexion to mean a language spoken by one of the parents). This system has been extended considerably in order to lay a better foundation for the development of the personality of these children. Starting from the school instruction year 1977/78, municipalities will be obliged to arrange such teaching for the benefit of immigrant children and young persons if it is requested. State grants are given for this instruction, and special training has been instituted for the teachers concerned.

An academic reform intended to be a step on the way to the realization of the right of everyone to education is being implemented. One of the features is that, instead of formal qualifications, the real qualifications of the student to take advantage of the instruction shall be the guiding principle for the right to be admitted to academic studies.

THAILAND

Introduction

The Constitution of the Kingdom of Thailand, which had been promulgated on 7 October 1974¹ and amended on 19 January 1975,² was abolished by the National Administrative Reform Council in its order No. 3 dated 6 October 1976.³ On 22 October 1976, the King, in accordance with the advice of the chairman of the National Administrative Reform Council, promulgated the new Constitution of the Kingdom of Thailand.⁴ The new Constitution consists of only 29 sections. Its objective is to restore the democratic form of government by means of an appropriate national administrative reform which provides for gradual development.

The first four years is the period for the restoration of the stability of the country, both economically and politically. During this period, the people will be allowed to participate in the national administration through the National Administrative Reform Assembly with appointed members controlling the national administration and, at the same time, the people will be encouraged to be interested in and to be aware of their duties. The second four years is the period when the people will be allowed greater participation in the national administration through the establishment of the National Assembly, consisting of the House of Representatives with elected members and the Senate with appointed members. The two houses will share equally the power and duties involved in the control of the national administration. In the third four-year period, the powers of the House of Representatives will be increased and those of the Senate reduced to a practical degree. Thereafter, if the people are well aware of their duties and responsibilities to the country under the democratic form of government, the Senate will be abolished, leaving only the House of Representatives.

Obviously, this Constitution fails to elaborate the way in which the rights and liberties of the people are safeguarded. It provides only that "A person enjoys the rights and liberties under the law" (sect. 8). This provision is tempered by section 21, which states:

"In the case where the Prime Minister deems it necessary for the prevention or suppression of an act subverting the security of the Kingdom, the Throne, the national economy, or the State affairs, or an act disturbing or threatening public order or good morals, or any act destroying national resources or deteriorating public health and sanitation, notwithstanding such act occurring before or after the day on which this Constitution is promulgated, or occurring within or outside the Kingdom, the Prime Minister shall, with the approval of the Cabinet and the Advisory Council to the Prime Minister, have the power to issue any order or take any action, and such order or action as well as acts performed in compliance therewith shall be considered lawful."

Section 25, however, provides: "Where this Constitution does not contain a provision which is applicable to a case, the matter shall be decided in accordance with the constitutional practice of Thailand under the democratic form of government." Section 25 may be interpreted to mean that all the fundamental rights and freedoms of the people, in so far as they are not contrary to or inconsistent with the provisions of the new Constitution, still exist.

¹ *Government Gazette*, vol. 91, part 169, 7 October B.E. 2517 (1974), pp. 1-40.

² *Ibid.*, vol. 92, part 14, 23 January B.E. 2518 (1975), pp. 1-3.

³ *Ibid.*, vol. 93, part 120, 6 October B.E. 2519 (1976), pp. 12-13.

⁴ *Ibid.*, vol. 93, part 135, 22 October B.E. 2519 (1976), pp. 1-15.

A. Right to life, liberty and security of person

(article 3 of the Universal Declaration)

The Announcement of the National Executive Council No. 199 dated 10 August 1972⁵ authorized inquiry officials to detain any person alleged to have committed an offence under the Anti-Communist Activities Act of 1952,⁶ as amended by the Anti-Communist Activities Act (No. 2) of 1969,⁷ for an unlimited period of time for the purposes of the inquiry or for reasons of national security and the maintenance of law and order, without having regard to the provisions of the Code of Criminal Procedure. Since the necessity for such measures had passed, the National Legislative Assembly, acting as the National Assembly, passed an Act, dated 9 January 1975,⁸ repealing Announcement No. 199 in order to assure liberty of person under the Constitution. In accordance with this Act, detainees were to be released on the day the Act came into force, or prosecuted within 30 days from that date.

Amnesties

During 1975 and 1976, four Royal Decrees on Pardon were promulgated, namely: the Royal Decree on Pardon that was enacted on the occasion of the Royal Promulgation of the 1974 Constitution of the Kingdom of Thailand;⁹ the Royal Decree on Pardon originated by the King,¹⁰ who considered that those who had been imprisoned on the orders of the Chairman of the National Executive Council or of the Prime Minister, issued under section 17 of the 1972 Constitution of the Kingdom of Thailand, and who had not been tried by a court of justice had already been duly punished by long imprisonment; the Royal Decree on Pardon that was enacted on the occasion of the forty-eighth birthday of the King, in 1975;¹¹ and the Royal Decree on Pardon that was enacted on the occasion of the wedding of the Crown Prince, in 1976.¹²

These Royal Decrees did not, however, apply to persons who had committed offences against the King, the Queen, the Heir, the Regent, or national security, or who had committed arson, rape, offences under the law on anti-Communist activities or offences under the narcotics laws.

The Royal Decree on Amnesty, 1976,¹³ was enacted for the persons who took part in the seizure of power from the Government and the abolition of the Constitution on 6 October 1976.

B. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

Announcements No. 21 dated 2 November 1958¹⁴ and No. 43 dated 10 January 1959¹⁵ authorized the police to arrest and detain hooligans for inquiry and prosecution or for correction and vocational training. The National Legislative Assembly resolved that these laws were contrary to the Constitution and, therefore, passed the Act on Correction and Vocational Training of Certain Kinds of Persons, 1975,¹⁶ and the Act on Procedure for Correction

⁵ *Ibid.*, vol. 89, part 123, 11 August B.E. 2515 (1972), pp. 9-10.

⁶ *Ibid.*, vol. 69, part 68, 13 November B.E. 2495 (1952), pp. 1-6.

⁷ *Ibid.*, vol. 86, part 14, 17 February B.E. 2512 (1969), pp. 162-167.

⁸ *Ibid.*, vol. 92, part 5, 9 January B.E. 2518 (1975), pp. 71-72.

⁹ *Ibid.*, vol. 92, part 18, 27 January B.E. 2518 (1975), pp. 1-11.

¹⁰ *Ibid.*, vol. 92, part 232, 10 November B.E. 2518 (1975), pp. 5-9.

¹¹ *Ibid.*, vol. 92, part 248, 5 December B.E. 2518 (1975), pp. 1-12.

¹² *Ibid.*, vol. 93, part 159, 31 December B.E. 2519 (1976), pp. 11-22.

¹³ *Ibid.*, vol. 93, part 156, 24 December B.E. 2519 (1976), pp. 42-45.

¹⁴ *Ibid.*, vol. 75, part 89, 2 November B.E. 2501 (1958), pp. 1-2.

¹⁵ *Ibid.*, vol. 76, part 5, 10 January B.E. 2502 (1959), pp. 1-3.

¹⁶ *Ibid.*, vol. 92, part 41, 19 February B.E. 2518 (1975), pp. 33-43.

and Vocational Training of Certain Kinds of Persons, 1975.¹⁷ Under these two acts, persons who were to be committed for correction and vocational training were: hooligans; vagrants; persons who earn their living in ways contrary to law and order or good public morals; persons possessing weapons that may be used in criminal offences or possessing objects acquired by the commission of criminal offences; persons who behave themselves in such a way as to cause trouble to others; and persons procuring girls for other persons.

The National Administrative Reform Council, however, considered that those Acts were not appropriate tools for solving social problems, and it therefore issued Order No. 22 dated 13 October 1976¹⁸ and Order No. 34 dated 20 October 1976,¹⁹ which dealt with the question in the same manner as Announcements Nos. 21 of 1958 and 43 of 1959, mentioned above, with only slight amendments.

According to Order No. 22, administrative officials and police are authorized to arrest and commit for correction and vocational training, until they became good citizens: hooligans, delinquents or vagrants; those who earn their living in ways contrary to law and order or good public morals; those who procure firearms, ammunition, or explosives illegally for trade or for the commission of other offences; those who incite the people to riots or unrest, or commit any act that may mislead the people to favour any form of government which is not democracy headed by the King; those who set up illegal gambling houses or brothels, or organize illegal lotteries; those who hoard goods or profiteer, and those who join in an illegal strike or lock-out.

C. Protection of honour and reputation

(article 12 of the Universal Declaration)

The Announcement of the National Administrative Reform Council No. 41 dated 21 October 1976²⁰ amended several sections of the Criminal Code. In particular, section 326, as amended, imposes imprisonment not exceeding one year or a fine not exceeding 2,000 baht, or both, on anyone who commits defamation by imputing, before a third person, anything which is likely to injure the reputation of any other person or to expose such person to public hatred or contempt; section 328, as amended, imposes imprisonment not exceeding two years or a fine not exceeding 4,000 baht, or both, if the offence of defamation is committed by means of the publication of any document, drawing, painting, film, picture or letters made apparent by any means, gramophone record or any other recording instrument or by broadcasting or by propagation by any means; and section 393, as amended, imposes imprisonment not exceeding one month or a fine not exceeding 1,000 baht, or both, on anyone who insults any person in the presence of that person or publishes an insult against any person.

D. Right of asylum

(article 14 of the Universal Declaration)

During the period under review, many thousands of refugees sought political asylum in Thailand. Although some of the refugees went on to other countries, the majority still remain in Thailand.

E. Equal rights during marriage and at its dissolution

(article 16 of the Universal Declaration)

The Constitution of the Kingdom of Thailand of 1974 provided that "Men and women have equal rights" (sect. 27, second paragraph) and that "The restriction of rights and liber-

¹⁷ *Ibid.*, vol. 92, part 41, 19 February B.E. 2518 (1975), pp. 44-54.

¹⁸ *Ibid.*, vol. 93, part 128, 13 October B.E. 2519 (1976), pp. 5-13.

¹⁹ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 5-13.

²⁰ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 46-51.

ties in violation of the objectives of the Constitution shall not be imposed" (third paragraph). The Government, therefore, submitted a bill revising Book I (Capacity) and Book V (Family) of the Civil and Commercial Code. The bill was approved by the House of Representatives and, on 6 October 1976, by the Senate. On the same day the National Administrative Reform Council took over the Government. On the advice of the Chairman of the Council, the King promulgated the bill as passed by both houses, and the revision of the Code came into force on 16 October 1976.²¹ The main points of the revision were: repeal of the provisions restricting the right of the wife, for example, to choice of domicile and to engage in an occupation; raising the age of a girl who may be betrothed from 15 to 17 years; in connexion with matrimonial property, making all property, except that set aside as individual property, common property; giving wives equal rights with husbands in suing for divorce; and revising the provisions relating to parenthood.

F. Right to own property

(article 17 of the Universal Declaration)

Farmers have suffered economic hardship because of losing their rights to land and thus becoming tenants. They have to pay excessively high rent and, therefore, fail to improve the land. This, in turn, causes low productivity and other economic, political and social problems. The National Legislative Assembly, acting as the National Assembly, therefore passed the Land Reform for Agriculture Act, 1975.²² This legislation provides for arrangements to be made to enable farmers to have land of their own, to maximize land utilization and to improve the production and marketing of produce. The objective of the legislation, i.e., to reduce the economic and social gap between different sectors of the population, forms part of the policy of the State as set forth in the Constitution.

G. Freedom of religion

(article 18 of the Universal Declaration)

Section 206 of the Criminal Code, as amended by the Announcement of the National Administrative Reform Council dated 21 October 1976,²³ prescribes imprisonment of one to seven years or a fine of 2,000 to 14,000 baht, or both, for anyone who commits any act against an object or place of religious worship of any community in a manner likely to insult a religion.

H. Freedom of opinion and expression

(article 19 of the Universal Declaration)

1. PRESS

As the Announcement of the Revolutionary Party No. 17 dated 27 October 1958,²⁴ which required a person who wished to be a printer, publisher, editor or owner of a newspaper to apply for a permit from the competent official and set up rules for publication, constituted a restriction of the freedom of expression and was contrary to the Constitution of the Kingdom of Thailand, the National Legislative Assembly repealed it in a bill which came into force on 9 October 1975.²⁵ The people and, in particular, the newspapers and radio stations then enjoyed full freedom of opinion and expression until 9 October 1976, when the National Administrative Reform Council deemed it expedient to regulate the exercise

²¹ *Ibid.*, vol. 93, part 129, 15 October B.E. 2519 (1976), pp. 1-2.

²² *Ibid.*, vol. 92, part 54, 5 March B.E. 2518 (1975), pp. 10-42.

²³ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 46-51.

²⁴ *Ibid.*, vol. 75, part 85, 21 October B.E. 2501 (1958), pp. 7-10.

²⁵ *Ibid.*, vol. 92, part 208, 8 October B.E. 2518 (1975), pp. 1-2.

of freedom of opinion and expression for the national security and the well-being of the people as a whole.

The Order of the National Administrative Reform Council No. 5 dated 6 October 1976²⁶ thus prohibited the publication of daily newspapers; instructed the publishers of magazines to refer articles to the Board of Censorship before publication; instructed all radio stations to stop their regular programmes and relay the broadcasts of Radio Thailand; put all television stations under the Board to be appointed by the Council; and directed that all publications and printed matter containing articles aiming at the disunity of the people or Communist propaganda should be confiscated and destroyed. By the Order of the National Administrative Reform Council No. 10 dated 7 October 1976,²⁷ any person wishing to issue a daily newspaper was required to apply for permission to the Council.

The Order of the National Administrative Reform Council No. 20 dated 11 October 1976²⁸ allows the publication of newspapers, magazines and other printed matter without prior censorship, provided that no one shall publish any word or picture which shows disrespect for the King or defames or insults the Queen, the Heir, or the Regent; constitutes an insult to the Thai nation or people as a whole or may induce foreigners to lose their trust in the Thai nation, Government or people; constitutes an allegation against the Thai Government, or a government ministry or department without pointing to any specific fault; constitutes Communist propaganda or subverts the national security; may cause public panic or unrest; constitutes bad language; or constitutes official secrets.

The Order of the National Administrative Reform Council No. 42 dated 21 October 1976²⁹ repeals all or some parts of Orders Nos. 5, 10 and 20. That is to say, the Council no longer prohibits the publication of daily newspapers and does not require prior censorship; but all the conditions of publication set forth in Order No. 20 remain in force.

The Order of the National Administrative Reform Council No. 43 dated 21 October 1976³⁰ prohibits the possession of any kind of document or printed matter that contains articles causing national disunity, constituting Communist propaganda or causing public disobedience of law and order, except documents or printed matter which are the property of the Government or of government officials or instructors of government departments having the duty to teach students, suppress Communist activities, or defend the country.

2. RADIO

The Order of the National Administrative Reform Council No. 15 dated 8 October 1976³¹ set forth the guidelines for all radio stations. With respect to news broadcasting, they must relay all the special programmes and regular news programmes of Radio Thailand and broadcast news which is in the national interest or enlightens the people without detrimental reference to any particular person, does not constitute direct or indirect Communist propaganda, does not cause public panic or national disunity and does not adversely affect foreign relations, is not untrue, and is not contrary to law and order or good public morals. Feature programmes must not constitute direct or indirect Communist propaganda or cause public disunity or affect national security. Entertainment programmes must induce the people to be patriotic; observe religious principles, respect the King, promote national unity and culture and compliance with law and order, and must not be contrary to good public morals. Music programmes shall also aim at the promotion of national culture. The advertising and public service programmes must be broadcast in the Thai language; they must not refer for the purpose of advertising to any person or thing which the people respect, and must not be obscene or advertise obscene goods.

²⁶ *Ibid.*, vol. 93, part 120, 6 October B.E. 2519 (1976), pp. 15-16.

²⁷ *Ibid.*, vol. 93, part 121, 7 October B.E. 2519 (1976), pp. 1-3.

²⁸ *Ibid.*, vol. 93, part 125, 11 October B.E. 2519 (1976), pp. 4-8.

²⁹ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 52-57.

³⁰ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 58-60.

³¹ *Ibid.*, vol. 93, part 122, 8 October B.E. 2519 (1976), pp. 4-8.

3. TELEVISION

The Order of the National Administrative Reform Council No. 17 dated 9 October 1976³² prohibits any programme which shows any kind of cruelty, may frighten the people or cause public panic, or may be a bad example for children or young persons. In addition, television is subject to the guidelines set forth for radio broadcasting. Furthermore, all lectures, debates, conversations, interviews and shows concerning or relating to politics shall be recorded in advance, unless they are approved by the Radio and Television Control Committee.

I. Right to take part in government

(article 21 of the Universal Declaration)

During the period under review, the National Legislative Assembly passed the Civil Service Act, 1975,³³ which replaces the Civil Service Act, 1944.³⁴ The National Legislative Assembly also passed the new Political Service Act, 1976,³⁵ and the Parliamentary Service Act, 1976.³⁶ In addition, the Government issued Ministerial Regulation No. 7 (1975)³⁷ repealing Ministerial Regulation No. 3 (1961),³⁸ which had been issued under the Public Prosecution Service Act, 1960,³⁹ and which prohibited women from being Public Prosecutors. The new legislation is in accordance with the equal rights provisions in the Constitution.

The King enacted a Royal Decree setting 4 April 1976 as the date for general elections.⁴⁰ After the National Administrative Reform Council had abolished the Constitution of the Kingdom of Thailand, by Order No. 3 dated 6 October 1976, it issued Order No. 35 dated 21 October 1976⁴¹ repealing the Act on Election of Members of the House of Representatives, 1968, and its amendments.

J. Right to form trade unions

(article 23 of the Universal Declaration)

After a few years of enforcement, the provisions for labour relations contained in the Announcement of the National Executive Council No. 103 dated 16 March 1972⁴² became inappropriate to current economic and social conditions. The National Legislative Assembly, therefore, passed the Labour Relations Act, 1975,⁴³ which revises the rules governing the submission of demands and the settlement of labour disputes and allows employers to form associations of employers and employees to form trade unions for the purpose of protecting their employment benefits and welfare and of improving the relations between employers and employees.

On 8 October 1976, the Chairman of the National Administrative Reform Council issued Notification No. 1 on labour policy,⁴⁴ stating that the Council still promotes the welfare of employees; promotes good relations between employers and employees;

³² *Ibid.*, vol. 93, part 123, 9 October B.E. 2519 (1976), pp. 1-5.

³³ *Ibid.*, vol. 92, part 26, 6 February B.E. 2518 (1975), pp. 1-78.

³⁴ *Ibid.*, vol. 71, part 17, 15 March B.E. 2497 (1954), pp. 1-103.

³⁵ *Ibid.*, vol. 92, part 26, 6 February B.E. 2518 (1975), pp. 79-87.

³⁶ *Ibid.*, vol. 92, part 27, 6 February B.E. 2518 (1975), pp. 1-46.

³⁷ *Ibid.*, vol. 92, part 224, 1 November B.E. 2518 (1975), pp. 1-2.

³⁸ *Ibid.*, vol. 78, part 44, 23 May B.E. 2504 (1961), pp. 527-528.

³⁹ *Ibid.*, vol. 77, part 106, 23 December B.E. 2503 (1960), pp. 1-38.

⁴⁰ *Ibid.*, vol. 93, part 6, 12 January B.E. 2519 (1976), pp. 1-3.

⁴¹ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), p. 14.

⁴² *Ibid.*, vol. 89, part 41, 16 March B.E. 2515 (1972), pp. 1-9.

⁴³ *Ibid.*, vol. 92, part 47, 26 February B.E. 2518 (1975), pp. 1-79.

⁴⁴ *Ibid.*, vol. 93, part 122, 8 October B.E. 2519 (1976), pp. 10-11.

promotes fair distribution of benefits from employment between employers and employees; upholds and maintains the right of collective bargaining; and authorizes the employers and employees to form their own organizations, in accordance with the labour law. The Chairman of the National Administrative Reform Council further asked both employers and employees to comply strictly with labour law in order to promote peace and stability in industry and business while the country was still undergoing difficulties.

Also on 8 October 1976, the Under-Secretary of State for the Interior, exercising the power of the Minister of the Interior during the enforcement of martial law all over the Kingdom, issued a Notification⁴⁵ warning both employers and employees to comply strictly with the Labour Relations Act, 1976, and directing that any labour dispute that could not be settled be referred for decision to the Labour Relations Tribunal or other tribunal to be appointed; prohibiting strikes and lock-outs; and directing employers who had effected lawful lock-outs to allow employees to return to work and employees who had effected lawful strikes to return to work before 15 October 1976.

The National Administrative Reform Council then issued Order No. 46 dated 21 October 1976⁴⁶ repealing sections 119 and 120 of the Labour Relations Act, 1975, and replacing them with provisions which authorize not less than five employers' associations or employers' federations to establish the Congress of Employers' Organizations for promoting the study of labour relations, and not less than 15 trade unions or labour federations to establish the Congress of Employees' Organizations, for promoting the study of labour relations.

In addition, the National Administrative Reform Council issued Order No. 47 dated 21 October 1976⁴⁷ authorizing the Prime Minister to appoint the members of the National Labour Advisory Council, consisting of 10 government representatives nominated by the Under-Secretary of State for the Interior (five government officials on active service and five other qualified persons), five representatives elected by all the employers' associations, and five representatives elected by all the trade unions. This Council has the duty to advise the Government on labour affairs—for example, on the essential needs of employers, the solution of labour problems, the preparation of courses of labour study for employers and employees, and labour policy and law.

K. Right to an adequate standard of living; protection of public health

(article 25 of the Universal Declaration)

1. DEBTORS

In order to improve and expedite civil proceedings as well as to protect debtors, the National Legislative Assembly passed the Civil Procedure Code Amendment No. 6, 1975.⁴⁸

This amendment revises the provisions relating to appeal and to the exemption of property of a debtor. *Inter alia*, the following items shall not be subject to the execution of judgement: wearing apparel, necessary bedding and kitchen utensils, not exceeding 5,000 baht in value; tools or utensils necessary for earning a living or engaging in a profession, not exceeding 10,000 baht in value; and property which, by law, is not transferable or not liable to execution. The latter kind of property includes maintenance allowances, salaries, wages, pensions, compensation, or aid paid by the Government or the employer to debtors or their surviving spouses.

2. THE ENVIRONMENT

The rapid growth of population, the migration from rural areas to towns and cities and the improper use of natural resources have adversely affected the quality of the environ-

⁴⁵ *Ibid.*, vol. 93, part 122, 8 October B.E. 2519 (1976), pp. 12-13.

⁴⁶ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 112-114.

⁴⁷ *Ibid.*, vol. 93, part 134, 21 October B.E. 2519 (1976), pp. 115-117.

⁴⁸ *Ibid.*, vol. 92, part 5, 9 January B.E. 2518 (1975), pp. 74-84.

ment. The National Legislative Assembly, therefore, passed the Improvement and Conservation of National Environment Quality Act, 1975.⁴⁹ A Special Advisory Committee has been appointed and an Office established in order to carry out this Act.

3. NARCOTICS

Narcotics addiction is a great obstacle to the economic and social development of the country. The National Administrative Reform Assembly, acting as the National Assembly, therefore enacted the Prevention and Suppression of Narcotics Act, 1976.⁵⁰ This Act establishes a Prevention and Suppression of Narcotics Board, chaired by the Prime Minister, and a special Office to implement the policy as set forth by the Board.

L. Right to education

(*article 26 of the Universal Declaration*)

The period of compulsory primary education was increased from four years to seven years in 113 *tambons* (village districts), by Notification of the Ministry of Education of 3 June 1976,⁵¹ and in 477 *tambons*, by Notification of 5 July 1976.⁵² All children in the *tambons* concerned are required to attend school from their eighth to fifteenth year unless they have passed *pthom* VII according to the curriculum established by the Minister of Education or other curriculum accredited by the Minister of Education as equivalent thereto. This measure will raise the standard of public education.

⁴⁹ *Ibid.*, vol. 92, part 40, 19 February B.E. 2518 (1975), pp. 39-47.

⁵⁰ *Ibid.*, vol. 93, part 144, 17 November B.E. 2519 (1976), pp. 14-23.

⁵¹ *Ibid.*, vol. 93, part 97, 29 July B.E. 2519 (1976), p. 14.

⁵² *Ibid.*, vol. 93, part 106, 27 August B.E. 2519 (1976), p. 18.

TURKEY

The Turkish Republic is a national, democratic, secular and social State governed by the rule of law and based on human rights and social justice. In the preamble to the Constitution, it is stated that the framers were guided by the desire to establish a democratic rule of law which would ensure and guarantee human rights and liberties, national solidarity, social justice and the welfare and prosperity of the individual and society. The independence of the judiciary and the supremacy and binding force of the Constitution are included among the general principles to be adopted for achieving these aims.

Under article 12 of the Constitution, all Turkish nationals are equal before the law in rights and obligations, irrespective of language, race, sex, political opinion, philosophical views, religion or religious sect. All citizens are entitled to the rights and freedoms set forth in the Universal Declaration of Human Rights. These rights and freedoms can be restricted only by law in conformity with the letter and spirit of the Constitution with a view to safeguarding the integrity of the State, national security or public order, or for special reasons stated in the Constitution, and provided that the law does not affect their essence.

As to the independence of the judiciary, article 132 of the Constitution provides that no organ, office, agency or individual may give orders to the courts or judges, send them circulars or make recommendations or suggestions to them. Article 114 recognizes the administration's responsibility and liability to prosecution for any of its acts or decisions which are not in accordance with the laws and regulations. Under article 147, a Constitutional Court is established, with powers to review the constitutionality of laws, and of internal regulations of the Turkish Grand National Assembly, thus providing a further guarantee of the conformity of the laws and regulations with the Constitution.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

A number of legislative and normative instruments aimed at the further protection and implementation of human rights were enacted in the Ukrainian SSR, and measures were taken to achieve a further rise in the material and cultural living standards of wide sections of the population of the Republic. The most important of these instruments are reviewed below.

A. Non-discrimination *(article 2 of the Universal Declaration)*

On 25 December 1974 the Supreme Soviet of the Ukrainian SSR enacted a law on the State Notarial System, which entered into force with effect from 1 May 1975.¹

Under article 9 of the Law, notarization in the Republic is performed in the Ukrainian language; however, if the person requesting the performance of a notarial act is not familiar with the language, the Law provides that the texts of the documents drawn up shall be translated into a language with which the person is familiar.

Under article 79 of the Law, foreign citizens and stateless persons have the right, on a footing of equality with Soviet citizens, to apply to organs which perform notarizations.

B. Right to an effective remedy *(article 8 of the Universal Declaration)*

In accordance with the decree of the Presidium of the Supreme Soviet of the Ukrainian SSR "On the incorporation of amendments and additions in the legislation of the Ukrainian SSR in connexion with the enactment of the Law of the Ukrainian SSR on the State Notarial System",² amendments and additions have been incorporated in a number of articles of the Code of Civil Procedure of the Ukrainian SSR. In particular, article 285 of the Code provides that an interested party who believes that the performance or non-performance of a notarial act was incorrect is entitled to lodge a complaint in the courts.

C. Right to a fair trial *(article 10 of the Universal Declaration)*

By decree of the Presidium of the Supreme Soviet of the Ukrainian SSR dated 30 June 1976, the Statute concerning the disciplinary liability of judges of tribunals of the Ukrainian SSR was approved.³ The Statute reaffirms the constitutional principle which proclaims that, in the administration of justice, judges are independent and are subject only to the law.

The Statute affirms that, in order to have the moral right to judge and educate others, a judge must be a model of the strict observance of Soviet laws, and of moral integrity and irreproachable conduct. Conversely, dereliction of duty and unworthy actions by judges undermine the authority of the courts and are detrimental to the cause of justice, the interests of the State and the rights of citizens, and must therefore entail severe liability.

The clear regulations in the Statute concerning questions of the disciplinary liability of judges provide additional guarantees of their complete independence and protect them from the possibility of being subjected to external pressure in the exercise of their duties.

Disciplinary action may be taken against judges of tribunals in the Ukrainian SSR on the grounds of: (a) dereliction of duty due to negligence or lack of discipline; (b) violations

¹ *Vedomosti Verkhovnogo Soveta Ukrainskoi SSR*, 1975, No. 1, item 4.

² *Ibid.*, 1975, No. 19, item 249.

³ *Ibid.*, 1976, No. 28, item 237.

of labour discipline; (c) misdemeanours unworthy of a Soviet judge. Disciplinary boards, consisting of other judges, are established to hear cases of breaches of discipline by judges; and these boards may impose disciplinary penalties in the form of a reproof, a reprimand, or a severe reprimand. If the board considers that a judge is unsuitable for the post he occupies, the question of his premature recall may be raised in accordance with the procedure established by law. If there are elements of criminality in the judge's behaviour, the disciplinary board raises the question of instituting criminal proceedings against him.

D. Protection of privacy

(article 12 of the Universal Declaration)

Article 7 of the Law of the Ukrainian SSR on the State Notarial System, which entered into force with effect from 1 May 1975, provides that State notaries and other officials who perform notarial functions are obliged to observe the rule of secrecy in regard to the notarial acts performed. Information concerning wills is given only after the death of the testator. The rules concerning the observance of the secrecy of notarial acts extend also to persons who learn of notarial acts in the course of their official duties.

Persons guilty of violating the secrecy of notarial acts are punishable in accordance with the procedure established by law.

E. Right to own property

(article 17 of the Universal Declaration)

Under article 8 of the Law of the Ukrainian SSR on the State Notarial System, State notaries and other officials who perform notarial acts are obliged to assist citizens and State, public and co-operative organizations and enterprises in the exercise of their rights and in the protection of their lawful interests, to explain their rights and obligations, and to warn them of the effects of the notarial acts performed so that it will be impossible to take advantage of ignorance of the law on their part or other similar circumstances.

Under chapter 3 of the Law, State notaries at the place where a will is opened—or, in localities where there is no State notarial office, officials of the executive committees of the local soviets of workers' deputies—take measures for the protection of the estate of a deceased person where this is required in the interests of the State or of the heirs, legatees or creditors.

To protect the estate, the above-mentioned persons, after making an inventory of it, place it in the keeping of the heirs or other persons. The custodian, trustee or other person in whose keeping the estate has been placed are warned that criminal liability is incurred under article 182 of the Criminal Code of the Ukrainian SSR in the event of its embezzlement or concealment, and also that material liability is incurred for damage caused.

F. Freedom of conscience and religion

(article 18 of the Universal Declaration)

By decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 1 November 1976,⁴ the Statute concerning religious associations in the Ukrainian SSR was approved with a view to developing the existing legislation on these matters. The Statute affirms the constitutional principle whereby citizens of the Ukrainian SSR are guaranteed freedom of conscience. Every citizen may profess any religion or none. The profession or non-profession of a religion does not entail any limitation of rights and does not grant any advantages. Freedom of religious worship and freedom of anti-religious propaganda are recognized for all citizens.

Under the Statute, the adoption of any decree, order or decision limiting freedom of conscience is prohibited. Official documents may not indicate whether a citizen belongs or

⁴ *Ibid.*, 1976, No. 46, item 420.

does not belong to a religion. No one may, by invoking his religious convictions, evade the performance of his civic duties.

In order to guarantee citizens freedom of conscience, the church in the Ukrainian SSR is separated from the State, and the school from the church. The teaching of religion is permitted only in ecclesiastical institutions, which are opened in accordance with the established procedure.

On reaching the age of 18, citizens who are believers may voluntarily, for the satisfaction of their religious needs, join religious associations.

The effects of the Statute extend to all cults, denominations, trends, tendencies and persuasions.

The Statute also regulates many other questions relating to the organization and activities of religious associations.

G. Right to take part in government

(article 21 of the Universal Declaration)

Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR dated 17 March 1975⁵

By this decree, 15 June 1975 was fixed as the date for elections to the Supreme Soviet of the Ukrainian SSR and to the soviets of workers' deputies of the regions, districts, towns, rural areas and settlements.

At its meeting held on 18 June 1975, the Central Electoral Commission on Elections to the Supreme Soviet of the Ukrainian SSR examined the returns for the elections to the Supreme Soviet of the Ukrainian SSR, ninth convocation, and found that the elections throughout the territory of the Republic had been conducted entirely in keeping with the requirements of the Constitution of the Ukrainian SSR and the Statute concerning Elections to the Supreme Soviet of the Ukrainian SSR. No complaints of violations of the electoral law were received.

The Central Electoral Commission established the final results of the elections. A total of 34,170,966 persons were registered on the electoral rolls in the Republic; of these, 34,168,785 persons, or 99.99 per cent, took part in the elections.

The number of persons voting for candidates of the Communist and non-party bloc was 34,158,402, representing 99.97 per cent of the total number of registered voters who actually cast their votes.

In all 570 electoral districts, the candidates for election obtained an absolute majority of votes and were elected deputies in accordance with article 93 of the Statute concerning Elections to the Supreme Soviet of the Ukrainian SSR.

The number of deputies elected to the Supreme Soviet of the Ukrainian SSR was 570; of these 287, or 50.3 per cent, were manual workers and collective farmers and 201, or 35.3 per cent, were women. Of the deputies elected, 69.1 per cent were members or candidate members of the Communist Party of the Soviet Union, 30.9 per cent were non-party men and women, and 12.8 per cent were young people under 30. Three hundred and eight persons, or 54 per cent of the deputies to the Supreme Soviet of the Ukrainian SSR, were elected for the first time.

Elections to the local soviets of workers' deputies of the Ukrainian SSR were conducted for 25 regions, 447 districts, 394 towns, 112 urban districts, 787 settlements and 8,560 rural areas. A total of 99.99 per cent of the total number of registered voters for each type of local soviet took part in the elections. The proportion of votes cast for the candidates was as follows: regional soviets, 99.96 per cent; district soviets, 99.98 per cent; urban soviets, 99.95 per cent; urban-district soviets, 99.93 per cent; settlement soviets, 99.97 per cent; rural soviets, 99.98 per cent.

A total of 521,395 deputies were elected. These included 376,769 manual workers and collective farmers (72.3 per cent), 240,701 women (46.2 per cent), 242,834 members and

⁵ *Ibid.*, 1975, No. 13, item 146.

candidate members of the Communist Party of the Soviet Union (46.6 per cent), 278,561 non-party men and women (53.4 per cent) and 150,837 young people under 30 (28.9 per cent). Of the persons elected, 187,942, or 36 per cent, had not been deputies of local soviets of the previous convocation.⁶

Decision of the Presidium of the Supreme Soviet of the Ukrainian SSR dated 31 July 1975⁷

This decision, "Concerning the organization of the fulfilment of mandates given by the voters to the deputies of the Supreme Soviet of the Ukrainian SSR, ninth convocation", states that in the course of the electoral campaign the voters gave 1,854 mandates to the deputies of the Supreme Soviet of the Ukrainian SSR and 104,177 mandates to deputies of local soviets of workers' deputies. These mandates constitute one of the practical manifestations of socialist democracy.

Of the total number of mandates, 542 relate to the competence of the appropriate republican organs. The voters' mandates relate to the further development of industry, agriculture, construction, transport, conservation of nature, extension of the network and improvement of the work of municipal and commercial enterprises, educational, cultural and health institutions, urban and rural amenities, and other questions. The decision indicates specific measures for the fulfilment of voters' mandates.

Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 9 December 1975⁸

By this decree, 11 April 1976 was fixed as the date for elections of people's judges for the district (urban) people's courts of the Ukrainian SSR.

Elections of people's judges of district (urban) people's courts were held on 11 April 1976 with the participation of 99.99 per cent of the voters registered on the electoral rolls.

Of the registered voters who actually cast their votes, 99.95 per cent voted in favour of the candidates for election as people's judges. All the candidates who stood obtained an absolute majority of votes and were elected as people's judges.

A total of 1,486 people's judges were elected to the district and urban people's courts. They included 428 women (28.8 per cent) and 414 persons elected for the first time (27.9 per cent).

The elections were conducted fully in accordance with the Constitution of the Ukrainian SSR, the Law concerning the Judicial System and the Statute concerning elections to district (urban) people's courts of the Ukrainian SSR.⁹

Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 29 November 1976¹⁰

By this decree, elections of people's assessors for the district (urban) people's courts of the Ukrainian SSR by the executive committees of the regional and the Kiev and Sevastopol urban soviets of workers' deputies were set for January-February 1977.

Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 17 October 1975¹¹

By this decree, the Statute concerning public committees at the settlement, rural, street, quarter, district and house levels in the Ukrainian SSR was approved.

These committees are organs for independent civic action by the population. Their principal task is the wide-scale enlistment of working people in the decision-making process on questions of economic, social and cultural development which come within the competence of soviets of workers' deputies.

⁶*Ibid.*, 1975, No. 26.

⁷*Ibid.*, 1975, No. 34, item 389.

⁸*Ibid.*, 1975, No. 51, item 552.

⁹ Report published in the newspaper *Pravda Ukrainy* of 16 April 1976.

¹⁰ *Vedomosti Verkhovnogo Soveta Ukrainskoi SSR*, 1976, No. 50, item 463.

¹¹*Ibid.*, 1975, No. 44, item 479.

The public committees are established on a territorial basis and are elected for a two-year term by a show of hands at popular assemblies. They are guided in their activity by existing legislation, by the above-mentioned Statute and by decisions of the local soviets of workers' deputies and their executive committees and the decisions of the citizens' assemblies (meetings) and the meetings of their representatives. The public committees report on their work to the citizens' assembly (meeting) or meeting of citizens' representatives at intervals of not less than one year.

*Decision of the Supreme Soviet of the Ukrainian SSR of 25 June 1976*¹²

By this decision, the Supreme Soviet of the Ukrainian SSR approved the Code of the Ukrainian SSR concerning Underground Resources. In accordance with the requirements of article 79 of the above-mentioned Code, trade unions, youth organizations, nature conservation societies, scientific associations and other public organizations, as well as individual citizens, assist State bodies in carrying out measures for the protection of underground resources and for their rational utilization.

In carrying out such measures, State bodies must take the proposals of the public organizations and individual citizens fully into account.

H. Right to social security

(article 22 of the Universal Declaration)

*Decision of the Supreme Soviet of the Ukrainian SSR dated 4 July 1975*¹³

By this decision, a 27-member commission of the Supreme Soviet of the Ukrainian SSR was established to deal with questions of health and social security.

*Decision of the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR of 27 May 1975*¹⁴

This decision related to additional privileges for disabled ex-service men of the Second World War and the families of military personnel killed in battle. On the same date, the Central Committee confirmed the Statute concerning the procedure for the granting of privileges, in regard to payment for housing and public utilities, to ex-service men of the Second World War, classes I and II, and to the families of military personnel killed in battle, and concerning passenger transport for disabled ex-service men of the Second World War.

It is provided that the payments to be made for housing occupied by disabled ex-service men of the Second World War (classes I and II) and by families of military personnel killed in battle shall be 50 per cent of the rent. The same persons are granted a 50 per cent reduction on payments for public utilities, including heating, water supply, drainage, gas and electricity. Disabled ex-service men of the Second World War also have the right to travel free on all types of urban passenger transport (excluding taxis) and in public motor transport (except taxis) in rural areas.

The decision also provides for a number of other privileges for disabled ex-service men of the Second World War.

I. Right to just and favourable conditions of work

(article 23 of the Universal Declaration)

*Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 5 June 1975*¹⁵

This decree made some additions and amendments to the Labour Code of the Ukrainian SSR. The articles redrafted include those concerning the procedure for considering

¹² *Ibid.*, 1976, No. 27, item 225, and annex to No. 27, p. 23.

¹³ *Ibid.*, 1975, No. 28, item 348.

¹⁴ *Sbornik postanovlenii i rasporyazhenii pravitelstva Ukrainskoi Sovetskoi Sotsialisticheskoi Respubliki*, 1975, No. 6, item 30.

¹⁵ *Vedomosti Verkhovnogo Soveta Ukrainskoi SSR*, 1975, No. 24, item 296.

labour disputes, the investigation of labour disputes in district (urban) people's courts, and a number of other matters. In particular, article 231 of the Code contains a new provision to the effect that a labour dispute may be investigated by a people's court at the request of the public prosecutor when he considers that a decision already taken is contrary to the legislation in force.

*Decision of the Presidium of the Supreme Soviet of the Ukrainian SSR of 25 June 1976*¹⁶

Section V of the Code of the Ukrainian SSR concerning Underground Resources, approved by this decision, contains provisions regarding the safety of work in connexion with the exploitation of underground resources.

In the construction, modernization and exploitation both of mines and of underground installations not connected with the extraction of minerals, as also in geological prospecting and other operations connected with the exploitation of underground resources, the safety of workers and of the population must be guaranteed.

Responsibility for the observance of safety rules and norms at enterprises, organizations and institutions engaged in the exploitation of underground resources rests with their managers.

The Code also sets forth, *inter alia*, the principal requirements with regard to safety of operations connected with the utilization of underground resources and the duties of persons engaged in mining operations in regard to the observance of safety rules and norms.

J. Right to an adequate standard of living

(article 25 of the Universal Declaration)

As a result of the further development of all sectors of the national economy, considerable successes in raising the standard of living of the people were achieved in 1975-1976. The data given below from information published by the Central Statistical Board of the Council of Ministers of the Ukrainian SSR on the results achieved in the implementation of the State plan for the development of the national economy in 1975-1976 are evidence of the further improvement in the welfare of the broad masses of the population of the Ukraine.¹⁷

The average annual number of manual and non-manual workers in the national economy of the Ukrainian SSR in 1976 was 18.7 million, an increase of 0.4 million over the previous year. The number of collective farmers employed in the public collective-farm economy was 4.8 million. As in previous years, there was full employment of the active population of the Republic; at certain enterprises, construction sites, collective farms and State farms there was shortage of manpower.

The national income—the source of the development of social production and of rises in the population's material and cultural standard of living—was 69 billion roubles in 1976 (in real prices), an increase of 3.5 billion roubles over the previous year.

The average monthly cash wage for manual and non-manual workers in 1976 was 139.7 roubles, as against 133.5 roubles in 1975. With the addition of payments and benefits from social consumption funds, the average monthly wage rose from 183 to 191 roubles. The wages of collective farmers rose by 7 per cent. Payments and benefits received by the population from social consumption funds totalled 16.9 billion roubles, an increase of 0.8 billion roubles over the previous year. These funds provide free education and medical care; pensions; allowances and other types of social welfare and social insurance; paid holidays; students' grants; free passes or reduced-price admissions to sanatoria and rest homes; the upkeep of kindergartens and crèches, and other kinds of social and cultural services.

¹⁶ *Ibid.*, 1976, No. 27, item 225, and annex to No. 27, pp. 19-21.

¹⁷ Information published in the newspaper *Pravda Ukrainy* on 5 February 1976 and 28 January 1977.

In 1975, the minimum wage for manual and non-manual workers was raised to 70 roubles per month, and the wage rates and salaries of the middle range of workers employed in the production sectors of the national economy were increased at the same time. Tax deductions from the wages of manual and non-manual workers in all sectors of the national economy receiving a wage up to and including 70 roubles a month were discontinued; and rates of taxation on wages up to and including 90 roubles were reduced. Social insurance was improved for certain categories of disabled persons and manual and non-manual workers. In 1976 further improvements were introduced in the pension entitlement of certain categories of workers in the coal industry.

In 1975-1976, 748,000 well equipped apartments and individual houses with a total area of 38.8 million square metres were built in the Republic, thus enabling 3.3 million persons to obtain better housing.

Improvements in public medical services and organized recreation continued. The number of doctors in all branches of medicine increased by 9,000 to 161,000. The number of hospital beds increased by 25,000. More than 15.5 million persons underwent treatment and rest cures in sanatoria and spas, rest homes and tourist centres.

*Law concerning the State five-year plan for the development of the national economy of the Ukrainian SSR during the years 1976-1980, adopted by the Supreme Soviet of the Ukrainian SSR on 19 November 1976*¹⁸

This Law outlines a programme for a further rise in the material and cultural standard of living of the people. In particular, the Law provides that by 1980, taking the 1975 figures as equal to 100, real *per capita* income will increase to 119, the average monthly wage of manual and non-manual workers to 114.8, the average monthly wage for collective farmers for work in the public economy to 130, and the number of hospital beds to 108.2. The total living space in residential buildings to be brought into service with all sources of financing will be 97.14 million square metres.

*Decision of the Supreme Soviet of the Ukrainian SSR of 19 November 1976*¹⁹

By this decision, a 25-member commission of the Supreme Soviet of the Ukrainian SSR was elected to deal with questions relating to the employment and living conditions of women and the protection of motherhood and childhood.

K. Right to education

(article 26 of the Universal Declaration)

By a decision of the Supreme Soviet of the Ukrainian SSR of 4 July 1975,²⁰ a 27-member commission of the Supreme Soviet of the Ukrainian SSR was established to deal with questions of education and science.

According to data compiled by the Central Statistical Board of the Council of Ministers of the Ukrainian SSR, more than 17 million persons were receiving education of one kind or another in the Ukrainian SSR. Schools of general education with places for 474,000 pupils were built and opened in 1975-1976, while 1,734,000 persons received secondary education. Enrolment at higher educational establishments in 1976 was 170,000, of whom 104,000 (or 3,500 more than in 1975) were attending day courses. Enrolment in special secondary educational establishments was 250,000, of whom 155,000 (or 5,300 more than in 1975) were attending day courses.

During the two-year period, 689,000 specialists, including 263,000 with higher education and 426,000 with specialized secondary education, were absorbed into the economy.

¹⁸ *Vedomosti Verkhovnoho Soveta Ukrainskoi SSR*, 1976, No. 48, item 441.

¹⁹ *Ibid.*, 1976, No. 48, item 446.

²⁰ *Ibid.*, 1975, No. 28, item 346.

L. Right to participate freely in cultural life*(article 27 of the Universal Declaration)*

By a decision of the Supreme Soviet of the Ukrainian SSR of 4 July 1975²¹ a 27-member cultural commission of the Supreme Soviet of the Ukrainian SSR was established.

A decision concerning popular arts and crafts industries was adopted by the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR on 25 March 1975.²² The decision provides for measures to ensure the further development of arts and crafts industries in the Republic, including increased output of various products, the strengthening of the material and technical supply basis for such industries and improvements in working and living conditions for creative craftsmen. Ministries, departments, and State and public organizations in the Republic are given specific tasks in regard to the development of popular arts and crafts industries.

By a decision of the Council of Ministers of the Ukrainian SSR of 12 November 1975,²³ the Statute of the Musical Society of the Ukrainian SSR was approved. According to its Statute, the Musical Society of the Ukrainian SSR is a voluntary creative mass public organization uniting professional musicians and members of independent musical groups. The Society is called upon to give every assistance to the development and dissemination of a Soviet musical art that is socialist in content, national in form and international in spirit. The Society bases its work on the principles of democratic centralism, making use of the many-sided activities and creative initiative of its members. The Statute sets forth the tasks of the Musical Society of the Ukrainian SSR and the rights and obligations of its members, and describes the structure and organs of the administration of the Society, its financial resources, and so on.

According to data compiled by the Central Statistical Board of the Council of Ministers,²⁴ the population of the Republic has at its disposal approximately 27,000 mass libraries with a stock consisting of more than 325 million copies of books. More than 150 million copies of books and brochures were printed in 1976. The number of cinemas was more than 28,000, and attendance at film projections in the two-year period totalled more than 1,630 million.

²¹ *Ibid.*, 1975, No. 28, item 347.

²² *Sbornik postanovlenii i rasporyazhenii pravitelstva Ukrainiskoi Sovetskoi Sotsialisticheskoi Respubliki*, 1975, No. 4, item 16.

²³ *Ibid.*, 1975, No. 11, item 65.

²⁴ Information published in the newspaper *Pravda Ukrainy* on 28 January 1977.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

General

The report of the official working group which had been studying the implications of new legislation on human rights was published in 1976 (*Legislation on Human Rights with Particular Reference to the European Convention: a Discussion Document*). The group examined the consequences of incorporating the European Convention on Human Rights in British domestic law but made it clear that there were other possible approaches.

A. Non-discrimination (article 2 of the Universal Declaration)

1. EQUAL RIGHTS FOR MEN AND WOMEN

The Sex Discrimination Act 1975, which came into operation in December 1975, applies to Great Britain. The Act makes sex discrimination unlawful in employment, training and related matters (where discrimination on the grounds of marriage is also dealt with), in education, in housing and in the provision of goods, facilities and services. The Act applies to discriminatory advertising in these areas and also unlawful pressure to discriminate and aiding another person to discriminate. Individuals have direct access to the courts of law, or, in employment training and related cases, to industrial tribunals. The Act established an Equal Opportunities Commission which has a duty to work towards the elimination of discrimination, to promote equality of opportunity between men and women and to keep the working of the Sex Discrimination Act and the Equal Pay Act under review. It also has powers to conduct formal investigations and to take action to eliminate unlawful discriminatory acts or practices and to issue non-discrimination notices requiring these practices to cease. It is responsible for enforcement in respect of discriminatory advertising, discriminatory practices, discriminatory instructions and pressure by one person on another to discriminate. The Commission can investigate areas of inequality not covered by the Act and has a responsibility for advising the Government.

The main principles of the Act were extended to Northern Ireland in 1976 by an Order which established a separate Equal Opportunities Commission for the Province.

2. NEW RACE RELATIONS LEGISLATION

The Race Relations Act 1976, which will come into force during 1977, is designed to strengthen the existing law on race relations and harmonize the legislation for dealing with sex and race discrimination. Like the Race Relations Act 1968, it makes racial discrimination unlawful in employment, training and related matters, in education, in housing and in the provision of goods, facilities and services. It extends the existing law to cover discrimination by private clubs with 25 or more members. The Act also applies to discriminatory advertising and makes unlawful pressure to discriminate and aiding discrimination. It gives individuals alleging racial discrimination direct access to civil courts and industrial tribunals for the first time and also strengthens the criminal law against incitement to racial hatred. The Commission for Racial Equality, which is to be set up under the Act, will replace the Race Relations Board and the Community Relations Commission (see below). It will help enforce the legislation but its main task will be to work towards the elimination of discrimination and promote equal opportunities and good relations between racial groups. It will also be responsible for co-ordinating the work of the 85 local community relations councils.

The new legislation was outlined in a White Paper, *Racial Discrimination*, published in September 1975, which discussed the position of coloured minorities in Britain. It pointed out that a high proportion of coloured people lived in the relatively more deprived inner city areas; that, despite the then existing Race Relations Acts, substantial discrimination continued to occur at work; that young West Indians suffered from relatively high unemployment; and that the proportion of immigrants living in overcrowded conditions was higher than for the population at large. On the other hand, nearly half the coloured households owned their own houses—almost the same proportion as white households; in Greater London a substantial number of West Indians were in skilled manual employment and the proportion of young Asians out of work had been lower than that of young people in general. The Government had decided, said the White Paper, that the first priority in fashioning a coherent and long-term strategy to deal with the interlocking problems of immigration, cultural differences, racial disadvantage and discrimination was to strengthen the law already on the statute book.

A number of reports on race relations matters have been published in the course of 1975 and 1976. These include, apart from the White Paper *Racial Discrimination* already mentioned, government responses to reports by the Parliamentary Select Committee on Race Relations and Immigration, a series of reports by the Community Relations Commission, including a major one prepared for the Government entitled *Urban Deprivation, Racial Inequality and Social Policy*, a report of a survey by an independent organization, Political and Economic Planning, entitled *The Facts of Racial Disadvantage*, and a number by the Runnymede Trust. The final reports of the Race Relations Board and Community Relations Commission include a summary of their work since they were established in 1968 and proposals for the future.

3. NORTHERN IRELAND: STANDING ADVISORY COMMISSION ON HUMAN RIGHTS

The Commission, an independent body established in 1974, advises the Secretary of State for Northern Ireland on the adequacy and effectiveness of the law for the time being in force in preventing discrimination on the grounds of religious belief or political opinion, and in providing redress for persons aggrieved by discrimination on either ground. It is regarded as an essential and integral part of the Government's policy in the field of human rights and community relations in Northern Ireland, and the annual reports of the Commission are laid before Parliament. Many of the recommendations made by the Commission in its first report have already been implemented by the Government, including bringing detention to an end; ending the "special category" status for convicted criminals sentenced to imprisonment for offences connected with the civil disturbances and who claimed political motivation; promoting legislation to secure equality of opportunity in employment irrespective of religious beliefs; and legislation to make it unlawful to discriminate on grounds of sex or marriage.

The second annual report of the Commission was presented to Parliament in November 1976, and the Commission's further recommendations are being carefully studied by the Government.

In March 1976, the Commission published a document entitled *Bill of Rights: a Discussion Paper* intended to stimulate public discussion on the subject. The paper examined the extent to which the content and form of existing legislation provided appropriate protection of human rights in Northern Ireland and drew attention to some of the main issues needing consideration. The Commission invited written submissions on the subject and subsequently stated that it proposed to present its recommendations to the Government during 1977.

B. Prohibition of torture and inhuman or degrading treatment or punishment

(article 5 of the Universal Declaration)

The report of the European Commission on Human Rights on the case brought by the Government of the Irish Republic against the United Kingdom was published in September

1976. Earlier that year the Government of the Irish Republic referred the case to the European Court of Human Rights which was to hold public hearings in February and April 1977.

The Commission's report exonerated the United Kingdom on most of the allegations that were declared admissible. In particular, the Commission found that detention and internment, which were introduced in 1971 and kept in use until 1975, were justified by the exigencies of the situation in Northern Ireland, and that these measures were not operated in such a manner as to discriminate against the minority community. But the Commission found that there has been breaches of article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. The breaches found by the Commission were confined to the period from August to December 1971. The Commission noted that the United Kingdom Government had taken, since December 1971, "important measures" which were likely to secure the protection contemplated by the Convention and stated that the Government had "repeatedly manifested their intention and goodwill to do anything that is reasonably possible in order to ensure the observance of their obligations under the Convention". They noted also that substantial compensation had been paid, under the normal procedures of domestic law, to victims of ill-treatment.

C. Equal protection of the law; right to an effective remedy *(articles 7 and 8 of the Universal Declaration)*

1. COMPLAINTS AGAINST THE POLICE

The Police Act 1976 is designed to introduce an effective independent element into the handling of complaints against the police in England and Wales. A new independent body, the Police Complaints Board, has been set up to receive reports from chief officers of police of their investigations into complaints by members of the public against members of police forces. Where no disciplinary charges have been preferred, the Board will be able to recommend, and in the last resort direct, that such charges be brought; where charges have been brought, they will consider whether there are exceptional circumstances making it desirable that they be heard by a tribunal, on which the Board will be represented, rather than by the chief officer sitting alone as is usual.

The initial investigation of complaints remains with the police, and the role of the Director of Public Prosecutions in deciding whether criminal proceedings are appropriate is unaffected. The new procedures apply to complaints relating to incidents occurring on or after 1 June 1977. The Police (Northern Ireland) Order 1977 provides for the introduction of broadly similar procedures in Northern Ireland. The Police (Scotland) Bill before Parliament makes corresponding provision for a Complaints Panel to investigate complaints of a non-criminal nature against the police in Scotland, to complement the role of the Procurator Fiscal in complaints of a criminal nature.

2. BAIL

The Bail Act 1976 creates a statutory presumption in favour of the grant of bail to defendants in England and Wales. The effect is that, where a person appears before a court and a remand is necessary, the court must remand him on bail unless satisfied that there are substantial grounds for believing that, if released on bail, he would abscond, commit offences or interfere with the course of justice. The Act creates a new criminal offence of absconding on bail. If bail is refused, the court has to give its reasons and make them known to the defendant.

3. LEGAL SERVICES

The establishment of a Royal Commission to inquire into the law and practice relating to the provision of legal services in England, Wales and Northern Ireland was announced in February 1976. A similar Royal Commission for Scotland was announced shortly afterwards.

4. LOCAL GOVERNMENT COMPLAINTS SYSTEM

The Local Government (Scotland) Act 1975 provided for the appointment of a Commissioner for Local Administration to look into charges of maladministration by local authorities and certain other bodies. (A corresponding system already existed in England and Wales; Northern Ireland has its own Commissioner for Complaints.) The Commissioner was appointed with effect from 1 January 1976.

D. Right not to be subjected to arbitrary arrest or detention

(article 9 of the Universal Declaration)

Detention, instituted in response to indiscriminate terrorism and widespread intimidation of witnesses, was brought to an end in Northern Ireland on 5 December 1975, when the last detainees were released. The Government emphasized that the end of detention would not have been possible without the greater success achieved during the year in bringing terrorist offenders before the courts and securing convictions through evidence submitted by both communities. Although the powers to reimpose detention remain under the Northern Ireland (Emergency Provisions) (Amendment) Act 1975, which amended the previous procedures for detention along the lines recommended by the Gardiner Committee, whose report on measures to deal with terrorism in Northern Ireland in the context of civil liberties and human rights was published in January 1975, the Government has made it clear that it hopes to avoid resorting to these powers. In its report the Gardiner Committee had concluded that detention should not remain as a long-term policy, considering that its prolonged effects were inimical to community life and obstructed those elements in Northern Ireland society which could lead to reconciliation. However, because of the level of violence at that time they considered that it should be retained under amended procedures as a short-term means of containing violence.

E. Right to a fair trial

(articles 10 and 11 of the Universal Declaration)

1. IDENTIFICATION IN CRIMINAL CASES

The report of a departmental committee (the Devlin Committee) on evidence of identification in criminal cases in England and Wales, published in the spring of 1976, recommended that only in exceptional circumstances should a person be convicted on the basis of identification evidence unsupported by other substantial evidence. Identification parades, regulated by a statutory code, should normally be held in preference to other methods of identification. In Scotland a working group was set up in August 1976 to consider the relevance of the Devlin Committee's report to Scotland with its distinct legal system. The working group is expected to report in 1977.

2. SCOTTISH DISTRICT COURTS SYSTEM

A new system of law courts to deal with summary criminal cases came into operation in Scotland in May 1975, replacing the burgh and justice of the peace courts. There is provision for the appointment of legally qualified stipendiary magistrates in some areas as necessary.

F. Protection against arbitrary interference with privacy

(article 12 of the Universal Declaration)

1. COMPUTERS AND PRIVACY

The need for legislation to protect the privacy of personal information held in computers, and to set up machinery to ensure that all existing and future computer systems in which personal information is stored are operated with appropriate safeguards, was the main theme of a government White Paper, *Computers and Privacy*, published in December 1975.

The envisaged legislation would involve two main elements: (a) the establishment of a set of objectives to set standards governing the use of computers that handle personal information; and (b) the setting up of a permanent statutory agency, a Data Protection Authority, to oversee the use of computers, in both the public and private sectors, to ensure that they are operated with proper regard for privacy and with the necessary safeguards for the personal information which they contain.

In the meantime, a non-statutory Data Protection Committee has been appointed to advise on the form the Authority might take, and to consider and refine the objectives to be incorporated in legislation establishing permanent safeguards.

2. REPORT ON DEFAMATION

The *Report of the Committee on Defamation*, published in March 1975, set out the conclusions of an official committee set up to consider whether in the light of the Defamation Act 1952 changes were needed in the law, practice and procedure relating to actions for defamation in England, Wales and Scotland.

G. Marriage law

(article 16 of the Universal Declaration)

The Divorce (Scotland) Act 1976 reformed the law of divorce in Scotland. In all actions started after 1 January 1977, irremediable breakdown of the marriage is the sole ground for granting a divorce.

H. Right to own property, alone or in association with others

(article 17 of the Universal Declaration)

The main principles behind the Community Land Act 1975 are that the community should be able to control the development of land in accordance with its needs and priorities, and that the increase in value of land arising from its own efforts should be restored to the community.

I. Freedom of opinion and of information

(article 19 of the Universal Declaration)

1. OFFICIAL SECRETS LEGISLATION

The Government announced its intention, in November 1976, to introduce a new Official Information Bill as soon as possible to replace section 2 of the Official Secrets Act 1911, which the Government considers too broad in its scope.

Under the Government's proposals, the criminal law relating to the unauthorized disclosure of official information would apply only in cases where serious harm to the nation's interests was threatened. It would apply also to only a limited number of other categories: information dealing with law and order, the confidences of private citizens, disclosure for private gain, and information relating to security and intelligence matters.

Section 2 of the 1911 Act, which the proposed new legislation will replace, has extensive ramifications for both State officials and private citizens. Under it, unauthorized disclosure by a Crown servant (including all ministers, civil servants, members of the armed forces and police officers) of any information learnt in the course of his job is a criminal offence. All information is covered, whatever its nature, importance, or original source. Section 2 also makes it an offence to receive information communicated in contravention of the official secrets legislation, whether or not any use is made of it.

The Government's proposals to minimize restrictions on the public's access to official information go further in some respects than the recommendations of a Home Office committee, under the chairmanship of Lord Franks, which reported in September 1972. The Franks committee recommended amongst other things that criminal sanctions should

continue to apply in the case of the disclosure of information concerning the domestic economy and in the case of the release of any Cabinet document, irrespective of its content. The Government, however, has expressed the view that a clear distinction should be drawn between information on home and economic policy on the one hand, and security, intelligence, defence and international relations on the other. In the latter case unauthorized disclosure might result in serious damage to the national interest, and therefore the criminal law should apply, but in the domestic area, disclosure, at most, would involve only embarrassment to the Government, so that criminal sanctions should not apply.

2. THE PRESS AND THE "CLOSED SHOP"

The Trade Union and Labour Relations Act 1974 enables employers and unions to draw up "closed shop" union membership agreements if they so wish. Considerable debate arose over the implications of this for journalists in the newspaper industry and, as a result, the Trade Union and Labour Relations (Amendment) Act 1976 provides *inter alia* for the preparation by the industry of a charter containing practical guidance on matters affecting the freedom of the press. If the industry does not present such a charter before 25 March 1977, the Secretary of State for Employment is empowered to produce one, after consultation with the industry and subject to Parliament's approval.

3. ROYAL COMMISSION ON THE PRESS: INTERIM REPORT

The Royal Commission on the Press (appointed in 1974) concluded in an interim report of March 1976 on the financial problems facing the national newspaper industry that there was no immediate prospect of increasing newspapers' revenue and that the only adequate means of cost-saving would be to secure higher productivity through reductions in manpower and the introduction of new technology in production methods. The Government accepted this conclusion and agreed with the Commission's view that a general subsidy to enable the press to carry out such measures would be inappropriate. The final report of the Royal Commission is expected in the middle of 1977.

4. CIVIL SERVANTS' POLITICAL ACTIVITIES

The Prime Minister announced in May 1976 the setting up of a committee to review the rules governing the active participation of civil servants in national and local political activities.

5. PARLIAMENTARY BROADCASTING

After an experimental period of sound broadcasting of proceedings in the House of Commons in the summer of 1975, both the House of Commons and the House of Lords voted in March 1976 in favour of permanent sound broadcasting of their proceedings.

6. OBSCENITY, INDECENCY AND CENSORSHIP LAWS

The Government announced in December 1976 that it was to appoint a committee to undertake a fundamental review of the obscenity, indecency and censorship laws.

J. Right to take part in government

(article 21 of the Universal Declaration)

1. DEVOLUTION

The Government's proposals for devolution to Scotland and Wales are of major constitutional significance. The objective is to give the people of Scotland and Wales greater democratic control over the decisions which most directly affect them, within the framework of the continuing unity of the United Kingdom. The Scotland and Wales Bill, which provided for the establishment of directly elected assemblies in both countries, received its second reading in the House of Commons in December 1976.

2. GOVERNMENTAL ARRANGEMENTS IN ENGLAND

In December 1976 the Government issued a consultative document entitled *Devolution: the English Dimension*, which discussed the main implications for England of devolution to Scotland and Wales, and set out the broad issues which the public should consider in deciding whether there was a need for change in the structure of government in England and, if so, what form it might take. Although the Government's view is that it would not be desirable to establish either an English Assembly or regional assemblies with legislative powers, the document canvassed a number of possibilities ranging from the creation of elected regional assemblies with executive powers to the examination of the scope for improvements in local government arrangements within the broad framework established in 1974. The Government has invited interested bodies and the general public to express their views.

3. NORTHERN IRELAND: STEPS TOWARDS FUTURE GOVERNMENT

Direct rule of Northern Ireland by the United Kingdom Parliament at Westminster continued throughout the period under review. On 1 May 1975 a Constitutional Convention was elected by proportional representation to consider what provision for the government of Northern Ireland was likely to command the most widespread acceptance throughout the community there. The "Loyalist" United Ulster Unionist Council (UUUC—a coalition of the Ulster Unionist Party, the Democratic Unionist Party and the Vanguard Unionist Party) won 46 of the 78 seats, the rest being divided as follows: Unionist Party of Northern Ireland, 5; Independent Unionist, 1; Social Democratic and Labour Party (SDLP), 17; Alliance Party, 8; and Northern Ireland Labour Party, 1. The Constitutional Convention began its work on 7 May 1975. When it adjourned in July for the summer recess there were basic differences of opinion—particularly between the UUUC and the mainly Roman Catholic SDLP. Informal interparty talks were held during the recess in an attempt to bridge the gap but were unsuccessful. When the Convention was dissolved in November (under the terms of the Northern Ireland Act 1974 it was to be dissolved when its report was presented or six months after its first meeting, whichever was earlier) after a majority of 42 to 31 had voted that the recommendations of the UUUC should be presented to the Secretary of State for Northern Ireland as the Convention's final report, differences—particularly on the fundamental issue of workable arrangements for executive government—remained unsolved. The report explained the Convention's inability to agree on fundamentals deriving from the divergence of views between the UUUC, which remained convinced that maximum stability would be obtained with a prime minister and executive chosen on conventional party lines, and the SDLP and other groups, which favoured a "power sharing" or "coalition" system. On the other hand, wide areas of agreement were noted, for example, on such matters as: the re-establishment of a devolved administration within the United Kingdom; the provision for greater participation by the minority; and the introduction of a Bill of Rights.

On 12 January 1976 Parliament debated the Convention report, accepting in principle a number of uncontroversial points. The Government took the view that the over-all arrangements for government proposed did not command sufficiently widespread acceptance throughout the community for a system based solely upon them to provide stable and effective government. The Convention was reconvened on 14 January 1976 to consider three specific matters put to it by the Secretary of State: the question of finding, on the basis of the agreement that had already been reached, a system of government which would command the most widespread acceptance throughout the community in Northern Ireland; the question whether a committee system had a place as part of a wider constitutional framework; and the question whether progress towards permanent and agreed constitutional arrangements could best be made on an evolutionary basis. The Convention met again on 3 February but was dissolved a month later as there was no prospect of agreement between the parties and no further progress could be made.

The aim of the Government continues to be to restore devolved government in Northern Ireland in a form which is stable and durable and which will command the support

of the vast majority of the population. In the meantime, talks have taken place between political parties in Northern Ireland, but no substantial progress towards agreement has yet been made. Like citizens in other parts of the United Kingdom, the people of Northern Ireland are able to pursue matters through their elected representatives in the United Kingdom Parliament at Westminster.

4. REFERENDUM ON EUROPEAN COMMUNITY MEMBERSHIP

A national referendum held on 5 June 1975 enabled the British people to express their opinion as to whether the country should continue to be a member of the European Community or should withdraw. By a majority of over two to one voters accepted the Government's recommendation that the country should remain in the Community.

5. DIRECT ELECTIONS TO THE EUROPEAN ASSEMBLY

The British Government expressed its commitment to introduce during the 1976/77 parliamentary session legislation to enable direct elections to the European Assembly to be held in Britain. Together with the other eight members of the European Community, the Government has undertaken to use its best endeavours to be ready for the first such elections in May/June 1978.

K. Right to social security; right to an adequate standard of living; right of children to special care and assistance (articles 22 and 25 of the Universal Declaration)

1. PENSIONS AND BENEFITS

New pension scheme

The Social Security Pensions Act 1975 makes provision for a new State pension scheme to be implemented from April 1978. The scheme will replace the present flat-rate contributory benefits for retirement, invalidity and widowhood by earnings-related benefits which will mature fully after 20 years of earnings-related contributions. Pension rights will be protected against inflation by revaluing past earnings in line with the growth of earnings generally. The scheme is designed to help the lowest-paid workers, who will receive a far greater percentage of their earnings than the higher-paid. Women earners will have equality of treatment with men. There is also provision for pensions to be based on the best 20 years of earnings, so benefitting people who reach peak earnings while young or have periods of unemployment, ill health or disablement. Basic pension rights will be safeguarded for mothers who are away from work bringing up children and for people who give up their jobs to care for sick relatives provided that they have paid contributions for at least 20 years at some time during their working lives.

Occupational pension schemes

The Social Security Pensions Act says that from April 1978 occupational pension schemes run by employers on behalf of their employees will have to be open to men and women workers on terms which are the same in respect of the age and length of service needed for admission and in respect of whether membership is voluntary or obligatory.

Supplementary benefit

A small team of officials began in the autumn of 1976 a review of the working of the supplementary benefits. (The purpose of supplementary benefit is to assist all people over the age of 16 who are not in work and whose financial resources are insufficient to meet personal requirements.)

Child benefit

Under the Child Benefit Act 1975 changes are being made in the system of government financial support for families with children. Family allowances (paid for all children other

than the first) are being replaced by child benefit payable for all children in a family, and child tax allowances are being phased out, their value being transferred to child benefit payable to the mother. Implementation of the scheme is taking several years.

Benefits for disabled people

Additional non-contributory benefits have been introduced for disabled people. In November 1975 a tax-free invalidity pension became payable to disabled people of working age unable to work and unable to qualify for a contributory national insurance invalidity pension; a similar allowance is to be paid to disabled housewives in November 1977. A taxable invalid care allowance became payable in July 1976 to people unable to work because they are caring for a severely disabled relative receiving an attendance allowance. Another benefit for disabled people is the mobility allowance for severely disabled adults under pensionable age (60 for women and 65 for men) and children aged 5 years or more; by November 1976 the total age range covered was 11 to 50 and extensions to the remaining age groups will be made at intervals. The allowance is payable to people unable to walk because of physical disablement.

2. HEALTH SERVICES

Royal Commission on the National Health Service

A Royal Commission on the National Health Service was appointed in 1975-1976 "to consider in the interests both of the patients and of those who work in the National Health Service the best use and management of the financial and manpower resources of the National Health Service".

Services for the mentally ill

Long-term plans for the comprehensive care of mentally ill people in England were outlined in a government White Paper published in the autumn of 1975. The aim of the Government's proposals is to replace the present system of care based on large mental hospitals with a more flexible system better suited to individual needs. This would take the form of locally-based services with a greater emphasis on day-hospital and out-patient treatment, on local authority day and residential services and on teamwork between all services.

3. HOUSING

Policy

Over the past two years the British Government's housing policy has become increasingly concerned with making the best use of the existing stock of houses, with renovation and new building taking priority over clearance, and with providing accommodation for smaller households to match the changing demographic and social pattern.

House improvement grants were first introduced in 1949. Since then some 3.6 million houses in Great Britain have been renovated with their aid: during 1976 grants were approved for more than 168,000.

Following the Housing Act 1974 a new system of house renovation grants was introduced to help private owners in areas of housing stress. The Act empowered local authorities to declare "housing action areas", in which preferential rates of renovation grant would be payable to enable owners to improve their houses to a given standard and to carry out works of conversion and modernization.

In 1976 the Government introduced for England and Wales a revision to the housing cost control system to encourage housing authorities and housing associations to provide accommodation for single working people and announced that schemes for providing accommodation, particularly in areas of stress and pressure, which in practice would be mainly occupied by students, would be eligible for subsidy.

People with lower incomes are being helped to become owner-occupiers or to have a share in the ownership or management of their homes in a number of ways. For example,

a scheme has been introduced which allows those buying homes for the first time to defer, subject to certain conditions, part of their mortgage payments in the first five years to the eleventh and subsequent years; while under a number of equity-sharing schemes run by local authorities a mortgage is granted for only a proportion (usually half) of the value of a house in the first instance, and rent is paid in respect of the remainder. In 1976 the Government accepted the recommendations of a working party which advocated the encouragement of alternative forms of housing tenure on estates run by local authorities or voluntary housing associations, so as to give occupiers a greater stake in the ownership or management of their homes.

The Housing Corporation is engaged in a pilot programme including co-ownership and community leasehold schemes. The Corporation has set up a specialist unit, known as the Co-operative Housing Agency, to advise, assist and finance housing co-operatives (schemes of collective ownership or management).

Agricultural tied cottage system

The Rent (Agriculture) Act 1976 ended the agricultural tied cottage system in England and Wales, and gave security of tenure for the first time to certain agricultural workers, ex-workers and their successors living in houses provided by the farmers who employ them. Once a worker's contractual right to occupy a farm cottage ends (normally when his employment ends), he is no longer required to leave the cottage. He and one successor may continue to live and pay a fair rent to his former employer. The Act also places a duty on local housing authorities to rehouse such occupiers on the application of the farmer if it can be shown that the accommodation is needed for an incoming worker, in the interests of efficient agriculture, and the farmer himself cannot provide alternative accommodation.

Homelessness

In the past no British legislation has specifically related to homelessness, although under the National Assistance Act 1948 local social services authorities are responsible for providing temporary accommodation in certain circumstances. In 1974, a government circular to local authorities invited them to make a fresh approach to their policies for the homeless and, in particular, asked housing authorities increasingly to undertake the prime responsibility for securing accommodation. Many authorities responded to this request and the most recent statistics indicate that in the year to June 1976 they accepted responsibility for helping some 30,000 homeless households. Nevertheless it was felt that the statutory position was unsatisfactory; and, following a review, the Government announced in December 1975 that it had decided to introduce legislation to place the responsibility for accommodation for homeless people on local housing authorities. In December 1976 the Housing (Homeless Persons) Bill was introduced in the House of Commons by a private Member with support from the Government. The bill seeks to clarify the functions of local authorities with respect to people who are homeless or are threatened with homelessness and to provide assistance from public funds to be made available to voluntary organizations concerned with homelessness. It reflects the concern of the Government that homelessness should be recognized as primarily a housing problem, but that supporting social and welfare services should nevertheless continue to be provided by other appropriate departments of local authorities.

The bill recognizes that among the homeless there are some groups whose housing needs are particularly urgent, and it provides powers for the Secretary of State for the Environment to prescribe circumstances in which homeless people are to be regarded as having a priority for accommodation. For these groups local housing authorities would be required to ensure that accommodation was or would continue to be available. For other groups they would be required to provide advice and assistance. It is proposed that these groups should include families with children, the elderly, the disabled and pregnant women.

It is recognized that homelessness is not a subject which can be dealt with neatly in legislation; the bill therefore contains a power for the Secretary of State to issue authoritative guidance to local authorities on implementing their duties under the bill. Such guidance will

draw heavily on the experience of authorities in helping the homeless, and it should help to achieve a uniform minimum standard of help for the homeless throughout the country.

4. URBAN REGENERATION

The British Government has become increasingly concerned with the crucial problems developing in the inner areas of large cities, where a decline in the economic and industrial base, loss of jobs and migration of skilled workers and young people have combined to produce conditions of economic blight and social deprivation among the populations still living there. This is seen as partly the result of conscious planning policy—such as the development of new and expanded towns—but mainly of unforeseen factors, including a voluntary movement, greater than had been expected, away from cities and a slower rate of population increase than had been forecast.

An urban aid programme was launched with the help of government funds as long ago as 1968, and since then many projects have been carried out by local authorities covering a wide range of social, educational and community activities, including renovation of substandard housing, play facilities for children of families with low incomes, literacy schemes, youth centres, help for the elderly and the handicapped and special aid for areas with large immigrant communities.

In 1976 a new phase began when the Government gave special responsibility for urban affairs to the Secretary of State for the Environment and set up a ministerial committee under his chairmanship with the task of working out a strategy for inner city regeneration. As a result of their deliberations, there is to be an expansion and redirection of the urban aid programme, linked to an increase in funds. The programme is to be extended to include economic and environmental projects, as well as social projects as at present, and will concentrate particularly on encouraging small industries and employment opportunities in inner city areas. Initially central Government will give priority to the large-scale problems of deprived areas in the major conurbations in co-operation with the local authorities concerned, but it is hoped to extend the programme to give more help to other cities with urban problems in later years.

5. SPORT AND RECREATION

A government White Paper of August 1975 dealt with policies for sport and outdoor recreation and the arrangements for their implementation in England, Wales and Northern Ireland. A central theme was that recreation should be regarded as one of the community's everyday needs and provision of it as part of the general fabric of the social services.

6. ADOPTION AND CHILDREN IN CARE

The Children Act 1975 revises the law on adoption and makes new provision for children in the care of local government authorities or voluntary organizations. The Act, which is being implemented in stages, separately in England and Wales and Scotland, places a duty on local authorities, voluntary organizations and courts to give first consideration to the child's welfare when taking any decision about adoption or care.

Some of the Act's provisions concerning adoption were implemented in 1976. A court can now permit adoption without parental agreement if the child has been seriously ill-treated by its parents or guardian and it is unlikely that the child will be able to live satisfactorily with the parent or guardian who has ill-treated him or her. Other provisions restrict the removal of a child pending adoption; people who have looked after a child for five years or more will be able to start adoption proceedings in the knowledge that the child cannot be removed from them before the court hearing without the leave of the court. This applies whether or not the parents agree to adoption. Adopted people over the age of 18 (17 in Scotland) have a right of access to their birth records; there is a counselling scheme to help an adopted person with the inquiry and to discuss its implications.

The Act amends legislation concerning care proceedings by setting out an additional ground for bringing proceedings where a child is at risk from a person who has been

convicted of an offence against another child. As with the other grounds, a juvenile court can commit children to the care of a local authority if it is satisfied that they are in need of care or control which they are unlikely to receive without a court order.

Other provisions in force relate to increased protection of children received into care without juvenile court (or, in Scotland, children's hearings) proceedings (that is, if they are abandoned by their parent or guardian or if the parent or guardian is unable to look after them). Parents can be required to give 28 days' notice of their intention to remove a child from care if the child has been there for six months or more. This protects the child against an abrupt move and gives everyone time to prepare for the child's return home. A local authority can, subject to the welfare principle referred to above, assume parental rights and duties if a child has been continuously in its care for more than three years; there is a new parental right of appeal to a court against such a decision.

Another section of the Act implemented in 1976 provides for separate representation for the child in court proceedings in England and Wales where a child or young person is the subject of unopposed proceedings for the variation or discharge of care or supervision orders.

Other major provisions of the Act—the statutory local authority adoption service, the new procedure for freeing a child for adoption, and more extensive representation for children in care and related proceedings—will be implemented when the economic situation improves:

L. Right to work; right to equal pay for equal work; trade union rights (*article 23 of the Universal Declaration*)

1. TRADE UNIONS AND LABOUR RELATIONS

The Trade Union and Labour Relations Act 1974 gives employees protection against unfair dismissal by providing machinery under which an employee may lodge a complaint of unfair dismissal against an employer and if successful obtain reinstatement, re-engagement or compensation, and gives legal support to the right to trade union membership by making it unfair to dismiss a person because of his membership or participation in the activities of an independent trade union. Amendments to the provisions regarding the remedies and the calculation of compensation were made by the Employment Protection Act 1975 and introduced on 1 June 1976.

2. EMPLOYMENT PROTECTION

The Employment Protection Act 1975 extends the rights of employees in a number of respects and strengthens collective bargaining between unions and employers. In addition to improving existing rights, it provides for:

(a) Payment to employees by employers at guaranteed rates if they are not provided with work (or suitable alternative work) during their normal working day—for example, during periods of short-time working or temporary “lay-offs”—that is, enforced absence from work when there is none available (these provisions were to come into effect in February 1977);

(b) Payment at normal rates to employees who are suspended on medical grounds in accordance with a statutory requirement or code of practice—up to a maximum of 26 weeks' suspension;

(c) Paid maternity leave for the first six weeks of maternity absence (this provision was to come into force in April 1977), protection against dismissal for reasons connected with pregnancy, and a right to reinstatement for up to 29 weeks following confinement (these provisions were to come into force in June 1977);

(d) The right of employees not to have action short of dismissal taken against them by their employer on grounds of their trade union membership or activities;

(e) The duty of employers to allow reasonable time off for independent trade union officials to carry out their official duties or to undergo training, for members of independent trade unions to take part in their union activities, and for employees who are made redundant for the purpose of looking for a new job or making arrangements for training. In the case of time off for trade union officials and for redundant employees, the employer is required to pay the employee. The Act also provides that most employees shall be entitled to receive, upon request, a written statement of the reasons for dismissal. Further provisions give employees the right to receive an itemized pay statement detailing gross pay, net pay and deductions;

(f) Special provisions to enable employees, when an employer becomes insolvent, to obtain payment of money owed to them.

(g) The duty of employers to consult the relevant recognized independent trade unions about all proposed redundancies and to provide the unions with all relevant information. Employers are also required to notify the Secretary of State for Employment in advance of larger redundancies so that arrangements may be made for alternative employment and further training and so that the Government may consider any additional measures needed to avoid or minimize the effects of the redundancies.

A new appellate body, the Employment Appeal Tribunal, has been established to hear appeals on points of law from industrial tribunals and other appeals relating to trade unions. Hearings are held before a High Court judge sitting with two lay members.

3. INDUSTRIAL DEMOCRACY

In December 1975 the Government set up an independent committee of inquiry to advise it on questions relating to representation at Board level in the private sector.¹ Its terms of reference were as follows:

“Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on Boards of Directors, and accepting the essential role of trade union organizations in this process, to consider how such an extension can best be achieved, taking into account in particular the proposals of the Trades Union Congress report on industrial democracy as well as experience in Britain, the EEC and other countries. Having regard to the interests of the national economy, employees, investors and consumers, to analyse the implications of such representation for the efficient management of companies and for company law.”

A parallel series of studies has also been undertaken into the scope for extending industrial democracy in the nationalized industries and the public services, including both central and local government.

These studies will take into account the accepted principles of a democratic system of government, whereby elected representatives take decisions and act in the interests of the community as whole.

4. EQUAL PAY FOR MEN AND WOMEN

The Equal Pay Act 1970 came fully into effect on 29 December 1975. Under the Equal Pay Act (Northern Ireland) 1970, similar provisions apply to Northern Ireland.

The Act provides for equal treatment in regard to pay and other terms of their contracts of employment for men and women who do the same or broadly similar work, or who do different jobs which are recognized by job evaluation as equivalent within the same establishment or in establishments operated by the same or related employers and covered by the same terms and conditions of employment. Where terms of contracts of employment are laid down in a collective agreement, statutory wage order or employer's pay structure, any provision applying specifically to men only or to women only must be eliminated.

¹ The committee's report was published in 1977.

Special treatment given to women in connexion with childbirth, and any terms and conditions relating to retirement, marriage or death are excluded from the requirement of equal treatment.

5. MEASURES TO ALLEVIATE UNEMPLOYMENT

Since August 1975 the Government has introduced a series of measures to check the rise in unemployment, to help keep people in jobs and at the same time to safeguard and expand Britain's industrial potential so as to provide the base for more jobs in the medium term.

The measures include: a temporary employment subsidy to encourage firms to defer impending redundancies which would otherwise have taken place; a job creation programme providing short-term, worth-while work for people who would otherwise be unemployed, especially the young; a recruitment subsidy, now replaced by the Youth Employment Subsidy, which helps long-term unemployed young people; expansion of direct training services and support for training in industry; a work experience programme designed to give unemployed young people a realistic introduction to the requirements, disciplines and satisfactions of working life; a "job release" scheme to encourage older workers in the Assisted Areas who are within a year of statutory pensionable age to leave work early and thus release jobs for younger unemployed people; expansion of the "Community Industry" scheme to help young people who have had particular difficulty in settling into stable jobs; and additional funds to encourage the movement of unemployed workers to areas where jobs are available. Between April 1975 and October 1976 the Government thus made available over £500 million to create or keep open 500,000 jobs or training places.

6. NORTHERN IRELAND: EQUAL OPPORTUNITY IN EMPLOYMENT

The Fair Employment (Northern Ireland) Act 1976, which came into force on 1 December 1976, deals with the promotion of equality of opportunity in employment and occupations between people of different religious beliefs, and makes it unlawful for an employer to discriminate against a person on the grounds of religious belief or political opinion. It gives priority to the voluntary approach to the promotion of equality of opportunity, and to conciliation in securing such equality.

The Act establishes an independent body, known as the Fair Employment Agency for Northern Ireland, whose functions are to promote equality of opportunity, to secure action to ensure it, and to achieve remedies for unlawful discrimination. The Agency also has an extensive educational function. The Act creates a Fair Employment Appeals Board to deal with appeals against the Agency's directions for securing equality of opportunity following an investigation into employment practices. The Act extends to both the public and private sectors of employment.

M. Right to education

(article 26 of the Universal Declaration)

1. EDUCATIONAL DISADVANTAGE AND THE NEEDS OF IMMIGRANTS

An Educational Disadvantage Unit within the Department of Education and Science acts as a focal point for the consideration of educational disadvantage and the education of immigrants. The unit is responsible for influencing the allocation of educational resources to those areas in greater need, and for promoting good practice by the education service with regard to the needs of the disadvantaged and of ethnic minorities.

In 1975 the Centre for Information and Advice on Educational Disadvantage began to operate, and in 1976 it was legally established as an independent body, financed by the Department of Education and Science, to act as a resource centre for information on good practice in this area.

2. ADULT LITERACY PROGRAMME

It is estimated that at the end of 1976 about 120,000 adult illiterates in Great Britain were being taught to read and write, compared with fewer than 10,000 at the beginning of 1975. This increase is the result of a collaborative effort, involving the Government, under which the Adult Literacy Resource Agency was set up to act as a national focus to assist the development of provision for adult illiterates, and to disburse some £3 million of government funds in the years 1975-1978. The British Broadcasting Corporation, which broadcasts special weekly television programmes, provides publicity and some tuition, and the local authorities of certain voluntary bodies provide the necessary tuition, drawing both on specially appointed professional teachers and on some 45,000 volunteer tutors.

3. SCOTLAND: EDUCATION OF MENTALLY HANDICAPPED CHILDREN

The Education (Mentally Handicapped Children) (Scotland) Act 1974 came into operation in May 1975. The effect of this legislation was to end the designation of severely mentally handicapped children as unsuitable for education and training. Local authorities, as education authorities, then became responsible for providing adequate and efficient education for mentally handicapped children of school age. The children mainly affected by the change were those in mental and mental deficiency hospitals or attending day-care centres provided by social work authorities or voluntary bodies. Underlying this legislative provision was the increasing appreciation of the fact that even the most severely mentally handicapped children can benefit socially and educationally from expert professional attention.

N. Right to participate freely in cultural life

(article 27 of the Universal Declaration)

1. COMMUNITY ARTS COMMITTEE

In order to make the arts more widely accessible, a Community Arts Committee was set up in 1975 for a two-year trial period by the Arts Council of Great Britain. The emphasis of the Committee's work has been on the support of artists helping local communities to achieve their own forms of cultural and artistic expression. There have been two main areas of support: the first to touring groups, working in a variety of arts media, whose visits encourage local schemes and stimulate initiative; the second to locally-based projects and to individuals working on a long-term basis with particular communities.

2. WELSH TELEVISION CHANNEL

The Government announced in February 1976 that it remained committed in principle to the introduction of a Welsh language service on the fourth television channel in Wales. However, having carefully considered the costs that would be involved, it had decided that implementation could not for the time being go ahead in view of the economic circumstances.

O. International instruments

(article 28 of the Universal Declaration)

The International Covenants on Human Rights entered into force for the United Kingdom on 20 August 1976, having been ratified on 20 May 1976. A number of reservations were made, and a derogation under article 4 of the International Covenant on Civil and Political Rights.

The Government announced in December 1975 that it had decided to renew, for a five-year period from 14 January 1976, the United Kingdom's acceptance of the right of individuals to petition the European Commission of Human Rights and of the jurisdiction of the European Court of Human Rights. This is a longer period than that of previous renewals.

As signatories to the Final Act of the Conference on Security and Co-operation in Europe, held at Helsinki in 1975, the United Kingdom and the other participating States expressed their intention to expand and improve at the various levels co-operation and links in the field of education and science, by such means as broadening co-operation and exchanges in the field of science and promoting the exchange of experience, on a bilateral and multilateral basis, in teaching methods at all levels of education. They also set themselves the objectives, among others, of developing the exchange of information concerning cultural achievements and of developing contacts and co-operation among persons active in the field of culture.

P. Prevention of terrorism; protection of rights and freedoms
(*article 30 of the Universal Declaration*)

1. PREVENTION OF TERRORISM

The Prevention of Terrorism (Temporary Provisions) Act 1976 was passed in March 1976 to replace and make minor amendments to the 1974 Act of the same name. The earlier Act was passed following the extension of the Provisional Irish Republican Army campaign of terrorist violence to Great Britain and, besides making the IRA illegal in Great Britain, empowered the Secretary of State to make exclusion orders against people who he was satisfied were concerned in terrorism. The Act also gave the police powers to arrest people whom they reasonably suspected of being involved in terrorism and to hold them for 48 hours, and, with the approval of the Home Secretary or the Secretary of State for Scotland, for up to a further five days. Speaking in the debate on the new legislation in the House of Commons the Secretary of State said that he recognized the "infringement of liberty" which resulted from the exercise of these powers but that the benefits had to be set against the costs. The information available to him suggested that without the Act people who had been convicted of major terrorist offences would not have been convicted; people who had been excluded from Great Britain would be engaged in terrorism there; and some people, now alive, would be dead. Among the changes introduced by the 1976 Act was the provision that the time in which a person could make representations against an exclusion order would be increased from 48 to 96 hours; and the Act remains in force for 12 months before it expires if not renewed, instead of six months as in the case of the previous Act.

The Criminal Jurisdiction Act 1975, which empowers courts in Northern Ireland to try persons accused of committing terrorist offences in the Irish Republic, was brought fully into operation on 1 June 1976 when reciprocal legislation in the Irish Republic came into force.

2. NORTHERN IRELAND: SPECIAL CATEGORY PRISONERS

"Special category" status for convicted terrorists in Northern Ireland was abolished for crimes committed after 1 March 1976. Announcing this in the House of Commons, the Secretary of State for Northern Ireland said that "those who murder, and those who shoot, bomb and commit other crimes are criminals and will not get special treatment in future". Special category status, which conferred special privileges, was introduced in June 1972 for convicted criminals who were sentenced to more than nine months' imprisonment for offences connected with the civil disturbances and who claimed political motivation. Its abolition was one of the recommendations of the Gardiner Committee (see sect. D above).

UNITED STATES OF AMERICA

Introduction

The Government of the United States of America is one of laws of which the Constitution and its amendments are the fundamental guidelines. The first ten amendments, known as the Bill of Rights, limit the power which the government may wield over the individual, preserving his freedom and integrity, and assuring enjoyment of his basic rights. President Ford, proclaiming the Bicentennial Human Rights Day and Week in December of 1976, declared "We have given renewed thought and study to those principles of liberty and justice that underlie our national experience. Re-examined in light of the past two centuries, the great instruments of our freedom—the Declaration of Independence, the Constitution and Bill of Rights—clearly retain their vitality and relevance to today's problems". He emphasized that "the principles contained in these fundamental statements of human purpose have immediate application, both domestically in our dealings with one another and internationally in our pursuit of friendly relations with all countries".

Legislative, executive and judicial authorities at the federal, state and local levels act to assure the enjoyment of basic human rights and protect the individual citizens against abrogations. During the years 1975 and 1976, significant progress was made at all jurisdictional levels in achieving gains in the enjoyment of human rights. Representative examples of developments on the federal level are summarized below.

General legislation

In 1975 Congress enacted the International Development and Food Assistance Act which affirmed, as an important expression of the humanitarian concern of the American people, the willingness of the United States to provide assistance for the relief and rehabilitation of peoples and countries affected by natural and man-made disasters. The Act amended the Foreign Assistance Act of 1961 by prohibiting the extension of development assistance "to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights ... unless such assistance will directly benefit the needy people in such country". The Act states that although "United States support for human rights must be unequivocally expressed ... [it is the sense of the Congress] that aid to needy people should not be conditioned on their having political freedom". The International Security Assistance and Arms Export Control Act followed in 1976, directing the President "to formulate the conduct of international security assistance programs of the United States in a manner which will promote and advance human rights", such as avoiding identification of the United States with governments which deny to their people internationally recognized human rights and fundamental freedoms and prohibiting assistance to countries which engage in a consistent pattern of gross violations of internationally recognized human rights. The Act further states that the Secretary of State shall be assisted in carrying out the requirements levied on him in the Act by the Coordinator for Human Rights and Humanitarian Affairs within the Department of State who continually observes and reviews all matters pertaining to human rights in the realm of foreign policy. In addition, Congress, in providing for United States participation in the African Development Fund and increasing United States involvement in the Inter-American Bank, in May 1976 directed the United States Executive Directors to vote against any loan, any extension of financial assistance or technical assistance to any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial of the right to life, liberty and the security of person, unless such assistance will directly benefit the needy people in such country.

Civil rights action

The enforcement of civil rights legislation in the fields of employment, education and housing continued to be a focal point of governmental efforts to protect and promote the human rights of all persons living in the United States. The primary responsibility for enforcement efforts continues to lie with the Civil Rights Division of the Department of Justice.

As of 1976 this Division had more than 175 attorneys pursuing enforcement matters. During fiscal years 1975 and 1976 the Division handled over 22,000 complaints and became involved in 386 lawsuits alleging criminal interference with the civil rights of individuals. The conviction rate increased from 36 per cent in 1974 to 49 per cent in 1975. New litigation was developed in the school desegregation area and continuing efforts were made to develop desegregation plans or take other steps in additional cases. In the area of housing, the Division handled 62 cases of pattern and practice discrimination, which encompasses racially discriminatory rental practices by owners and operators of apartment buildings, trailer parks and referral services and refusal to make dwellings available to persons on account of race on the part of real estate brokers and development companies. Increased attention was given to the problem of sex discrimination, with particular reference to employment rights and benefits.

Judicial decisions

During this period, the United States Supreme Court handed down opinions in a wide variety of cases dealing with human rights and fundamental individual freedoms, as protected in the American constitutional system. Some of the leading cases by which the Supreme Court continued its work of delineating and protecting the rights of citizens in the light of constitutional guidelines are reviewed briefly in the following sections.

A. Right to protection against discrimination (articles 2 and 7 of the Universal Declaration)

1. LEGISLATION

In order to prohibit "unreasonable discrimination on the basis of age in programs or activities receiving federal financial assistance", Congress amended the Older Americans Act of 1965 through its approval of the Age Discrimination Act of 1975. The amendment directs the Commission on Civil Rights to determine whether age-based discrimination exists in federally-assisted programmes. Should evidence of discrimination be found, the Commission must determine the causes and extent and identify the programme involved. Following the publication of final regulations, cases involving unreasonable discrimination shall be prosecuted by the Attorney General.

In addition, Congress, reacting to the often-cited instances of discrimination against the elderly in credit transactions, amended the Equal Credit Opportunity Act of 1974 to prevent discrimination by creditors on the basis of age as well as race, colour, religion, national origin, sex and marital status. These amendments establish for the first time in federal regulations the right of rejected credit applicants to obtain a statement of reasons for the action taken against them.

2. JUDICIAL DECISIONS

The Supreme Court dealt with many cases involving discrimination on the basis of nationality, sex, political affiliation and race. In *Hampton v. Mow Sun Wong* (426 US 88) the Court overturned the Civil Service Commission's rule excluding aliens from most Federal employment, identifying the provision as discriminatory and a denial of the due process rights of aliens. The Court also invalidated a Utah statute mandating different ages of majority for male and female in *Stanton v. Stanton* (421 US 7). Considering a situation where four members of a county sheriff's department were dismissed following an election due to their political affiliation, the Court declared the dismissal of non-policy-making and non-confidential state and local government employees due to their partisan-political affil-

iation or non-affiliation to be inherently unconstitutional and ordered appropriate reinstatement (*Elrod v. Burns*, 427 US 347).

A large number of recent cases have continued to affirm the constitutional prohibitions on racial discrimination in the United States. In *Hills v. Gautreaux* (425 US 284) the Supreme Court unanimously endorsed a District Court decision requiring that government agencies (in this case the Chicago Housing Authority and United States Department of Housing and Urban Development) remedy their past discriminatory selection of public housing sites in predominantly low-income black sections by consciously locating future projects in predominantly white neighbourhoods, even to the point of entering the all-white suburbs outside Chicago's city limits. In addition to housing, the Court also spoke on the subject of racial discrimination in education. Although the case of *Pasadena City Board of Education v. Spangler et al.* (427 US 424) cast no doubt on the propriety of race-conscious desegregation orders, a concept which the Court has explicitly endorsed in other decisions, the Court here ruled that a school board, having complied with a court desegregation order, did not have to change its desegregation scheme annually to reflect demographic changes in the population.

The four cases of *Albemarle Paper Co. v. Moody* (422 US 405), *Franks v. Bowman Transportation Co.* (424 US 747), *McDonald v. Santa Fe Train Transportation Co.* (427 US 273), and *Washington v. Davis* (426 US 299) each concerned allegations of racial discrimination in the area of employment. The 1866 and 1964 Civil Rights Acts were held to protect white as well as black employees against racially discriminatory disciplinary discharges. In *Franks*, an applicant, discriminatorily denied a job, was found to be entitled to reinstatement with full seniority retroactive to the date his original application was rejected. In addition, the Court held that job aptitude tests with discriminatory impact must be validated by "demonstrable relationship" to job performance or be altered to do so.

B. Right to life

(article 3 of the Universal Declaration)

Clarifying the 1972 *Furman v. Georgia* (408 US 238) decision, which ambiguously restricted the states' utilization of the death sentence, the Supreme Court in the 1976 cases of *Gregg v. Georgia* (428 US 153), *Proffitt v. Florida* (428 US 242), *Jurek v. Texas* (428 US 262), *Woodson v. North Carolina* (428 US 280) and *Roberts v. Louisiana* (428 US 325) began to define the conditions under which a law imposing the penalty of death for the crime of murder will be found constitutional. In the first three cases mentioned above, the Court upheld state statutes guiding the exercise of discretion by the judge or jury imposing the death penalty. In the latter two, it decided that certain mandatory death sentence statutes violated the Eighth Amendment's prohibition against cruel and unusual punishment. The Court took steps to minimize the risk of arbitrary imposition of this sentence by upholding statutes requiring state supreme court review and pre-sentence hearings to take into account any mitigating or aggravating circumstances. At the close of 1976, the Court reinforced these opinions through its termination of Gary Gilmore's stay of execution, which had been granted earlier, after a determination of Gilmore's competence in waiving his constitutional rights in the case of *Gilmore v. Utah* (US A-453 (1976)).

C. Rights of prisoners

(article 5 of the Universal Declaration)

In *Estelle v. Gamble* (429 US 97) the Supreme Court decided that deliberate indifference of prison officials to serious medical needs of prisoners constituted cruel and unusual punishment proscribed by the Eighth Amendment. The Court limited its definition by stating that mere claims of malpractice by the prisoner against medical personnel who saw and treated him frequently were not so cognizable. In the area of mental illness, the Court decided in *O'Connor v. Donaldson* (422 US 563) that confinement without treatment of a non-dangerous mentally ill patient, "capable of surviving safely in freedom by himself or with the help ... of family members or friends", violated the patient's due process rights.

D. Right to privacy

(*article 12 of the Universal Declaration*)

In this two-year period, Congress enacted several major pieces of legislation protecting consumers and their rights of privacy. In the State Taxation of Depositories Act of 1976, Congress assured the consumers protection from disclosure of information in connexion with their credit transactions. Amending the Truth in Lending Act, Congress approved the Consumer Leasing Act of 1976 with the triple purpose of "protecting consumers against inadequate and misleading leasing information, assuring meaningful disclosure of lease terms, and limiting ultimate liability in connexion with leasing of personal property".

On 1 January 1975 the President signed the Privacy Act of 1974 into law, hailing the statute as an initial advance in protecting the right of individual privacy. This measure creates the Privacy Protection Study Commission, an independent group with a mandate to monitor the operation of the law and investigate additional privacy rules which are now needed. In addition, this Act delineates the utilization of and access to files on individuals in the possession of the Federal Government. The Act went into effect in September 1975.

E. Freedom of speech and the press; right to information concerning governmental operations

(*articles 19 and 21 of the Universal Declaration*)

The Supreme Court sharply restricted the power of trial judges to limit press coverage of criminal cases in *Nebraska Press Assoc. v. Stuart* (427 US 539). The majority felt that "overly sweeping prohibitions on extrajudicial statements by lawyers could violate First Amendment values and produce many of the same evils as direct censorship of the press by keeping out of the public domain information and criticism from those who are in the best position to assess the functioning of the criminal justice system and to expose corruption and injustice".

The question of the protection of commercial speech under the First Amendment rose to the Court's attention in 1975 and 1976. In *Bigelow v. Virginia* (421 US 809) the Court held that commercial speech could not be outlawed by state or local governments if the public interest of the commercial communications outweighed the state's need to regulate and the underlying activity advertised was legal. The answer expanded in 1976 with the ruling in *Virginia State Board of Pharmacy v. Virginia Citizens' Consumer Council, Inc.* (425 US 748) stating that even an advertisement which does "no more than propose a commercial transaction" is entitled to some protection. In this case a Virginia law prohibiting the advertisement of prescription drug prices was overturned, the Court claiming that commercial information was "indispensable to the proper allocation of resources in a free enterprise system".

The Government in the Sunshine Act was signed by the President in September 1976, opening the decision-making processes and business of governmental regulatory and other agencies to the public. This extension of the Freedom of Information Act entitles the public "to the fullest practicable information regarding the decision-making processes of the Federal Government".

F. Right to security and an adequate standard of living

(*articles 22 and 25 of the Universal Declaration*)

The Older Americans Amendments of 1975 placed emphasis upon making services available which will enable older citizens to live at home as long as possible and give high priority in the distribution of federal funds to the needs of low-income older persons. In signing the measure, President Ford gave it a strong endorsement and urged its rapid implementation.

VENEZUELA

Introduction

In the Office of the Government Attorney, the Department of Human Rights is responsible for everything connected with the protection of constitutional rights and guarantees and with due enforcement of the law in criminal proceedings and proceedings concerning public order and behaviour. In this connexion it deals, as appropriate, with representations from private individuals and applications and requests from public bodies and officials; it also handles representations from private individuals concerning matters connected with the administration of military justice and the State security organs.

In addition, the Department is responsible for overseeing the special procedure for the prosecution of public officials for offences committed in the course of their duties or in connexion with their office; in this respect it supervises informations laid by government prosecutors under the special procedure provided for in Book Three, title III, chapter III, of the Code of Criminal Procedure. It also supervises the due enforcement of the Vagrants and Malefactors Act, deals with related applications and does whatever else the Prosecutor-General of the Republic instructs it to do.

Other departments of the Office of the Government Attorney concerned with the protection of human rights are the Department of Family Affairs and Minors, the Department for Supervision of Tribunals and Prosecutorial Agencies, the Department for Supervision of Officials' and Employees' Duties and the Department of Social Protection.

A. Treatment of detained persons

(articles 5 and 25 (2) of the Universal Declaration)

The Department of Human Rights continued to supervise the protection of human rights in prisons and other custodial institutions. Mention should be made in this respect of Circular No. 2 of 3 February 1975 addressed to all government prosecutors, requiring them to take every possible step to ensure that human and constitutional rights are respected in police stations, gaols, detention premises of military commands, work camps, prisons, penitentiaries, custodial establishments for minors and other places of detention and confinement; urging them to take steps to ensure the renewed observance of those rights in cases where they have been impaired or violated; and instructing them on the procedure to be followed in such cases. In addition, in Telegraphic Circular No. 4 of 17 March 1975, government prosecutors were directed to inquire into the legality of disciplinary punishments imposed on unconvicted and convicted prisoners and to investigate transfers of unconvicted prisoners for disciplinary or other reasons to places of detention beyond the jurisdiction of the court concerned.

In 1976 the Department dealt with a total of 1,103 written representations and oral applications, consisting of 622 representations, 119 of which concerned matters connected with military justice or with State security organs, and 481 oral applications, 327 of which concerned cases connected with the administration of military justice or with State security organs. In dealing with these representations and applications, 1,335 communications were addressed to public bodies and private individuals. As an example of the interest shown in ensuring that all applications and matters connected with prisoners' human rights received due attention, mention should be made of the circular addressed to the government prosecutors of the judicial circuit of the Federal District and Miranda State¹ reminding them that the fact that a particular prosecutor is assigned in the calendar to supervise a given police unit does not relieve any other prosecutor of responsibility for entertaining and dealing with

¹ No. DH-1-No. 1-76 of 27 February 1976. See annex A of the report of the Prosecutor-General to Congress for the year 1976.

any complaint-made to him with regard to the alleged violation of the human rights of any prisoner, it being the obligation of every prosecutor in any way cognizant of any punishable act imputed to a public official to determine whether or not the imputation has any substance, with a view to commencing the special proceedings applicable in such cases.

In 1975, government prosecutors made 633 prison visits and 2,601 visits to custodial institutions to interview prisoners and ascertain the treatment they were receiving, the condition and quality of their food, health and sanitary conditions, etc.

Protection of minors

In 1975 the Department of Family Affairs and Minors took action in regard to the question of provisional custody of minors by organizing and conducting inspections of ordinary places of detention in which minors are in custody. In addition, although this is not the exclusive task of the Department, it undertook moves aimed at the building of new institutions for minors; these moves achieved satisfactory results in that the Ministry of Public Works and the National Housing Institute agreed to build two new special institutions for minors. The Department's routine work included dealing with complaints lodged personally with the Department by individuals, as well as representations received by the Department and complaints in the press involving minors.

In 1976 the Department continued to receive and deal with the supervisory schedules of all minors detained in Venezuela; these are communicated by government prosecutors on the basis of their visits of inspection to the various ordinary detention establishments unsuitable for minors. This supervisory activity enables the Department, among other things, to seek appropriate steps to expedite proceedings involving minors in order to ensure that they do not remain in custody in the establishments in question.

B. Administration of justice

(articles 8, 10 and 11 of the Universal Declaration)

In 1975 the Government Attorney saw fit to ask the Supreme Court of Justice to resolve the doubts felt by certain criminal judges of first instance and examining magistrates about their competence to begin *ex officio* investigations against public officials for offences committed in the course of their duties or in connexion with their office, except as provided by law, and their power to call upon junior or other magistrates for records of steps taken to examine informations laid by a government prosecutor or a private individual, with a view to further steps or the institution of committal proceedings in the case in question. In response to the Government Attorney's application the Supreme Court made the following ruling:

"1. Except as provided by law, examining officials have a duty to issue an order for committal proceedings without delay whenever they are in any way cognizant of a punishable act having been committed in their jurisdiction or of the presence in their jurisdiction of a person or persons alleged to have committed a punishable act in another judicial district.

"2. Examining officials shall refrain from making the order in question where the offence has been committed by a public official in the course of his duties or in connexion with his office, unless the information has been laid by a private individual, or by a representative of the Government Attorney under article 374 of the Code of Criminal Procedure, or unless the offence is among those provided for in articles 195 to 199 and 205 of the Penal Code, or the act in question is any other punishable act expressly excluded by law from the present prohibition.

"3. Regardless of their rank, examining officials shall also refrain from intervening in any action undertaken by a representative of the Government Attorney or a private individual who, in accordance with article 800 of the Code of Civil Procedure and in pursuance of article 374 of the Code of Criminal Procedure, requires any organ of judicial administration to entertain and examine an information laid by him with a view to making a charge or accusation against a public official, since such steps are

merely preliminary to proceedings which may or may not be brought subsequently by the person laying the information, who is the only person entitled to request the magistrate in question to take those steps."²

In 1976 the Department of Human Rights continued to supervise the special procedure for the prosecution of public officials for offences committed in the course of their duties or in connexion with their office, with a view to enforcing their criminal liability.

The Department for Supervision of Tribunals and Prosecutorial Agencies is responsible for ensuring the due observance of statutory time-limits and conditions in criminal proceedings; in this connexion, government prosecutors are required to transmit to the Department the monthly check-lists of criminal cases communicated by the courts, with a view to ascertaining whether any irregularities exist in proceedings in progress in the courts concerned. In addition to these check-lists, the Department receives written and oral complaints of alleged irregularities in the handling of proceedings, exceptional occurrences at places of detention, delays in the preparation of prosecutions, etc. All requests by private individuals and public bodies are dealt with and investigated, as regards the steps taken by the Department and government prosecutors, in accordance with the provisions of article 67 of the National Constitution.

In 1975 the Department for Supervision of Officials' and Employees' Duties examined a total of 8,024 written communications containing opinions and petitions formulated by government prosecutors. In addition, the 16,939 judgements received from the various Venezuelan courts were classified for the purposes of comparing the opinions of government prosecutors with those of judicial officers.

C. Marriage and the family

(article 16 of the Universal Declaration)

As regards divorce, the Department of Family Affairs and Minors continued to exercise close supervision, on a monthly basis, of the divorce petitions filed throughout Venezuela in the various Civil Courts of First Instance, thus enabling respondents to have notice of proceedings brought against them in places outside the area in whose jurisdiction they reside.

In 1976 the Department continued its specific tasks relating to enforcement of legislation governing family affairs and minors. Placing a broad interpretation on the contents of article 67 of the National Constitution, the Department gave special attention to the large number of persons daily seeking the intervention of the Government Attorney in various kinds of family matters.

Among the Department's specific functions, mention should be made of the numerous cases dealt with by the Department in connexion with matters such as default on alimony and maintenance obligations; wardship and custody; paternity actions; adoption; minors' property; minors in irregular situations, including those deprived of material or moral support and those under detention for reasons of misconduct; and generally all matters in any way concerning family affairs and minors.

D. Right to a social order in which human rights can be realized

(article 28 of the Universal Declaration)

The Department of Social Protection was set up in 1971 to plan more efficient action by the Government Attorney in regard to supervision of the body of legislation concerning the integrity of the social, moral, economic and cultural order of the community.

Within the constitutional framework which imposes on the Government Attorney a general duty to ensure the strict enforcement of the Constitution and the law, the Department was given specific responsibility for supervising legislation prohibiting usury, prof-

² *Gaceta Oficial*, No. 30,866, 3 December 1975.

iteering and speculation; legislation imposing appropriate restrictions on economic freedom; legislation suppressing traffic in persons and establishment of brothels; legislation prohibiting the operation of games of wager and chance and illicit lotteries; legislation punishing the adulteration of foodstuffs, beverages and medicines, the use of false weights and measures, and illicit traffic in and unlawful possession of narcotic drugs and psychotropic substances; tenancy legislation; and legislation establishing safeguards for indigenous inhabitants. The Department was also entrusted with representing the Government Attorney in proceedings in the Commission for Prevention of Drug Abuse.

Thus the Department, within the functions assigned to it, has been engaged since 1971 in systematic activities designed to maintain social stability through the rigorous supervision of law enforcement.

E. Offences against the community
(article 29 of the Universal Declaration)

With regard to offences against public property, the Department for Supervision of Officials' and Employees' Duties examined and dealt with cases investigated by the Office of the Controller General of the Republic, the Commission for the Investigation of Unlawful Enrichment of Public Officials and Employees and other bodies in which irregularities were alleged to have been committed by a public official or employee. In this connexion, 564 cases were pending, 65 actions were brought and 82 cases were disposed of by criminal process. In addition, 38 actions were pending for enforcement of civil liability and 14 actions were pending for unlawful enrichment of officials.

In 1976 the Department continued to discharge the functions assigned to it under the internal regulations of the Office, and in this connexion to handle cases investigated in connexion with offences against public property. It achieved a satisfactory level of supervision of these offences by maintaining permanent relations with government prosecutors with a view to ensuring expeditious proceedings and a favourable outcome in the various actions instituted in this connexion.

PART II

**TRUST AND NON-SELF-GOVERNING
TERRITORIES**

One Trust Territory and several Non-Self-Governing Territories attained independence during 1975 and 1976; in others, progress was made towards that goal.¹

A. TERRITORIES THAT ATTAINED INDEPENDENCE

1. Papua New Guinea

Papua and the Trust Territory of New Guinea, which had been administered jointly by Australia since 1949, became independent as Papua New Guinea on 16 September 1975, on which date the Trusteeship Agreement for the Territory of New Guinea, approved by the General Assembly on 13 December 1946,² ceased to be in force, in accordance with General Assembly resolution 3284 (XXIX) of 13 December 1974. Papua New Guinea was admitted to membership in the United Nations on 10 October 1975.³ (See also part I above.)

2. Mozambique, Cape Verde, Sao Tome and Principe, and Angola

Four territories formerly administered by Portugal attained independence: Mozambique, on 25 June 1975 (under the Lusaka Agreement of 26 November 1974); Cape Verde, on 5 July 1975 (under the Lisbon Agreement of 19 December 1974) (see also part I above); Sao Tome and Principe, on 12 July 1975 (under the Algiers Agreement of 19 December 1974); and Angola, on 11 November 1975 (under the Alvar Agreement of 15 January 1975). Mozambique, Cape Verde and Sao Tome and Principe became Members of the United Nations on 16 September 1975⁴ and Angola on 1 December 1976.⁵

3. Comoros

The Comoros became independent on 6 July 1975. A popular referendum had been held on 22 December 1974, in which 94.56 per cent of the people had voted for independence. In connexion with its ratification of the results of the referendum, the French National Assembly, on 27 June 1975, had enacted legislation to permit individual islands within the Comoro Archipelago, to vote separately on a constitution to be drawn up by the Territory's Chamber of Deputies for the independent State of Comoros. The General Assembly, reaffirming the necessity of respecting the unity and territorial integrity of the Comoro Archipelago, composed of the islands of Anjouan, Grande-Comore, Mayotte and Mohéli, decided to admit the Comoros to membership in the United Nations on 12 November 1975.⁶

4. Suriname

The independence of Suriname was proclaimed on 25 November 1975, following the adoption on 19 November 1975 by the Staten (the representative body authorized under the Constitution of the Netherlands to legislate on home affairs of Suriname) of a new constitution for independence. Suriname was admitted to membership in the United Nations on 4 December 1975.⁷ (See also part I above.)

¹ See the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to the General Assembly at its thirtieth, thirty-first and thirty-second sessions (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1)*); *ibid.*, *Thirty-first Session, Supplement No. 23 (A/31/23/Rev.1)*; and *ibid.*, *Thirty-second Session, Supplement No. 23 (A/32/23/Rev.1)*).

² See *Trusteeship Agreement for the Territory of New Guinea* (United Nations publication, Sales No. 1947.VI.A.8).

³ General Assembly resolution 3368 (XXX).

⁴ General Assembly resolutions 3365 (XXX), 3363 (XXX) and 3364 (XXX), respectively.

⁵ General Assembly resolution 31/44.

⁶ General Assembly resolution 3385 (XXX).

⁷ General Assembly resolution 3413 (XXX).

5. Seychelles

Seychelles became independent on 29 June 1976, following the conclusion of an agreement between the Governments of the Seychelles and the United Kingdom of Great Britain and Northern Ireland at the constitutional conference held in London from 19 to 22 January 1976. Seychelles was admitted to membership in the United Nations on 21 September 1976.⁸ (See also part I above.)

B. TRUST TERRITORIES

Trust Territory of the Pacific Islands

On 15 February 1975, representatives of the Mariana Islands District of the Trust Territory of the Pacific Islands and representatives of the United States of America signed a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America upon the termination of the Trusteeship Agreement between the United States and the United Nations. A plebiscite was held throughout the Mariana Islands District in June 1975 in which the population endorsed the Covenant by 78.8 per cent of the vote. The Covenant was approved by the Congress of the United States and signed into law on 24 March 1976 by the President of the United States.

A separate administration was established in the Northern Mariana Islands as of 1 April 1976.

C. NON-SELF-GOVERNING TERRITORIES

1. Gilbert and Ellice Islands

Constitutional talks were held in London on 14 July 1976 between representatives of the Gilbert Islands Government and the administering Power, the United Kingdom of Great Britain and Northern Ireland, at which agreement was reached on full internal self-government for the Gilbert Islands,⁹ including the adoption of a constitution providing for an elected House of Assembly with 21 members and a Speaker. At those talks it was agreed that elections would be held in the Gilbert Islands and that independence would be achieved during 1978.

A constitutional conference on the Ellice Islands took place in March 1975. The conference accepted the recommendation that the administrative separation of the Ellice Islands from the Territory of the Gilbert and Ellice Islands should take place on 1 January 1976, the new Territory to be known as Tuvalu and to have the same level of constitutional advancement as the rest of the former Territory. On 1 January 1976, therefore, Tuvalu formally took over its own administration, with headquarters at Funafuti, and prepared to move towards internal self-government. The Tuvalu Order 1975 of 17 September 1975, which took effect on 1 October 1975, established the Territory and provided a constitution for it.

2. Solomon Islands

Full internal self-government went into effect in the Solomon Islands on 2 January 1976.¹⁰ Constitutional talks on the future of the Territory had been held in London in May 1975 between the Governments of the Solomon Islands and the United Kingdom of Great Britain and Northern Ireland, the administering Power, at which it had been agreed that internal self-government would be introduced in the Territory not later than 31 December 1975, on the understanding that, subject to the requisite legislative approval of the United Kingdom Government, independence would follow within 12 to 18 months.

⁸ General Assembly resolution 31/1.

⁹ Full internal self-government for the Gilbert Islands came into effect on 1 January 1977.

¹⁰ The order conferring internal self-government on the Solomon Islands was approved by the Legislative Assembly on 12 November 1975.

3. St. Kitts-Nevis-Anguilla

A series of talks on the future constitutional status of Anguilla was held between representatives of the Government of the United Kingdom of Great Britain and Northern Ireland and the Prime Minister of St. Kitts-Nevis-Anguilla in February and May 1975. Anguilla was administered by a British Commissioner, appointed by the Queen, assisted by a Council. In a communiqué issued at the end of May 1975, it was stated that the United Kingdom Government had decided to give Anguilla a greater measure of internal self-government.

In early December 1975, the Council agreed to a new constitution, which came into force in February 1976, ensuring legal separation from St. Kitts-Nevis. According to a statement released by the British Commissioner's office in Anguilla, the main features of the new Constitution included: (a) protection of the fundamental rights and freedoms of Anguillans, enforceable through the courts; (b) provision for a Commissioner appointed by the Queen and a Legislative Assembly; (c) an Executive Council; (d) a ministerial system of government, with a Chief Minister and three ministers.

By decision 31/406 E of 1 December 1976, the General Assembly of the United Nations deferred until its 1977 session consideration of the question of St. Kitts-Nevis-Anguilla.

4. Timor

In July 1975, the Portuguese Government promulgated Law 7/75, which provided for the formation of a transitional government for Timor to prepare for the election of a popular assembly in October 1976. The transitional government was to consist of a High Commissioner appointed by Portugal and five members, two of whom were to be representatives of the Portuguese Government; the other three members were to be chosen from among representatives of the political parties in the Territory. The law provided for the formation of a transitional government council, an advisory organ composed of two members elected by each regional council and four members nominated by each political party. The popular assembly, which was to be elected by direct, secret and universal suffrage, was to be responsible for determining the future status of the Territory. Law 7/75 envisaged that Portuguese sovereignty could be terminated in October 1978, unless some other agreement was reached between the Government of Portugal and the popular assembly.

On 12 December 1975, the General Assembly, in its resolution 3485 (XXX), having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the question of Timor¹¹ and deeply concerned at the critical situation resulting from the military intervention of the armed forces of Indonesia in Portuguese Timor, *inter alia*, called upon all States to respect the inalienable right of the people of Portuguese Timor to self-determination, freedom and independence and to determine their future political status in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples; called upon Portugal to continue to make every effort to find a solution by peaceful means; appealed to all the parties in Portuguese Timor to respond positively to efforts to find a peaceful solution in the hope that such talks would bring an end to the strife in that Territory and lead towards the orderly exercise of the right to self-determination by the people of Portuguese Timor; called upon the Government of Indonesia to desist from further violation of the territorial integrity of Portuguese Timor and to withdraw without delay its armed forces from the Territory in order to enable the people of the Territory freely to exercise their right to self-determination and independence; and called the attention of the Security Council to the critical situation in the Territory of Portuguese Timor and recommended that it take urgent action to protect the inalienable right of the people of Portuguese Timor to self-determination.

¹¹ Official Records of the General Assembly, Thirtieth Session, Supplement No. 23 (A/10023/Rev.1), chap. VIII.

On 22 December 1975 the Security Council, in its resolution 384 (1975), *inter alia*, called upon all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination, and called upon the Government of Portugal as administering Power to co-operate fully with the United Nations so as to enable the people of East Timor to exercise freely their right to self-determination. The Council also requested the Secretary-General to send urgently a special representative to East Timor for the purpose of making an on-the-spot assessment of the situation.

The report of the Secretary-General transmitting the report of his Special Representative appointed under Security Council resolution 348 (1975) was considered by the Council, which on 22 April 1976 adopted resolution 389 (1976). In that resolution the Council *inter alia* called upon all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination; called upon the Government of Indonesia to withdraw without further delay all its forces from the Territory; requested the Secretary-General to have his Special Representative continue the assignment entrusted to him and pursue consultations with the parties concerned; and called upon all States and other parties concerned to co-operate fully with the United Nations to achieve a peaceful solution to the situation and to facilitate the decolonization of the Territory.

On 1 December 1976, the General Assembly adopted resolution 31/53, in which, *inter alia*, it reaffirmed the inalienable right of the people of East Timor to self-determination and independence and the legitimacy of their struggle to achieve that right; rejected the claim that East Timor had been integrated into Indonesia, inasmuch as the people of the Territory had not been able to exercise freely their right to self-determination and independence; and requested the Special Committee to dispatch to the Territory as soon as possible a visiting mission with a view to the full and speedy implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

PART III

INTERNATIONAL DEVELOPMENTS

Note. Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

UNITED NATIONS ACTIVITIES IN THE FIELD OF HUMAN RIGHTS DURING THE PERIOD 1975-1976

Introduction

The United Nations organs whose work in the field of human rights is summarized in the present chapter are: the General Assembly; the Economic and Social Council; the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities; the Commission on the Status of Women; and the Committee on the Elimination of Racial Discrimination.

During the period under review, human rights matters were dealt with at various sessions of these organs, as follows:

General Assembly

Thirtieth session (16 September-17 December 1975)

Thirty-first session (21 September-22 December 1976)

Economic and Social Council

Fifty-eighth session (8 April-8 May 1975)

Fifty-ninth session (2-31 July 1975)

Sixtieth session (13 April-14 May 1976)

Sixty-first session (30 June-5 August 1976)

Commission on Human Rights¹

Thirty-first session (3 February-7 March 1975)

Thirty-second session (2 February-5 March 1976)

Sub-Commission on Prevention of Discrimination and Protection of Minorities²

Twenty-eighth session (25 August-12 September 1975)

Twenty-ninth session (12 August-1 September 1976)

Commission on the Status of Women³

Twenty-sixth session (13 September-1 October 1976) and resumed twenty-sixth session (6-17 December 1976)

Committee on the Elimination of Racial Discrimination⁴

Eleventh session (31 March-18 April 1975)

Twelfth session (4-22 August 1975)

Thirteenth session (29 March-16 April 1976)

Fourteenth session (2-20 August 1976)

¹ For the reports of the Commission on Human Rights on its thirty-first and thirty-second sessions see *Official Records of the Economic and Social Council, Fifty-eighth Session, Supplement No. 4 (E/5635)*; and *ibid.*, *Sixtieth Session Supplement No. 3 (E/5768)*.

² For the reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its twenty-eighth and twenty-ninth sessions, see E/CN.4/1180 and E/CN.4/1218 respectively.

³ For the report of the Commission on the Status of Women on its twenty-sixth and resumed twenty-sixth sessions, see *Official Records of the Economic and Social Council, Sixty-second Session, Supplement No. 3 (E/5909)*.

⁴ The Committee on the Elimination of Racial Discrimination submitted its sixth annual report (covering its eleventh and twelfth sessions) to the General Assembly at its thirtieth session (*Official Records of the General Assembly, Thirtieth Session, Supplement No. 18 (A/10018)*) and its seventh annual report (covering its thirteenth and fourteenth sessions) to the General Assembly at its thirty-first session (*ibid.*, *Thirty-first Session, Supplement No. 18 (A/31/18)*).

A. International Covenants on Human Rights

At its twenty-first session, in 1966, the General Assembly adopted 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, and expressed the hope that those instruments would be signed, ratified or acceded to without delay and would come into force at an early date.

The International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976, three months after the date of the deposit of the thirty-fifth instrument of ratification, in accordance with its article 27. As at 31 December 1976, the Secretary-General had received instruments of ratification, accession or notification of succession from 42 States (see pp. 350-360); 24 other States had signed the Covenant. The Economic and Social Council at its sixtieth session established, by resolution 1988 (LX) of 11 May 1976, the procedures for the implementation of the Covenant.

The International Covenant on Civil and Political Rights entered into force on 23 March 1976, three months after the date of the deposit of the thirty-fifth instrument of ratification, in accordance with its article 49. As at 31 December 1976, the Secretary-General had received instruments of ratification, accession or notification of succession from 40 States (see pp. 350-360); 25 other States had signed the Covenant. The Optional Protocol also entered into force on 23 March 1976, three months after the date of the deposit with the Secretary-General of the tenth instrument of ratification or accession, in accordance with its article 9. As at 31 December 1976, the Secretary-General had received instruments of ratification, accession or notification of succession from 15 States (see pp. 350-360); 11 other States had signed the Protocol.

The first meeting of the States parties to the International Covenant on Civil and Political Rights was held on 20 September 1976 and, in accordance with the provisions of articles 28 to 32 of the Covenant, elected the members of the Human Rights Committee. In accordance with article 45 of the Covenant, the Committee is to submit to the General Assembly, through the Economic and Social Council, an annual report on its activities.

On 13 December 1976, the General Assembly adopted resolution 31/86, in which it welcomed the entry into force of the Covenants and the Optional Protocol as a major step in the international efforts to promote universal respect for and observance of human rights and fundamental freedoms; recognized that appropriate arrangements should be made to enable the Human Rights Committee to hold sessions at such intervals and of such duration as might be necessary for it to carry out in an efficient manner the functions entrusted to it under the International Covenant on Civil and Political Rights and the Optional Protocol thereto; endorsed the appeal to States made by the Economic and Social Council in its resolution 1988 (LX) that they should include in their delegations to the sessions of the Council at which reports of the States parties to the International Covenant on Economic, Social and Cultural Rights were examined experts competent in the subject-matter of the relevant reports; and requested the Secretary-General to submit to the General Assembly at its thirty-second session a report on the status of the Covenants and the Optional Protocol.

B. Elimination of racial discrimination

1. DECADE FOR ACTION TO COMBAT RACISM AND RACIAL DISCRIMINATION

The General Assembly, by its resolution 3057 (XXVIII) of 2 November 1973, designated the 10-year period beginning on 10 December 1973 as the Decade for Action to Combat Racism and Racial Discrimination, approved a Programme for the Decade and decided to consider the question annually. The Economic and Social Council was asked to assume responsibility for co-ordinating the Programme and evaluating the activities undertaken in connexion with the Decade.

The Economic and Social Council at its fifty-eighth session, having examined the second annual report of the Secretary-General on the Decade (E/5636 and Add.1-3) and a

note submitted by him containing information on activities of Governments and international organizations in connexion with the Decade and comments and views received from Member States in response to General Assembly resolution 3223 (XXIX) of 6 November 1974 (E/5637 and Add.1 and 2), adopted resolution 1938 A (LVIII) of 6 May 1975. By that resolution the Council requested the Secretary-General to transmit the above-mentioned documents to the General Assembly at its thirtieth session, together with any additional information received by him on activities undertaken in connexion with the Decade and the summary records of the discussion of the item at the fifty-eighth session of the Council; the Council also recommended to the Assembly the adoption of a draft resolution on this question. In resolution 1938 B (LVIII) of the same date, the Council recommended to the General Assembly the adoption of a draft resolution on the World Conference to Combat Racism and Racial Discrimination.

The General Assembly considered the item at its thirtieth session on the basis of the documentation provided by the Secretary-General in accordance with Council resolution 1938 A (LVIII), including the information received by him since the fifty-eighth session of the Council (A/10145 and Corr.1 and Add.1).⁵ The Assembly adopted resolution 3377 (XXX) of 10 November 1975 in which it urged all States to co-operate loyally and fully in achieving the goals and objectives of the Decade; urged United Nations organs, the specialized agencies and intergovernmental and non-governmental organizations to ensure the continuation of their activities related to the Decade; requested the Secretary-General to submit to the Assembly at its thirty-first session a report containing proposals to implement efficiently paragraph 17 of the Programme for the Decade, which called for the establishment of an international fund on a voluntary basis; called upon the Commission on Human Rights, in collaboration with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to study ways and means of ensuring the implementation of United Nations resolutions bearing on *apartheid*, racism and racial discrimination with a view to facilitating the examination of that question by the Assembly and appealed to Governments and private organizations to make voluntary contributions of funds which would make it possible to carry out all of the activities provided for in the Programme for the Decade, especially in paragraphs 15 and 16 thereof, with regard to research, studies, education, training and information directed towards the achievement of the goals of the Decade and designed to assist the victims of racial discrimination and racism.

On the same date, the General Assembly adopted resolution 3379 (XXX), by which it determined that zionism was a form of racism and racial discrimination.

At its thirty-second session, the Commission on Human Rights included in its agenda an item entitled "Study in collaboration with the Sub-Commission on Prevention of Discrimination and Protection of Minorities of ways and means of ensuring the implementation of United Nations resolutions bearing on *apartheid*, racism and racial discrimination". On 5 March 1976, the Commission adopted resolution 9 (XXXII) in which it requested the Sub-Commission, at its twenty-ninth session, to study and prepare suggestions on effective ways and means and concrete measures for securing the full and universal implementation of the United Nations decisions and resolutions on racism, racial discrimination, *apartheid*, decolonization and self-determination and related matters and to submit its suggestions and proposals to the Commission at its thirty-third session; and recommended to the Economic and Social Council to take into account the participation of the Commission in the preparatory arrangements for holding the world conference to combat racism and racial discrimination.

The Secretary-General submitted to the Economic and Social Council at its sixtieth session his third annual report prepared in accordance with paragraph 18 (f) of the Programme for the Decade for Action to Combat Racism and Racial Discrimination (E/5760 and Add.1), a report containing an analysis of replies received from Governments in response to a 16-item questionnaire circulated by the Secretary-General to all Govern-

⁵ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 68.

ments pursuant to paragraph 18 (e) of the Programme (E/5759 and Add.1) and a report on consultations with the Government of Ghana concerning arrangements for holding the world conference to combat racism and racial discrimination (E/5763).

On 11 May 1976, the Economic and Social Council adopted resolution 1989 (LX) in which it requested the Secretary-General to submit to the General Assembly, at its thirty-first session, the reports transmitted to the Council pursuant to Assembly resolution 3057 (XXVIII) (E/5759 and Add.1, E/5760 and Add.1, E/5763), together with a report containing information received by him on activities undertaken or contemplated in connexion with the Decade which would supplement the information on the subject submitted to the Council at its sixtieth session, and the summary records of the Council's discussion; welcomed in particular Security Council resolutions 385 (1976) of 30 January 1976, 386 (1976) of 17 March 1976, 387 (1976) of 30 March 1976 and 388 (1976) of 6 April 1976, by which the Security Council had, *inter alia*, condemned the continued illegal occupation of the Territory of Namibia by South Africa, demanded again that South Africa abolish its application of racially discriminatory and repressive laws and practices in Namibia, reaffirmed that the current situation in Southern Rhodesia constitutes a threat to international peace and security and expanded the sanctions against the racist régime under Chapter VII of the Charter of the United Nations, and appealed to all States as well as to the United Nations family of organizations to provide all possible assistance to Mozambique; and recommended to the Assembly a draft resolution on the question.

On the same date the Economic and Social Council adopted resolution 1990 (LX), in which it recommended to the General Assembly the adoption of a draft resolution on the World Conference to Combat Racism and Racial Discrimination.

The first of these draft resolutions was adopted by the General Assembly, at its thirty-first session, as resolution 31/77 of 13 December 1976, in which the Assembly condemned the intolerable conditions which continued to prevail in southern Africa and elsewhere, including the denial of the right to self-determination and the inhumane and odious application of *apartheid* and racial discrimination; reaffirmed its recognition of the legitimacy of the struggle of oppressed peoples to liberate themselves from racism, racial discrimination, *apartheid*, colonialism and alien domination; appealed to Member States which had not yet done so to forward the reports called for under paragraph 18 (e) of the Programme for the Decade; reiterated the call in paragraph 18 (g) of the Programme for the Decade to make adequate resources available to the Secretary-General to enable him to undertake the activities entrusted to him under the Programme; and decided to consider at its thirty-second session, as a matter of high priority, the item entitled "Decade for Action to Combat Racism and Racial Discrimination".

The second draft resolution was adopted by the General Assembly as resolution 31/78 of 13 December 1976, in which the Assembly decided to convene the World Conference to Combat Racism and Racial Discrimination in Ghana, and to consider the question of the World Conference as a matter of high priority at its thirty-second session.

2. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in resolution 2106 A (XX) of 21 December 1965, entered into force on 4 January 1969. As at 31 December 1976, the Secretary-General had received instruments of ratification, accession or notification of succession from 92 States (see pp. 350-359, 361); 15 other States had signed the Convention. In addition, five of the States parties to the Convention had made declarations, under article 14 of the Convention, recognizing the competence of the Committee on the Elimination of Racial Discrimination, established under article 8 of the Convention, to receive and consider communications from individuals or groups of individuals within their jurisdiction claiming to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Under article 14, paragraph 9, of the Convention, 10 declarations are necessary to establish the competence of the Committee to exercise this function.

On 10 November 1975, the General Assembly adopted resolution 3381 (XXX) in which it took note of the report of the Secretary-General on the status of the Convention (A/10197),⁶ expressed its satisfaction with the increase in ratifications; appealed to States which had not done so to accede to the Convention and to States parties to consider making the declaration under article 14 of the Convention; and asked the Secretary-General to continue to submit to it the annual reports requested under its resolution 2106 A (XX).

The Committee on the Elimination of Racial Discrimination held its eleventh and twelfth sessions in 1975. It continued its main task of considering biennial reports submitted to it, by States parties to the Convention, on legislative, judicial, administrative or other measures giving effect to provisions of the Convention. It also adopted decisions dealing, among other things, with participation by the Committee in the Programme for the Decade for Action to Combat Racism and Racial Discrimination, relations with racist régimes, and information supplied by Cyprus relating to conditions in Cyprus. At its twelfth session it also adopted a statement in connexion with its consideration of action taken by the Economic and Social Council on the Programme for the Decade.

At its thirteenth and fourteenth sessions, held in 1976, the Committee completed the consideration of all the reports submitted to it before the opening of its fourteenth session by States parties in accordance with article 9, paragraph 1, of the Convention—except for the second and third periodic reports of France, submitted in one document, which had not been made available to the Committee in all its working languages, and the third periodic report of Chile, which was deferred until the fifteenth session at the request of the Government of the reporting State. In addition, the Committee considered the second periodic report of Cuba, which had been deferred from the twelfth session.

At the thirteenth and fourteenth sessions, 50 reports submitted by 44 States parties were considered by the Committee. In accordance with rule 64 A of its provisional rules of procedure, the Committee followed the practice, inaugurated at its sixth session, of requesting the Secretary-General to notify the States parties concerned of the dates on which their respective reports would be considered. At the thirteenth session, 19 of the 28 States parties whose reports were considered by the Committee sent representatives to participate in the consideration of their respective reports, while at the fourteenth session, 15 of the 16 States parties concerned were represented during the consideration of their reports by the Committee.

In addition, the Committee dealt with copies of petitions and reports and other information relating to Trust and Non-self-governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, submitted to it under article 15 of the Convention.

The reports of the Committee on these four sessions were considered by the General Assembly at its thirty-first session. The Assembly adopted resolution 31/81 of 13 December 1976, in which, noting with appreciation the interest of the Committee, when performing its functions under the Convention, to contribute to the achievement of the objectives of the Decade for Action to Combat Racism and Racial Discrimination, it took note of the reports of the Committee for 1975 and 1976; commended the Committee for focusing greater attention on the just cause of the peoples struggling against the oppression of the colonialist and racist régimes in southern Africa; called upon all States parties to the Convention to provide all necessary information to the Committee in accordance with article 9 of the Convention, taking also into account the relevant recommendations and requests of the Committee; and invited all States not yet parties to the Convention to ratify or accede to it and, pending such ratification or accession, to be guided by the basic provisions of the Convention in their internal and foreign policies.

In its resolution 31/79 of the same date, the General Assembly again expressed its satisfaction with the increase in the number of States which had ratified the Convention or acceded thereto and appealed to States parties to the Convention to study the possibility of making the declaration provided for in article 14 of the Convention.

⁶ *Idem.*

3. INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF *APARTHEID*

The International Convention on the Suppression and Punishment of the Crime of *Apartheid* was adopted by the General Assembly on 30 November 1973, by resolution 3068 (XXVIII). In accordance with its article XV, paragraph 1, the Convention entered into force on 18 July 1976, the thirtieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification or accession. As at 31 December 1976, 23 States had ratified or acceded to the Convention; 16 other States had signed it.

On 13 December 1976, the General Assembly adopted resolution 31/80, in which it welcomed the entry into force of the Convention and appealed to all States which had not yet become parties to it to accede thereto. The Assembly invited the Chairman of the Commission on Human Rights at its thirty-third session, in 1977, to appoint a group of three members of the Commission, as provided for by article IX of the Convention, to consider reports submitted by States parties and invited the Commission to undertake the functions set out in article X of the Convention, including in particular the preparation of a list of individuals, organizations, institutions and representatives of States alleged to be responsible for the crimes enumerated in article II of the Convention.

C. Elimination of discrimination on grounds of sex

1. INTERNATIONAL WOMEN'S YEAR

The focal point of the celebration of the International Women's Year was the World Conference of the International Women's Year, held in Mexico City from 19 June to 2 July 1975. The Conference was attended by 133 States represented by more than 1,000 delegates, about 70 per cent of whom were women. Three Governments were represented by observers. Nine offices of the Secretariat, seven United Nations bodies, seven specialized agencies and IAEA were also represented. In accordance with General Assembly resolution 3276 (XXIX), seven national liberation movements sent observers. The Commission on Human Rights and eight intergovernmental organizations were also represented by observers, as well as 114 non-governmental organizations in consultative status with the Economic and Social Council following Economic and Social Council decision 73 (LVIII).

The Conference adopted the Declaration of Mexico on the Equality of Men and Women and Their Contribution to Development and Peace, 1975; the World Plan of Action for the Implementation of the Objectives of the International Women's Year; regional plans of action; 35 resolutions; and a decision recommending the convening of a second world conference in 1980.⁷

The Declaration contains 17 principles which, *inter alia*, define the meaning of equality between women and men, stress the specific responsibility of the State to find ways and means by which to enable women to be fully integrated in society and stress the responsibilities of men in the context of family life. The Declaration links the issue of inequality with the problem of underdevelopment and emphasizes the need for changes in economic and social structures which will enable women to participate in and contribute to the total development effort. The vital role that women can and should play in the promotion of world peace in all spheres of life is strongly emphasized.

The World Plan of Action sets out guidelines for action to improve the status of women and seeks to stimulate national and international action to solve the problems of underdevelopment and of the socio-economic structures which place women in an inferior position, in order to achieve the goals of the International Women's Year. It recommends a series of targets to be achieved as a "minimum" by the end of 1980. Specific areas for national action include international co-operation and the strengthening of international peace; political participation, education and training; employment and related economic

⁷ See *Report of the World Conference of the International Women's Year, Mexico City, 19 June-2 July 1975* (United Nations publication, Sales No. E.76.IV.1).

roles; health and nutrition; the family in modern society; population; housing and related facilities; and other social questions. Special emphasis is on the need for research, the collection and analysis of data and the use of the mass communication media to accelerate changes in the roles of women and men. The Plan also stresses the need for international action and for review and appraisal exercises to be undertaken at regular intervals by the United Nations system to gauge the impact of the Plan of Action.

A number of parallel activities took place at the time of the Conference which provided a forum for the general public, academics, journalists and experts on issues of concern to women. These activities were arranged in consultation with the Government of Mexico.

On 9 December 1975, as a last activity of the Year, a panel discussion was held at United Nations Headquarters on "Women in the United Nations". The President of the General Assembly made the opening statement and the Secretary-General introduced the issue of women in the Secretariat. Participants included members of the delegations to the General Assembly at its thirtieth session and high-ranking officials of the Secretariat.

The impact of the International Women's Year at its mid-point was described and analysed in a report of the Secretary-General submitted to the General Assembly at its thirtieth session (A/10263 and Corr.1).⁸ Information received from 91 Member States and three non-member States made it clear that there had been a world-wide response to the Year. Special national committees were established in 80 countries to organize and co-ordinate activities in connexion with the Year and 91 Member States and two non-member States appointed liaison officers to facilitate the exchange of information and co-ordination. In most cases, activities were organized with a view to promoting national awareness on the themes of the Year. In addition, special campaigns were organized in areas where inequality or lack of integration of women in the development effort were most flagrant. In some instances, the focus was on legislative action, in others on the establishment of better facilities to improve the social situation of women. Research was undertaken on the situation of women and meetings were organized dealing with issues of special relevance to women. In many instances, national machinery was established to assess and accelerate the integration of women in development. The report also contains information on measures and activities undertaken by organizations of the United Nations system, by intergovernmental organizations and by non-governmental organizations.

On 15 December 1975, the General Assembly adopted resolution 3520 (XXX) in which it took note of the report of the Conference and endorsed the action proposals contained in the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975, the World Plan of Action for the Implementation of the Objectives of the International Women's Year, the regional plans of action and the resolutions and other recommendations adopted by the Conference. The Assembly proclaimed the period from 1976 to 1985 United Nations Decade for Women: Equality, Development and Peace, which would be devoted to effective and sustained national, regional and international action to implement the World Plan of Action and related resolutions of the Conference; called upon Governments, as a matter of urgency, to examine the recommendations contained in the World Plan of Action and related resolutions of the Conference and to establish short-term, medium-term and long-term targets and priorities to this end; invited the Secretary-General to appoint a group of five to ten experts to draw up the terms of reference for an International Research and Training Institute for the Advancement of Women; affirmed that a system-wide review and appraisal of the World Plan should be undertaken biennially which should constitute an input to the process of review and appraisal of progress made under the International Development Strategy for the Second United Nations Development Decade, taking into account the Programme of Action on the Establishment of a New International Economic Order and the decisions resulting from the sixth and seventh special sessions of the Assembly; and decided to convene a world conference in 1980 to review and evaluate the progress made in implementing the objectives of Interna-

⁸ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 75.

tional Women's Year as recommended by the World Conference of the International Women's Year.

On the same date the General Assembly adopted resolution 3518 (XXX) in which it expressed its deep appreciation to the Government and people of Mexico for acting as host to the World Conference of the International Women's Year.

2. PROCLAMATION OF THE UNITED NATIONS DECADE FOR WOMEN: EQUALITY, DEVELOPMENT AND PEACE

In pursuance of recommendations of the World Conference of the International Women's Year, the General Assembly, by its resolution 3520 (XXX) of 15 December 1975, proclaimed the period 1976-1985 United Nations Decade for Women: Equality, Development and Peace, to be devoted to effective and sustained action to implement the World Plan of Action and related resolutions of the Conference, and decided to convene in 1980, at the mid-term of the Decade, a world conference to review and evaluate the progress made in implementing the objectives of the International Women's Year.

Also on 15 December 1975, the General Assembly decided that the voluntary fund for the International Women's Year established by the Economic and Social Council in its resolution 1850 (LVI) of 16 May 1974 should be extended to cover the period of the Decade for Women. This idea had originated in resolution 12 of the Conference. The Assembly also requested the Secretary-General to report to the Council at its sixtieth session giving an accounting report of the fund and proposals for the fund's future management and the criteria to be applied for future disbursements.⁹

After considering the Secretary-General's report on this question (E/5773), the Economic and Social Council in its resolution 2005 (LX) of 12 May 1976 recommended for adoption by the General Assembly at its thirty-first session certain criteria and proposals for the management of the Voluntary Fund for the United Nations Decade for Women. These included arrangements for solicitation and acknowledgement of pledges and the collection of contributions, for operation and control and for reporting to the Assembly and, as appropriate, to the Commission on the Status of Women.

At its twenty-sixth session, the Commission on the Status of Women adopted a programme of action focusing on the first half of the United Nations Decade for Women.

The Economic and Social Council had before it at its resumed sixty-first session a note by the Secretariat containing the Programme for the Decade adopted by the Commission on the Status of Women (E/5894). On 27 October 1976, the Council, in its decision 196 (LXI), decided (a) to take note of the decision adopted by the Commission at its twenty-sixth session concerning the Programme for the United Nations Decade for Women; (b) to transmit the Programme to the General Assembly at its thirty-first session for its information, and (c) to consider the report of the Commission on its twenty-sixth session, as a whole, at its sixty-second session.

At its thirty-first session the General Assembly, in its resolution 31/136 of 16 December 1976, approved the Programme for the Decade as adopted by the Commission on the Status of Women and urged Governments and United Nations bodies to take all necessary steps to give effect to the Programme.

3. ESTABLISHMENT OF AN INTERNATIONAL RESEARCH AND TRAINING INSTITUTE FOR THE ADVANCEMENT OF WOMEN

Following the recommendation of the World Conference of the International Women's Year in its resolution 26 that an International Research and Training Institute for the Advancement of Women should be established and at the request of the Economic and

⁹ See *Official Records of the General Assembly, Thirtieth Session, Supplement No. 34 (A/10034)*, p. 100, agenda items 75 and 76.

Social Council in its resolution 1959 (LIX) of 28 July 1975, the Secretary-General submitted a note to the General Assembly at its thirtieth session containing suggestions concerning the purpose and nature of the institute and supporting the recommendation that an expert group should meet to assist in its establishment (A/10340). After considering the note, the Assembly decided in principle, in its resolution 3520 (XXX), to establish an International Research and Training Institute for the Advancement of Women, under the auspices of the United Nations, which would be financed through voluntary contributions and would collaborate with appropriate national, regional and international economic and social research institutes; invited the Secretary-General to appoint a Group of Experts to draw up the terms of reference and structural organization of the Institute, giving special consideration to the needs of women of developing countries; and requested the Secretary-General to report to the Council at its sixtieth session on the basis of the recommendations of the Group of Experts.

Accordingly, on the basis of the recommendations of the group of 11 international experts which had met in February 1976 (ESA/SDHA/AC.11/1), the Secretary-General submitted a report (E/5772) to the Economic and Social Council at its sixtieth session in which he expressed agreement that the Institute should be established, subject to the availability of the extrabudgetary funds that would be needed to ensure its operation for an initial period of three years at least and also to the Institute's scope and objectives, terms of reference and priorities. The Secretary-General proposed certain procedures and arrangements on administrative and financial aspects and certain steps comprising the necessary preparatory work. On 12 May 1976, the Council adopted resolution 1998 (LX) in which it decided to establish the Institute not later than 1977, providing the necessary financial provisions were made, as an autonomous body under the auspices of the United Nations; funded through voluntary contributions; decided on the Institute's guidelines; requested the Secretary-General to prepare a time-table, undertake the necessary administrative steps for its establishment, assign staff to undertake the substantive preparation, make a survey of existing data and information and seek actively financial and technical support; took note with appreciation of the offer of Iran to host the Institute; and requested the Secretary-General to continue to seek the most suitable location, taking into account various practical aspects, and to report to the General Assembly at its thirty-first session.

At that session the General Assembly, in its resolution 31/135 of 16 December 1976, endorsed the decision of the Council to create an International Research and Training Institute for the Advancement of Women.

4. INTEGRATION OF WOMEN IN THE DEVELOPMENT PROCESS

The question of the integration of women in the development process was dealt with extensively in the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, 1975, in the World Plan of Action for the Implementation of the Objectives of the International Women's Year, in the regional plans of action and in several resolutions adopted by the World Conference. The need for a global review and appraisal of the implementation of the World Plan of Action was stressed.

The General Assembly, in resolution 3420 (XXX), endorsed the action proposals contained in those documents and called upon Governments, as a matter of urgency, to examine the question of action to be taken at the national level, such as: (a) the establishment of short-term, medium-term and long-term targets, and priorities to that end, taking into account the guidelines set forth in sections I and II of the World Plan of Action, including the minimum objectives recommended for achievement by 1980; (b) the adoption of national strategies, plans and programmes for the implementation of the recommendations within the framework of over-all development plans, policies and programmes; (c) the undertaking of regular reviews and appraisals of progress made at the national and local levels in achieving the goals and objectives of the World Plan of Action within the framework of over-all development plans, policies and programmes. The Assembly also called upon the relevant organizations of the United Nations system, the regional commissions, financial institutions and development banks, and non-governmental organizations within

their particular areas of interest and competence, to take measures to assist in the implementation of the World Plan of Action and related resolutions of the Conference.

In the same resolution, the General Assembly invited all relevant organizations of the United Nations system concerned to develop during the first half of the Decade, under the auspices of the Administrative Committee on Co-ordination (AAC), a joint interagency programme for the integration of women in development. The ACC *Ad Hoc* Interagency Meeting on International Women's Year, convened at Geneva in July 1975, suggested a new preliminary framework and agreed on a plan for its further elaboration. At its sixty-seventh session, in April 1976, ACC endorsed the proposed plan.

In two resolutions adopted at its thirtieth session, resolutions 3520 (XXX) and 3490 (XXX), the General Assembly affirmed the need for a system-wide review of the implementation of the World Plan of Action as an input to the process of review and appraisal of progress under the International Development Strategy for the Second United Nations Development Decade in the years of the biennial review of the Strategy. In the latter resolution the Assembly requested the Commission on the Status of Women to consider reports on measures undertaken to implement the World Plan of Action in accordance with the Strategy and to report its findings and conclusions on major trends and policies with regard to the status of women, particularly the integration of women in development, to the Economic and Social Council.

The Commission on the Status of Women, at its twenty-sixth and resumed twenty-sixth sessions, discussed the review and appraisal of progress made under the Strategy and in the implementation of the World Plan of Action and recommended a draft resolution for adoption by the Economic and Social Council in which certain areas were listed as requiring urgent action to improve the situation of women.¹⁰

Also during its thirtieth session, the General Assembly adopted three resolutions dealing with specific aspects of the integration of women in development. In resolution 3505 (XXX) of 15 December 1975, the Assembly invited relevant organizations within the United Nations system to pay special attention to development programmes relating to women in the fields of agriculture, industry, trade, science and technology and requested the Secretary-General to prepare a report for the Assembly's consideration at its thirty-first session on the extent to which women participate in agriculture, trade, industry, science and technology with a view to recommending ways of increasing and upgrading women's participation in these fields, as well as a report on the implementation of the resolution. In resolution 3522 (XXX) of 15 December 1975, the Assembly urged Governments and organizations of the United Nations development system to incorporate in their training programmes courses designed to improve the efficiency of women in business and financial management. In resolution 3524 (XXX) of 15 December 1975, the Assembly recommended that all organs of the United Nations development system should give sustained attention to the integration of women in the formulation, design and implementation of development projects and programmes.

As a follow-up to the Conference, a United Nations regional seminar with the theme "The participation of women in economic, social and political development: obstacles that hinder their integration" was organized, in co-operation with the Government of Argentina and in consultation with the Economic Commission for Latin America, at Buenos Aires from 22 to 30 March 1976, under the United Nations regular programme of technical co-operation.

5. ELABORATION AND IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS

In resolution 3521 (XXX) of 15 December 1975 on equality between men and women and elimination of discrimination against women, the General Assembly called upon States that had not done so to ratify international instruments concerning the protection of women's rights and the elimination of discrimination against women and to implement

¹⁰ See *Official Records of the Economic and Social Council, Sixty-second session, Supplement No. 3 (E/5909)*, chap. IV, and chap. I, draft resolution IV.

their provisions. It requested the Commission on the Status of Women to complete, in 1976, the elaboration of the draft Convention on the Elimination of Discrimination against Women.

The Commission on the Status of Women considered the draft Convention on the Elimination of Discrimination against Women at its twenty-sixth and resumed twenty-sixth sessions. It had before it a working paper based on comments received from Governments, specialized agencies and non-governmental organizations in consultative status with the Economic and Social Council on the draft articles contained in the report of the Working Group on the Preparation of a New Instrument or Instruments of International Law to Eliminate Discrimination against Women (E/CN.6/591), as well as the text of a draft Convention on the Elimination of All Forms of Discrimination against Women together with relevant comments received from Governments (E/CN.6/591/Add.1 and Corr.1). The Commission adopted the draft Convention as a whole on 17 December 1976 and transmitted it to the Economic and Social Council with a draft resolution under which the Council would submit the draft Convention to the General Assembly.¹¹

In its resolution 3520 (XXX), the General Assembly affirmed that it and other relevant bodies should consider biennially the progress achieved in the promotion of the full equality of women with men in all spheres of life in accordance with international standards and, in particular, the participation of women in political life and in international co-ordination and the strengthening of international peace.

Following up on the relevant recommendations of the World Conference of the International Women's Year and, in particular resolution 8, the General Assembly adopted resolution 3416 (XXX) of 8 December 1975 on employment of women in the Secretariat in which it reaffirmed, *inter alia*, bearing in mind Articles 8 and 101 of the Charter of the United Nations and those declarations and instruments adopted by the United Nations acknowledging the equality of status of men and women, that equitable distribution of the positions between men and women in the Secretariat was a major principle governing the recruitment policy of the United Nations; requested the Secretary-General to make every effort during each of the following two biennia to fill posts subject to geographical distribution with the equivalent of 5 per cent of the mid-point of the desirable range of each region with qualified women; requested him to intensify regular and publicized recruitment missions; and urged Member States to seek and recommend qualified women candidates for Professional posts in the Secretariat.

The Commission on the Status of Women at its twenty-sixth session considered the question of the implementation of the Declaration on the Elimination of Discrimination against Women in the context of the review and appraisal of progress made under the International Development Strategy for the Second United Nations Development Decade and in the implementation of the World Plan of Action for the Implementation of the Objectives of the International Women's Year. It had before it a report (E/CN.6/592 and Add.1) on the implementation of the Declaration, submitted by the Secretary-General in accordance with Economic and Social Council resolution 1677 (LII) of 2 June 1972, which established a four-year reporting system, and with Council resolution 1852 (LVI) of 16 May 1974. The report contained an analysis of additional government replies on civil and political rights as well as replies on economic, social and cultural rights.

6. ROLE OF WOMEN IN INTERNATIONAL CO-OPERATION AND THE STRENGTHENING OF INTERNATIONAL PEACE

A report on the involvement of women in strengthening international peace and eliminating racism and racial discrimination (E/CONF.66/3/Add.2) was prepared for the World Conference of the International Women's Year.

The Conference adopted three resolutions on the issue of women and peace. In resolution 28 on women's participation in promoting world peace and international co-ope-

¹¹ *Ibid.*, chap. I, draft resolution I.

tion, the Conference, *inter alia*, urged Governments in a concerted effort to provide women with equal opportunities with men to represent their countries in all international forums where issues of international peace and co-operation are discussed; to organize activities such as reading groups and information services to familiarize as many men and women as possible with the concepts of international peace and co-operation, cultural understanding, self-reliance and self-determination, to enable them to translate these concepts at all levels of society; to implement a system of continuous education whereby the individual's perspectives and attitudes to such values as understanding all nations and peoples, racial equality, international peace and co-operation, which all men and women are called upon to instil in their children, be further strengthened by teachers and educators; to utilize to the fullest the media channels to continue the educational process of goodwill and understanding among all peoples and to request the United Nations to proclaim United Nations Day, 24 October, also as a special day devoted to international peace. In resolution 29 on women's participation in the strengthening of international peace and security and in the struggle against colonialism, racism, racial discrimination and foreign domination, the Conference, *inter alia*, called upon all Governments, intergovernmental and non-governmental organizations, women's groups and women's organizations to intensify their efforts to strengthen peace, to expand and deepen the process of détente and to implement its irreversible character, to eliminate completely and definitely all forms of colonialism, to put an end to the policy and practice of *apartheid* and racism, and to foreign domination and aggression. In resolution 31 on women's contribution to world peace through participation in international conferences, the Conference recommended, *inter alia*, that in the current year Member States should seek to increase substantially the number of women in their delegations to meetings held under United Nations auspices and should seek to improve upon that increase in subsequent years. It further recommended that Member States should not limit the representation of women to the Third Committee of the General Assembly, but should appoint women to serve on all the Assembly's Main Committees. This resolution has been disseminated among Member States with a view to soliciting their positive response.

On 15 December 1975, the General Assembly adopted resolution 3519 (XXX) in which it called upon all Governments and intergovernmental and non-governmental organizations, particularly women's organizations and women's groups, to intensify their efforts to strengthen peace, and expressed its solidarity with and its assistance for women who contributed towards the struggle of the peoples for their national liberation.

7. INFLUENCE OF MASS COMMUNICATION MEDIA ON ATTITUDES TOWARDS THE ROLES OF WOMEN AND MEN IN PRESENT-DAY SOCIETY

The potential of the media as agent for change of traditional and outdated attitudes and values towards the role of women in present-day society has been increasingly discussed in international, national and regional conferences and meetings. The three regional seminars on the integration of women in development with special reference to population factors that were held, respectively, at Bangkok from 13 to 17 May 1974, at Addis Ababa from 3 to 7 June 1974 and at Caracas from 28 April to 2 May 1975 emphasized the role of the media in the integration of women in development and in changing traditional attitudes which discriminate against women. The World Conference of the International Women's Year recognized that the media had great potential as a vehicle for social change and could exercise a significant influence in helping to remove prejudice and stereotypes, in accelerating the acceptance of women's new and expanding roles in society, and in promoting their integration into the development process as equal partners with men. The Conference, in resolution 19, requested Governments and responsible organizations to promote and encourage, in the mass communication media of their countries, the projection of a dignified and positive image of women.

A progress report on the influence of the communication media on the formation of new attitudes towards the roles of women and men in present-day society (E/CN.6/601 and Corr.1), prepared by the Secretary-General in accordance with Economic and Social

Council resolution 1862 (LVI) of 16 May 1974 and resolution 19 of the World Conference, was before the Commission on the Status of Women at its resumed twenty-sixth session. The Commission recommended a draft resolution for adoption by the Council by which the Council would decide to appoint a special rapporteur to prepare a study on the impact of the mass communication media on the changing roles of men and women.¹²

D. Elimination of all forms of religious intolerance

Pursuant to General Assembly resolution 3267 (XXIX) of 10 December 1974, in which the Assembly had requested the Commission on Human Rights to submit to it a single draft declaration on the elimination of all forms of religious intolerance and of discrimination based on religion or belief, the Commission established, at its thirty-first and thirty-second sessions, an informal working group, open to all members of the Commission, which continued the consideration of the draft declaration and reported to the Commission on the progress of its work.¹³

At its thirty-first session, the General Assembly adopted resolution 31/138 of 16 December 1976, in which it requested the Commission on Human Rights to speed up its work on the elaboration of a single draft Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and to submit a progress report, through the Economic and Social Council, to the General Assembly at its thirty-second session.

E. Question of the violation of human rights

1. REPORTS OF THE *AD HOC* WORKING GROUP OF EXPERTS OF THE COMMISSION ON HUMAN RIGHTS WITH RESPECT TO SOUTHERN AFRICA

The *Ad Hoc* Working Group of Experts established under Commission on Human Rights resolution 2 (XXIII) of 6 March 1967 reported to the Commission (E/CN.4/1159) at the thirty-first session on its field mission in the summer of 1974, in the course of which it had visited London, Nairobi, Lusaka, Gaborone, Dar es Salaam, Kinshasa, Brazzaville, Dakar and Geneva. The report surveyed further developments in the situation in South Africa, Namibia, Southern Rhodesia and territories under Portuguese administration as regards matters within the Group's term of reference; it was based on oral testimony, taken in public or in private, from a total of 105 witnesses and on a number of written communications and contained the conclusions and recommendations presented by the Group.

By resolution 5 (XXXI) of 14 February 1975, the Commission decided that the *Ad Hoc* Working Group should continue carefully to observe and survey further developments concerning the policy of *apartheid* and racial discrimination present in the situation prevailing in Namibia and Southern Rhodesia; and requested the Group to study the private gaol and farm gaol systems, the development of the separate homelands policy and its effects on the right to self-determination, the farm labour system in the Republic of South Africa, the consequences of *apartheid* as regards the African family, and the particular difficulties of the student movements in South Africa and Namibia. The Group was asked to submit an interim report to the Commission at its thirty-second session, in 1976, and a report on its findings no later than at the Commission's thirty-third session, in 1977.

On 6 May 1975, the Economic and Social Council, in resolution 1939 (LVIII) and decision 78 (LVIII), approved the extension of the mandate of the *Ad Hoc* Working Group of Experts as recommended by the Commission on Human Rights, requested the Secretary-General to appeal to the United Nations Commissioner for Namibia to establish appropriate collaboration with the Working Group, requested the General Assembly to make arrangements for adequate financial resources and staff to be provided to the Working Group in

¹² *Ibid.*, chap. I, draft resolution IX.

¹³ For the reports of the informal working groups, see *Official Records of the Economic and Social Council, Fifty-eighth Session, Supplement No. 4 (E/5635)*, para. 173; and *ibid.*, *Sixtieth Session, Supplement No. 3 (E/5768)*, para. 177.

order to enable it to carry out its mandate, and requested the Secretary-General to give wide publicity to the Group's report (E/CN.4/1159).

At its fifty-eighth session, the Economic and Social Council also examined the report of the *Ad Hoc* Working Group of Experts (E/5622) prepared in accordance with Council resolution 1796 (LIV) of 18 May 1973 and decisions 18 (LVI) of 17 May 1974 and 25 (LVII) of 31 July 1974, which dealt with the system of recruitment of African workers, as well as the disparities in wages between black and white workers, in South Africa, Namibia, Southern Rhodesia and the African Territories under Portuguese administration. Included in the report were the findings of the Working Group regarding certain specific allegations of infringements of trade union rights. The Economic and Social Council, in decision 83 (LVIII) of 6 May 1975, took note with satisfaction of the report of the Working Group and the conclusions and recommendations contained therein and invited the Commission on Human Rights to consider it appropriately at its thirty-second session and to submit its observations to the Council at its sixtieth session.

At its thirty-second session, the Commission on Human Rights had before it the interim report (E/CN.4/1187) of the *Ad Hoc* Working Group of Experts, prepared in accordance with its resolution 5 (XXXI) of 14 February 1975. The Commission also had before it the report of the *Ad Hoc* Working Group (E/5622) which the Economic and Social Council, by its decision 83 (LVIII), had invited it to consider.

On 4 March 1976, the Commission on Human Rights adopted resolution 8 (XXXII) in which it expressed its satisfaction to the *Ad Hoc* Working Group of Experts for the interim report (E/CN.4/1187) it had submitted; decided that the Working Group should evaluate all the aspects of the Declaration of Dakar on Namibia and Human Rights and of the Programme of Action annexed thereto and should submit specific proposals to the Commission at its thirty-third session; requested the Secretary-General, in application of the provisions of paragraph 10 of Commission resolution 5 (XXXI), to continue his contacts with a view to the organization, in southern Africa, of a symposium on the matters referred to in paragraph 20 of the conclusions and recommendations of the report of the Working Group (E/CN.4/1159); and recommended a draft resolution for adoption by the Economic and Social Council.

On 12 May 1976, the Economic and Social Council adopted resolution 1991 (LX) in which, *inter alia*, it expressed its deep concern to the General Assembly regarding the situation in southern Africa as constituting a serious threat to international peace and security; appealed to all States to co-operate with the international organizations in measures they were taking to combat racial discrimination and *apartheid*; invited Member States to ratify the International Convention on the Suppression and Punishment of the Crime of *Apartheid*; and requested the Secretary-General to communicate the report of the *Ad Hoc* Working Group of Experts (E/CN.4/1187) to all competent bodies in the United Nations system.

The *Ad Hoc* Working Group of Experts held a session at Geneva on 14 and 15 June 1976 before proceeding on a field mission to Africa and Europe.

(See also subject. 2 below, "Allegations regarding infringements of trade union rights".)

2. ALLEGATIONS REGARDING INFRINGEMENTS OF TRADE UNION RIGHTS

On 6 May 1975, the Economic and Social Council adopted decision 84 (LVIII) by which it transmitted to the *Ad Hoc* Working Group of Experts of the Commission on Human Rights, for consideration and report to the Council, certain allegations regarding infringements of trade union rights in South Africa received by the Secretary-General from the International Confederation of Free Trade Unions (E/5638). As requested, the Working Group submitted to the Council at its sixtieth session a report on those allegations (E/5767).

On 12 May 1976, the Economic and Social Council adopted resolution 1997 (LX) in which it called for the immediate release of all trade unionists currently under imprisonment or detention and for the immediate recognition and restitution of all trade union rights; and requested the *Ad Hoc* Working Group of Experts to continue to study that ques-

tion and to report thereon to the Commission on Human Rights and to the Council at such times as it might consider appropriate.

The Economic and Social Council was also seized at its sixtieth session of a report from the Fact-Finding and Conciliation Commission on Freedom of Association of the International Labour Organisation concerning allegations regarding infringements of trade union rights in Lesotho¹⁴ which had been referred to the Conciliation Commission under a procedure governed by Council resolution 277 (X) of 17 February 1950. On 12 May 1976, the Economic and Social Council adopted resolution 1966 (LX) in which it requested the Government of Lesotho to inform the Secretary-General of any steps taken to implement the recommendations contained in the Conciliation Commission's report; and requested the Secretary-General to transmit any communications received from the Government of Lesotho on the matter to the Director-General of the International Labour Office for the information of the Governing Body.

The Economic and Social Council also had before it, for consideration under a procedure governed by its resolution 277 (X), certain allegations of infringements of trade union rights in the Bahamas (E/5645) submitted by trade unions in that country and a reply thereon from the Government concerned (E/5765), which rejected the allegations. On 12 May 1976, the Economic and Social Council adopted decision 150 (LX) by which it decided to defer consideration of the subject to its sixty-second session and requested the Secretary-General to ascertain from the complainant unions whether they would specify the nature of their allegations, as requested by the Government of the Bahamas, or whether they wished to withdraw their complaint.

3. STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS

At its thirty-first session, the Commission on Human Rights considered in closed meetings, as provided in Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, the confidential resolution adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its twenty-seventh session on the matter of communications received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959.

By decision 7 (XXXI) of 24 February 1975, the Commission on Human Rights requested the Secretary-General to address a communication on its behalf to Governments, appealing to them to continue to co-operate with the Commission and its Sub-Commission on Prevention of Discrimination and Protection of Minorities by sending their observations as soon as possible on any copies of communications forwarded to them under Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959 or by complying with any request made to them for their observations on communications under Council resolution 1503 (XLVIII) of 27 May 1970. The Commission recommended that the Economic and Social Council should request the Secretary-General to furnish the monthly list of communications forwarded to members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under paragraph 4 (a) of Council resolution 1503 (XLVIII) also to the members of the Commission on Human Rights every month. In decision 79 (LVIII) of 6 May 1975, the Council adopted the draft decision to that effect. The Commission also decided to set up a working group composed of five of its members to examine situations referred to the Commission by the Sub-Commission under Council resolution 1503 (XLVIII), to meet a week before the thirty-second session of the Commission. By decision 79 (LVIII), the Economic and Social Council approved the Commission's decision, except that it deferred to its fifty-ninth session the question of the date of the meeting of the working group.

The Commission also adopted the text of a draft resolution which it recommended for adoption by the Economic and Social Council relating to written and oral statements by

¹⁴ International Labour Office document GB.197/3/5.

non-governmental organizations in consultative status concerning complaints or allegations relating to human rights. On 5 May 1975, the Council amended and adopted the text as resolution 1919 (LVIII) in which it, *inter alia*, appealed urgently for the strict observance of the requirement of confidentiality stated in paragraph 8 of Council resolution 1503 (XLVIII); decided that in future non-governmental organizations in consultative status must comply without exception as regards their submissions both in written and in oral form, in so far as they related to allegations or complaints on human rights, with the provisions of paragraph 36 (b) of Council resolution 1296 (XLIV) of 23 May 1968 and must also observe strictly the provisions of paragraph 8 of resolution 1503 (XLVIII); and decided that any non-governmental organization failing to observe the provisions of paragraph 36 (b) of resolution 1296 (XLIV) might render its consultative status subject to suspension or withdrawal under the terms of that resolution.

The Working Group established under resolution 2 (XXIV) of 16 August 1971 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in accordance with Economic and Social Council resolution 1503 (XLVIII), met from 11 to 20 August 1975. After considering the communications received since its third annual session, including the replies of Governments, the Working Group submitted a confidential report to the Sub-Commission, which discussed the report in closed meetings and adopted a confidential resolution by which it communicated its findings to the Commission on Human Rights. At its thirty-second session, the Commission considered that resolution and related documents in closed meetings, as provided in Economic and Social Council resolution 1503 (XLVIII).

On 12 May 1976, the Economic and Social Council adopted decision 147 (LX) in which it approved decision 6 (a) (XXXII) of the Commission on Human Rights, in which the Commission decided to set up a working group composed of five of its members which would meet a week before its thirty-third session to examine such particular situations as might be referred to the Commission by the Sub-Commission at its twenty-ninth session under Council resolution 1503 (XLVIII). In decision 6 (b) (XXXII), the Commission decided that the Sub-Commission and its Working Group on Communications should have access to the records of the closed meetings of the Commission in which it examined situations referred to it under Council resolution 1503 (XLVIII), together with all other confidential documents relating thereto that had been before the Commission.

On the same date, the Economic and Social Council adopted decision 149 (LX) by which it also approved decisions taken by the Commission on Human Rights to refer certain confidential documents which had been before the Commission under Council resolution 1503 (XLVIII) to the *Ad Hoc* Working Group on the situation of human rights in Chile and certain other confidential documents also considered by the Commission under the same resolution to the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.

4. QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE TERRITORIES OCCUPIED AS A RESULT OF HOSTILITIES IN THE MIDDLE EAST

The Commission on Human Rights considered at its thirty-first session the question of the violation of human rights in the territories occupied as a result of hostilities in the Middle East and adopted resolutions 6 A and B (XXXI) of 21 February 1975. In resolution 6 A (XXXI), the Commission called upon Israel to comply with its obligations under the Charter of the United Nations and the Universal Declaration of Human Rights, to abide by its obligations under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to implement all the relevant United Nations resolutions and to desist from all acts and policies aimed at colonizing and changing the physical character and demographic composition of the occupied Arab territories, particularly through the establishment of settlements and the deportation and transfer of the indigenous inhabitants. The Secretary-General was requested to bring the resolution to the attention of all Governments, the competent United Nations organs, specialized agencies and regional intergovernmental organizations and to give it the widest possible publicity, and to report to the Commission

at its next session. In resolution 6 B (XXXI), the Commission called upon Israel to ensure freedom of worship and accord the esteem, regard and protection due to religious personalities in accordance with the established traditions in the region, particularly in Jerusalem, which had been fully respected by all authorities throughout the centuries, and also called upon Israel to release Archbishop Capucci immediately.

The General Assembly, at its thirtieth session, had before it the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (A/10272)¹⁵ as well as the report of the Secretary-General (A/10370) submitted in accordance with paragraph 10 (c) of resolution 3240 A (XXIX) and paragraph 4 of resolution 3240 C (XXIX) of 29 November 1974.

On 15 December 1975, the General Assembly adopted resolutions 3525 A, B, C and D (XXX) in which it called again upon Israel to allow the Special Committee access to the occupied territories; deplored the continued and persistent violation by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and other applicable international instruments; reiterated its call upon all States, international organizations and specialized agencies not to recognize any changes carried out by Israel in the occupied territories and to avoid actions, including actions in the field of aid, which might be used by Israel in its pursuit of the policies and practices referred to in the resolution; requested the Special Committee, pending the early termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the Arab territories occupied by Israel since 1967, to consult, as appropriate, with the International Committee of the Red Cross in order to ensure the safeguarding of the welfare and human rights of the population of the occupied territories, and to report to the Secretary-General as soon as possible and whenever the need arose thereafter; reaffirmed that the Geneva Convention relative to the Protection of Civilian Persons in Time of War was applicable to all the Arab territories occupied by Israel since 1967, including Jerusalem; requested the Special Committee to continue its efforts to undertake a survey of the destruction in Quneitra and to assess the nature, extent and value of the damage caused by such destruction; declared all measures taken by the Israeli authorities with a view to changing the institutional structure and established religious practices in the sanctuary of Al-Ibrahimi Mosque in the city of Al-Khalil null and void; called upon Israel to rescind and to desist forthwith from all such measures; and requested the Secretary-General to report as soon as possible on the implementation of that provision after investigating the situation in Al-Ibrahimi Mosque by contacting the Islamic, Arab and other authorities concerned.

The Commission on Human Rights, at its thirty-second session, had before it a report of the Secretary-General (E/CN.4/1184) submitted in accordance with paragraph 12 of its resolution 6 A (XXXI) and a number of other documents (E/CN.4/1183 and Add.1, E/CN.4/1205, E/CN.4/1211) drawing its attention to certain aspects of the question. On 13 February 1976, the Commission adopted resolution 2 (XXXII) in which it reaffirmed that military occupation of territory constituted a grave threat to international peace and security and was, in itself, a continuous violation of the Charter of the United Nations and of the Universal Declaration of Human Rights; called upon Israel to take immediate steps for the return of the Palestinians and the other displaced inhabitants of the occupied Arab territories to their homes; called upon Israel to desist forthwith from establishing new settlements in the occupied Arab territories and to commence immediately with the removal of the existing settlements; deplored the measures taken by Israel to exploit the human, natural and all other resources and wealth of the occupied Arab territories and called upon Israel immediately to rescind all such measures and to compensate and make full restitution for the exploitation and depletion of their human and natural resources; declared that all measures taken by Israel to change the physical character, the demographic structure and the status of occupied Arab territories were null and void, and considered those changes an impediment to the achievement of a just and lasting peace; censured in the strongest

¹⁵ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 52.

terms all measures taken by Israel to change the status of Jerusalem; and requested the Secretary-General to bring the resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies and regional intergovernmental organizations and to give it the widest possible publicity.

The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories held three series of meetings at Geneva from 16 to 20 February; from 4 to 15 June and from 28 to 30 July 1976. It considered information it had received on the occupied territories as well as a number of submissions received from Governments and other sources, and it held hearings. It also had on its agenda a progress report on the survey of the destruction in Quneitra requested by the General Assembly in its resolution 3525 C (XXX). The Special Committee held a fourth series of meetings at Headquarters on 14 and 15 September 1976, when it considered and adopted its report to the General Assembly.

On 16 December 1976, the General Assembly adopted resolutions 31/106 A, B, C and D, in which, having considered the report of the Special Committee (A/31/218), it deplored the measures taken by Israel in the occupied territories that altered their demographic composition or geographical nature, and particularly the establishment of settlements; declared that such measures had no legal validity and could not prejudice the outcome of the search for the establishment of a just and lasting peace in the area; reaffirmed that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, was applicable to all the Arab territories occupied by Israel since 1967, including Jerusalem; requested the Special Committee, pending the early termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the occupied territories, to consult, as appropriate, with the International Committee of the Red Cross in order to ensure the safeguarding of the welfare and human rights of the population of the occupied territories and to report to the Secretary-General; and requested the Special Committee to complete its survey on the question of damages resulting from the destruction of Quneitra, including those not covered by the report submitted by the expert engaged by the Special Committee (A/31/218, annex III), and to report thereon to the Assembly.

5. STUDY OF REPORTED VIOLATIONS OF HUMAN RIGHTS IN CHILE

At its thirty-first session, the Commission on Human Rights considered the item entitled "Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment". The Commission had before it a note by the Secretary-General (E/CN.4/1166), information submitted in accordance with Sub-Commission resolution 8 (XXVII) of 21 August 1974 (E/CN.4/1166/Add.1-15), three communications from the Permanent Mission of Chile (E/CN.4/1158, E/CN.4/1174 and E/CN.4/1174 Add.1) and the report of the Sub-Commission on its twenty-seventh session (E/CN.4/1160).

In resolution 8 (XXXI) of 27 February 1975, the Commission on Human Rights decided that an *ad hoc* working group of five members of the Commission, to be appointed in their personal capacity by the Chairman of the Commission and to operate under his chairmanship, should inquire into the present situation of human rights in Chile on the basis of the above-mentioned resolutions of the Sub-Commission and the General Assembly and of Economic and Social Council resolution 1873 (LVI) of 17 May 1974 and of a visit to Chile and of oral and written evidence to be gathered from all relevant sources; and appealed to the Government of Chile to extend its full co-operation to the Working Group in fulfilling its task, including the granting of all necessary facilities and complete freedom of movement in the country for this purpose. The *Ad Hoc* Working Group was asked to report the results of its inquiries to the Commission on Human Rights at its thirty-second session and to submit a progress report on its findings to the Secretary-General for inclusion in his report to the General Assembly at its thirtieth session under Assembly resolution 3219 (XXIX). The Commission decided to consider at its thirty-second session as a matter of high priority the question of the violations of human rights in Chile.

The Economic and Social Council, in decision 80 (LVIII) of 6 May 1975, approved the decision of the Commission on Human Rights in its resolution 8 (XXXI) to set up an *ad hoc* working group to inquire into the present situation of human rights in Chile within the terms of the resolution.

The General Assembly, in dealing with the question of the protection of human rights in Chile at its thirtieth session, had before it the report of the Secretary-General (A/10295)¹⁶ describing the action taken by the President of the twenty-ninth session of the Assembly and the Secretary-General under paragraph 5 of Assembly resolution 3219 (XXIX) of 6 November 1974.

In a note to the General Assembly (A/10285), the Secretary-General reported on the action taken by the Commission on Human Rights in response to the recommendation of the Sub-Commission, as endorsed by the Assembly in paragraph 4 of its resolution 3219 (XXIX), that the Commission should study the reported violations of human rights in Chile. The progress report of the *Ad Hoc* Working Group established under Commission resolution 8 (XXXI) of 27 February 1975, which was transmitted to the Secretary-General by the Chairman-Rapporteur of the Working Group on 4 September 1975, was annexed to that note.

In resolution 3448 (XXX) of 9 December 1975, the General Assembly expressed its profound distress at the constant flagrant violations of human rights in Chile; called upon the Chilean authorities to take, without delay, all necessary measures to restore and safeguard human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile is a party; deplored the refusal of Chilean authorities to allow the *Ad Hoc* Working Group to visit the country, notwithstanding previous solemn assurances given by the authorities, and urged them to honour those assurances; invited the Commission on Human Rights to extend the mandate of the Working Group, as currently constituted, in order to enable it to report to the Assembly at its thirty-first session and to the Commission at its thirty-third session on the situation of human rights in Chile and, in particular, on any developments which occurred to re-establish respect for human rights and fundamental freedoms; and requested the President of the thirtieth session of the Assembly and the Secretary-General to assist in any way they might deem appropriate in the re-establishment of basic human rights and fundamental freedoms in Chile.

At its thirty-second session, the Commission on Human Rights, in considering the question of the violation of human rights in Chile, had before it the report, consisting of two parts, of the *Ad Hoc* Working Group on the results of its inquiries (A/10285, E/CN.4/1188), the report of the Secretary-General (A/10295), the statement of the Chairman-Rapporteur of the *Ad Hoc* Working Group (A/C.3/640), and a number of related General Assembly documents (A/10303, A/C.3/639, A/C.3/642) and material submitted to the Commission by the Permanent Representative of Chile to the United Nations Office at Geneva (E/CN.4/1197, E/CN.4/1204 and E/CN.4/1207).

In resolution 3 (XXXII) of 19 February 1976, the Commission on Human Rights expressed its appreciation to the Chairman and members of the *Ad Hoc* Working Group for the report (A/10285, E/CN.4/1188); expressed its profound distress at the constant, flagrant violations of human rights, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention and exile, of which the Working Group's report brought further evidence; reaffirmed its condemnation of all forms of torture and cruel, inhuman or degrading treatment or punishment; concluded that the practice of torture had been systematically employed by some State agencies, particularly by the Dirección de Inteligencia Nacional (DINA), and called upon the Chilean authorities to undertake effective measures to investigate and put an end to such activities of those agencies and of individuals in relation to acts of torture; extended the mandate of the current Working Group and requested it to report to the Assembly at

¹⁶ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 12.

its thirty-first session and to the Commission at its thirty-third session on the situation of human rights in Chile, in particular any developments, legislative or otherwise, which might occur to re-establish respect for human rights and fundamental freedoms in implementation of Assembly resolution 3448 (XXX) and all other relevant resolutions and decisions of United Nations bodies.

On 12 May 1976, the Economic and Social Council adopted resolution 1994 (LX) in which it endorsed resolution 3 (XXXII) of the Commission on Human Rights; requested the Working Group, in fulfilling its mandate, also to ascertain any effect which any measure taken by the Chilean authorities might have on the re-establishment of respect for human rights and fundamental freedoms in implementation of General Assembly resolution 3448 (XXX); and appealed once again to the Chilean authorities to comply with the requests and observations made and the guarantees sought by the Commission with regard to the restoration of basic human rights and fundamental freedoms.

On 12 May 1976, the Economic and Social Council adopted decision 145 (LX) by which it requested the General Assembly to make arrangements for the provision of adequate financial resources and staff for the implementation of resolution 3 (XXXII) of the Commission on Human Rights.

6. QUESTION OF HUMAN RIGHTS IN CYPRUS

On 9 December 1975, the General Assembly, in taking up the question of persons missing in Cyprus as part of its consideration of the report of the Economic and Social Council,¹⁷ adopted resolution 3450 (XXX) in which it requested the Secretary-General to exert every effort to assist in tracing and accounting for persons missing as a result of armed conflict in Cyprus and requested him to provide the Commission on Human Rights with information relevant to the implementation of the resolution. The Secretary-General submitted his report to the Commission at its thirty-second session (E/CN.4/1186 and Corr.1). The Commission also had before it, *inter alia*, two communications from the Permanent Representative of Cyprus to the United Nations Office at Geneva (E/CN.4/1202, E/CN.4/1209) and a communication from the Permanent Representative of Turkey to the United Nations Office at Geneva (E/CN.4/1206).

On 27 February 1976, the Commission on Human Rights adopted resolution 4 (XXXII) in which it renewed its call upon the parties concerned to undertake urgent measures to facilitate the voluntary return of all refugees and displaced persons to their homes in safety and to settle all other aspects of the refugee problem; urged all parties to refrain from unilateral actions in contravention of the relevant United Nations resolutions, including changes in the demographic structure of Cyprus; requested the Secretary-General to continue and to intensify his efforts in respect of missing persons in Cyprus and called upon the parties concerned to co-operate with the Secretary-General in the fulfilment of his task; requested the Secretary-General to provide the Commission at its thirty-third session with information relevant to the implementation of the resolution; and decided to consider the question of human rights in Cyprus at its thirty-third session.

F. Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa

By resolution 3 (XXX) of 14 February 1974, the Commission on Human Rights had decided to place this item, as a matter of priority, on the agenda of its thirty-second session. At that session, the Commission had before it the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its twenty-eighth session (E/CN.4/1180) containing the results of its consideration of the preliminary report submitted by Mr. Ahmed M. Khalifa, Special Rapporteur (E/CN.4/Sub.2/L.624).

¹⁷ For relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes, agenda item 12.*

In resolution 6 (XXXII) of 1 March 1976, the Commission on Human Rights strongly condemned the attitude of any country which, by its political, military, economic and other forms of assistance, became an accomplice in *apartheid* and racial discrimination and thus contributed to the perpetuation of those policies; and encouraged the Special Rapporteur to continue his work so that the final report, accompanied by the recommendations of the Sub-Commission, could be considered by the Commission at its thirty-third session.

G. The right of peoples to self-determination

1. IMPORTANCE OF THE UNIVERSAL REALIZATION OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION

At its thirtieth session the General Assembly had before it a report submitted by the Secretary-General (A/10156 and Add.1)¹⁸ in accordance with paragraph 12 of resolution 3246 (XXIX) of 29 November 1974. On 10 November 1975, the General Assembly adopted resolution 3382 (XXX) in which it strongly condemned all Governments which did not recognize the right to self-determination and independence of peoples under colonial and foreign domination and alien subjugation, notably the peoples of Africa and the Palestinian people; noted with appreciation the material and other forms of assistance that peoples under colonial régimes continued to receive from Governments, United Nations agencies and intergovernmental and non-governmental organizations; and called for a maximization of that assistance.

In accordance with its resolution 3 (XXXI) of 11 February 1975, the Commission on Human Rights, at its thirty-second session, considered the item entitled "The right of peoples to self-determination and its application to peoples under colonial and alien domination".

On 29 November 1976, the General Assembly adopted resolution 31/30, in which it expressed its concern that the assistance extended so far by the specialized agencies and other organizations within the United Nations system to the colonial peoples, particularly those of Zimbabwe and Namibia, and to their national liberation movements was far from adequate in terms of the actual needs of the peoples concerned; requested the Economic and Social Council to continue to consider, in consultation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, appropriate measures for co-ordination of the policies and activities of the organizations within the United Nations system in implementing the relevant resolutions of the Assembly; and requested the Secretary-General to continue to assist the organizations in working out appropriate measures and to report thereon to the Assembly at its thirty-second session.

Also at its thirty-first session, the General Assembly, after having considered the report (A/31/152 and Add.1-3) submitted by the Secretary-General under its resolution 3382 (XXX), adopted resolution 31/34 of 30 November 1976, in which it reaffirmed the legitimacy of the peoples' struggle for independence, territorial integrity, national unity and liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle; demanded full respect for the basic human rights of all individuals detained or imprisoned as a result of their struggle for self-determination and independence, and strict respect for article 5 of the Universal Declaration of Human Rights under which no one shall be subjected to torture or to cruel, inhuman or degrading treatment, and their immediate release; and decided to remain seized of the item at its thirty-second session on the basis of reports that Governments, United Nations agencies and intergovernmental and non-governmental organizations were requested to submit concerning the strengthening of assistance to colonial Territories and peoples under alien domination and foreign subjugation.

¹⁸ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes agenda item 77*.

2. IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS RELATING TO THE RIGHT OF PEOPLES UNDER COLONIAL AND ALIEN DOMINATION TO SELF-DETERMINATION

The Sub-Commission on Prevention of Discrimination and Protection of Minorities had before it at its twenty-eighth session the preliminary report (E/CN.4/Sub.2/L.626) submitted by Mr. Héctor Gros Espiell, Special Rapporteur for the question of the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination, in accordance with its resolution 4 (XXVII) of 16 August 1974. The Sub-Commission indicated its wish to receive the final report at its twenty-ninth session and to discuss it at its thirtieth session.

At the twenty-ninth session of the Sub-Commission, the Special Rapporteur presented his final report (E/CN.4/Sub.2/377 and Add.1-4). On 26 August 1976 the Sub-Commission decided that the Special Rapporteur should update his report before submitting it to the Sub-Commission at its thirtieth session.

3. HISTORICAL AND CURRENT DEVELOPMENT OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION

At its twenty-eighth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had before it the preliminary report on the historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms (E/CN.4/Sub.2/L.625), submitted by the Special Rapporteur, Mr. Aureliu Cristescu, in accordance with Sub-Commission resolution 3 (XXVII) of 16 August 1974. On 10 September 1975, the Sub-Commission decided to consider the draft report at its twenty-ninth session and the final report at its thirtieth session.

H. Human rights in armed conflicts

The second and third sessions of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts were held in 1975 and 1976, respectively, and substantial progress was made towards the successful conclusion of the Conference.

The second session of the Conference of Government Experts on the Use of Certain Conventional Weapons was convoked by the International Committee of the Red Cross at Lugano from 28 January to 26 February 1976 and discussed such conventional weapons as had been or might become the subject of proposed prohibition or restriction of use, particularly incendiary weapons, small calibre weapons, delayed action weapons and blast and fragmentation weapons.

The Secretary-General submitted to the General Assembly at its thirtieth session a report (A/10195 and Corr.1 and Add.1) containing a summary of the work of the second session of the Diplomatic Conference and information on relevant activities of certain non-governmental bodies, and a note (A/10147) on the protection of journalists engaged in dangerous missions in areas of armed conflict,¹⁹ and at its thirty-first session a report on the third session of the Diplomatic Conference and on the second session of the Conference of Government Experts on the Use of Certain Conventional Weapons (A/31/163 and Add.1).²⁰

The General Assembly adopted resolution 3500 (XXX) of 15 December 1975 and resolution 31/19 of 24 November 1976, in which it called upon all parties in armed conflicts to acknowledge and to comply with their obligations under the humanitarian instruments and to observe the international humanitarian rules which were applicable; called the atten-

¹⁹ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda items 70 and 114.

²⁰ For other relevant documents, see *Official Records of the General Assembly, Thirty-first Session, Annexes*, agenda item 111.

tion of the Diplomatic Conference, and of the Governments and organizations participating in it, to the need for measures to promote on a universal basis the dissemination of and instruction in the rules of international humanitarian law applicable in armed conflicts; and urged all participants in the Diplomatic Conference to do their utmost to reach agreement on additional rules which might help to alleviate the suffering brought about by armed conflicts and to respect and protect non-combatants and civilian objects in such conflicts.

I. Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention or imprisonment

The General Assembly, at its thirtieth session, had before it an analytical summary by the Secretary-General of the information received from Member States in accordance with General Assembly resolution 3218 (XXIX) of 6 November 1974 (A/10158 and Corr.1 and Add.1)²¹ and a report of the Secretary-General reflecting the results of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and containing the proposal of the Congress for a draft Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/10260). In addition, the Assembly received information concerning the question of medical ethics in relation to the protection of detained persons against torture and other cruel, inhuman or degrading treatment or punishment, including the text of the draft Declaration of Tokyo prepared by the World Medical Association on this subject (A/C.3/641) and the working paper on health aspects of avoidable maltreatment of prisoners and detainees prepared for the Congress by the World Health Organization (A/CONF.56/9).

By resolution 3452 (XXX) of 9 December 1975, the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a guideline for all States and other entities exercising effective power.

On the same date, the General Assembly adopted resolution 3453 (XXX) in which it requested the Commission on Human Rights, at its thirty-second session, to study the question of torture and any necessary steps for ensuring the effective observance of the above-mentioned Declaration and for the formulation of a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the *Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile*²² and the draft principles contained therein; requested the Committee on Crime Prevention and Control to elaborate a draft code of conduct for law enforcement officials and to submit this draft code to the Assembly at its thirty-second session, through the Commission for Social Development and the Economic and Social Council; invited WHO to give further attention to the study and elaboration of principles of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment; and decided to include in the provisional agenda of its thirty-first session an item entitled "Torture and other cruel, inhuman or degrading treatment or punishment" for the purpose of reviewing the progress achieved in accordance with resolution 3453 (XXX).

At its thirty-second session, the Commission on Human Rights had before it, in addition to the relevant documents and resolutions of the General Assembly, a report of the Secretary-General on the discussions and recommendations of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the decisions of the Assembly on the matter (E/CN.4/1190).

In resolution 10 A (XXXII) of 5 March 1976, the Commission on Human Rights invited the Sub-Commission on Prevention of Discrimination and Protection of Minorities

²¹ For other relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 74.

²² United Nations publication, Sales No. 65.XIV.2.

to draw also upon the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a guideline for its work; recommended that the Sub-Commission should examine the relevant information submitted under its resolutions 7 (XXVII) of 20 August 1974 and 4 (XXVIII) of 10 September 1975 also in the light of the principles contained in the Declaration; and requested the Sub-Commission to report annually to the Commission on the implementation of the resolution. In resolution 10 B (XXXII), the Commission drew the attention of Governments, specialized agencies and non-governmental organizations in consultative status with the Economic and Social Council to a number of relevant studies and documents; invited Governments, specialized agencies and non-governmental organizations in consultative status with the Council to submit their comments, or their further comments, on any or all of the mentioned documents before the twenty-ninth session of the Sub-Commission; requested the Secretary-General to submit to the Sub-Commission at its twenty-ninth session an up-to-date report on the draft principles on freedom from arbitrary arrest and detention and on the study on the right of arrested persons to communicate with those whom it is necessary for them to consult in order to ensure their defence or to protect their essential interests; requested the Sub-Commission to draw up, at its twenty-ninth session, a body of principles for the protection of all persons under any form of detention or imprisonment for transmission to the Commission for its consideration at its thirty-third session; and decided to consider with priority at its thirty-third session an item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment and in particular the body of principles for the protection of all persons under any form of detention or imprisonment".

On 12 May 1976, the Economic and Social Council adopted resolution 1993 (LX) in which it called on all Governments fully to observe and implement the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; urged the Sub-Commission on Prevention of Discrimination and Protection of Minorities to give adequate attention to the task entrusted to it by resolution 10 (XXXII) of the Commission on Human Rights; reiterated the recommendation of the Assembly in its resolution 3144 B (XXVIII) of 14 December 1973 that Member States should make all possible efforts to implement the Standard Minimum Rules for the Treatment of Prisoners²³ in the administration of penal and correctional institutions and take the Rules into account in the framing of national legislation; and requested the Committee on Crime Prevention and Control, at its fourth session, to study the range of application of the Standard Minimum Rules, to formulate a set of implementing procedures for those Rules, and to report to the Council at its sixty-second session.

At its twenty-ninth session the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in resolution 3 A (XXIX) of 31 August 1976, recommended that the Commission on Human Rights request the Economic and Social Council to authorize the Chairman of the Sub-Commission to appoint a group of five of its members to meet for not more than five working days prior to each session of the Sub-Commission to analyse the material received in connexion with the human rights of persons subjected to any form of detention or imprisonment and to prepare the Sub-Commission's annual review of developments in this field. The Sub-Commission requested the Secretary-General, in view of the next annual review, to invite Governments, specialized agencies, regional intergovernmental organizations, the International Criminal Police Organization (INTERPOL) and interested non-governmental organizations in consultative status with the Economic and Social Council to provide reliably attested information, in particular relating to the question of the human rights of persons subjected to any form of detention or imprisonment in situations of public emergency or under a state of siege and to the necessity of judicial and administrative supervision over arrest, interrogation and detention practices of the secret police and other police and military authorities. The Secretary-General was asked to submit the information he received to the Sub-Commission at its next session.

²³ For the text of the Rules, see *Report of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955* (United Nations publication, Sales No. 56.IV.4).

On 20 August 1976 the Sub-Commission, by decision 2 of its twenty-ninth session, appointed Mr. Erik Nettel as Rapporteur to formulate, in co-operation with the Secretariat, the first draft of a body of principles for the protection of all persons under any form of detention or imprisonment, for consideration at the thirtieth session of the Sub-Commission.

At its thirty-first session the General Assembly adopted resolution 31/85 of 13 December 1976, in which it requested the Commission on Human Rights to submit, through the Council, a comprehensive report on the elaboration of a body of principles for the protection of all persons under any form of detention or imprisonment to the Assembly at its thirty-third session, and invited the World Health Organization to prepare a draft code on medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to bring it to the attention of the Assembly at its thirty-second session.

J. Slavery and the slave trade

At its twenty-eighth and twenty-ninth sessions the Sub-Commission on Prevention of Discrimination and Protection of Minorities considered the agenda item "Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism".

The Sub-Commission had before it at its twenty-eighth session the report of the Working Group established under Sub-Commission resolution 11 (XXVII) of 21 August 1974 on its first session (E/CN.4/Sub.2/AC.2/3). The Sub-Commission adopted resolution 5 (XXVIII) of 10 September 1975, in which it recommended that Governments should be called upon to focus their attention on all measures which would lead to the eradication of slavery—such measures including land reform and reform of the education system with a view to ensuring the dissemination of technical knowledge, especially in the field of agriculture, and credit assistance; and that the Commission on Human Rights and the Economic and Social Council should broaden the terms of reference of the Working Group so that it could invite States, governmental and non-governmental organizations and individuals, to attend its meetings and assist it in its work, and enable it to benefit from a longer annual period of work, specifically up to five working days, and to have all possible assistance from the Secretariat. The Commission on Human Rights, by its decision 8 (XXXII) of 5 March 1976, took note of the report of the Sub-Commission (E/CN.4/1180).

At its twenty-ninth session the Sub-Commission had before it the report of the Working Group on its second session (E/CN.4/Sub.2/373) and adopted resolution 5 (XXIX) of 31 August 1976, in which it requested the Working Group to continue its study of the problems of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of *apartheid* and colonialism; as well as such manifestations as the sale of children, debt bondage, the traffic in persons and the exploitation of the prostitution of others. The Sub-Commission requested the Secretary-General to call upon States parties to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949 to comply with the reporting procedures envisaged in article 21 of that Convention and also to call upon States parties to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 to report annually to the Secretary-General on the legal, administrative and practical situation within their countries in relation to the abolition of the institutions and practices covered by the Supplementary Convention. The Sub-Commission also decided to consider the item relating to slavery and the slave trade biennially.

K. Studies dealing with particular rights or groups of rights

1. DECISIONS OF THE SUB-COMMISSION RELATING TO ITS CONSIDERATION OF STUDIES

At its twenty-eighth session the Sub-Commission on Prevention of Discrimination and Protection of Minorities took a number of decisions concerning the time-table for

submission and consideration of studies that were in preparation,²⁴ including the following: The problem of the applicability of existing international provisions for the protection of human rights to individuals who are not citizens of the country in which they live (Special Rapporteur, the Baroness Elles); Study of the problem of discrimination against indigenous populations (Special Rapporteur, Mr. José R. Martínez Cobo); Study on the rights of persons belonging to ethnic, religious and linguistic minorities (Special Rapporteur, Mr. Francesco Capotorti); Study of the question of the prevention and punishment of the crime of genocide (Special Rapporteur, Mr. Nicodème Ruhashyankiko); The individual's duties to the community and the limitations on human rights and freedoms under article 29 of the Universal Declaration of Human Rights (Special Rapporteur, Mrs. Erica-Irene Daes); and the revised version of the study on racial discrimination in the political, economic, social and cultural spheres (Special Rapporteur, Mr. Hernán Santa Cruz).

2. HUMAN RIGHTS OF MIGRANT WORKERS

At its twenty-eighth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had before it the final version of the report prepared by Mrs. Halima Warzazi entitled "Exploitation of labour through illicit and clandestine trafficking" (E/CN.4/Sub.2/L.629). The Special Rapporteur, with the assistance of an informal working group, also submitted draft recommendations on the subject (E/CN.4/Sub.2/L.636). On 10 September 1975, the Sub-Commission adopted decision I (XXVIII) by which it decided to request the Secretariat to consolidate the preliminary report, the final report, the introductory statements and the draft recommendations of the Special Rapporteur in a single document and to send it to the Commission on Human Rights as reflecting the current status of the work on the subject in the Sub-Commission. It also decided to place the item on the agenda of its twenty-ninth session and to consider the draft recommendations at that session.

At its thirtieth session, the General Assembly considered the item entitled "Measures to ensure the human rights and dignity of all migrant workers".²⁵ On 9 December 1975, the General Assembly adopted resolution 3449 (XXX) in which it requested the United Nations organs and specialized agencies concerned to utilize in all official documents the term "non-documented or irregular migrant workers" to define those workers who illegally and/or surreptitiously enter another country to obtain work; and urged Member States to grant all facilities and help to diplomatic and consular agents accredited in their countries in order for them to fulfil their functions in relation to the protection and defence of the human rights of migrant workers, including those non-documented or irregular.

At its twenty-ninth session, the Sub-Commission had before it a document (E/CN.4/Sub.2/L.640) containing the two reports by the Special Rapporteur, her introductory statements and the draft recommendations which she had prepared with the assistance of a working group. The Sub-Commission decided on 31 August 1976 to take note with appreciation of the reports submitted by its Special Rapporteur and of the draft recommendations and to send them to the Commission on Human Rights together with the record of the discussion of the question at the twenty-ninth session of the Sub-Commission. It further decided to draw the attention of the Commission to the report of the United Nations seminar on the human rights of migrant workers, held in Tunis from 12 to 24 November 1975 (ST/TAO/HR/50).

The General Assembly at its thirty-first session adopted resolution 31/127 of 16 December 1976, in which it called upon all States, taking into account the provisions of the relevant instruments adopted by the International Labour Organisation and of the International Convention on the Elimination of All Forms of Racial Discrimination, to take measures to prevent and put an end to all discrimination against migrant workers and to ensure the implementation of such measures; invited all States to extend to migrant

²⁴ See E/CN.4/1180, annex II.

²⁵ For relevant documents, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 12.

workers having regular status in their territories treatment equal to that enjoyed by their own nationals with regard to the protection of human rights and to the provisions of their labour legislation and their social legislation, to promote the implementation of instruments and the adoption of bilateral agreements designed to eliminate the illicit traffic in alien workers, and to adopt, pending the conclusion of such agreements, measures to ensure that the fundamental human rights of all migrant workers, irrespective of their immigration status, were fully respected under their national legislation. The Assembly also called upon all States to give consideration to ratifying the Migrant Workers (Supplementary Provisions) Convention, 1975, adopted by the General Conference of the International Labour Organisation.

3. REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Commission on Human Rights, by resolution 2 (XXXI) of 10 February 1975, decided to keep the item entitled "Question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems relating to human rights in developing countries" on its agenda as a standing item with high priority.

In considering the question at its thirty-second session, the Commission had before it the printed version of the study prepared by the Special Rapporteur.²⁶ The periodic reports on economic, social and cultural rights for the period 1 July 1969 to 30 June 1973 that had been received after the thirty-first session of the Commission (E/CN.4/1155/Add.29-32) were also made available to the Commission.

L. Rights of disabled persons

At its thirty-first session the General Assembly proclaimed the year 1981 International Year for Disabled Persons, with the theme "Full participation". By resolution 31/123 of 16 December 1976 the Assembly decided to devote the year 1981 to the realization of a set of objectives, including: (a) helping disabled persons in their physical and psychological adjustment to society; (b) promoting all national and international efforts to provide disabled persons with proper assistance, training, care and guidance, to make available to them opportunities for suitable work and to ensure their full integration in society; (c) encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life; (d) educating and informing the public of the right of disabled persons to participate in and contribute to various aspects of economic, social and political life; and (e) promoting effective measures for the prevention of disability and for the rehabilitation of disabled persons. All Member States and the organizations concerned were invited to establish measures and programmes to implement the objectives of the Year, and the Secretary-General was asked to submit to the Assembly at its thirty-second session a draft programme for the Year.

M. Periodic reports on human rights

Under Economic and Social Council resolutions 1074 C (XXXIX) of 28 July 1965 and 1596 (L) of 21 May 1971, States Members of the United Nations or members of specialized agencies were invited to submit reports on developments in human rights in territories subject to their jurisdiction once every two years in a continuing cycle.²⁷

At its thirty-first session, the Commission on Human Rights considered, with the assistance of its *Ad Hoc* Committee on Periodic Reports, reports on economic, social and

²⁶ *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress* (United Nations publication, Sales No. E.75.XIV.2).

²⁷ First six-year cycle:

- (i) Civil and political rights (1 July 1968-30 June 1971);
- (ii) Economic, social and cultural rights (1 July 1969-30 June 1973);
- (iii) Freedom of information (1 July 1970-30 June 1975), to be submitted in 1976.

cultural rights for the period from 1 July 1969 to 30 June 1973 received from 47 Governments (E/CN.4/1155 and Add.1-28), reports on economic, social and cultural rights from specialized agencies (E/CN.4/1156 and Add.1 and 2), an analytical summary prepared by the Secretary-General of the reports (E/CN.4/1164 and Add.1), a subject and country index to those reports (E/CN.4/1165 and Corr.1 and Add.1), an up-to-date memorandum on the status of multilateral international agreements in the field of human rights concluded under the auspices of the United Nations (E/CN.4/907/Rev.12 and Corr.1), the report of its *Ad Hoc* Committee on Periodic Reports on the work of its 1975 session (E/CN.4/1167) and contributions received under Economic and Social Council resolution 1074 C (XXXIX) of 28 July 1965 from 13 non-governmental organizations in consultative status.

The Commission, on the recommendation of the *Ad Hoc* Committee, adopted resolution 12 (XXXI) of 6 March 1975, in which it noted with satisfaction the encouraging number of reports received; called upon the Governments of all Member States to participate in the reporting system and to provide more detailed information on difficulties experienced in ensuring the full enjoyment of human rights and on the methods and measures applied to overcome such difficulties; commended the notable efforts made by reporting Governments with different economic and social systems and material resources to promote the enjoyment of economic, social and cultural rights by an increasing number of their population; noted the importance of all persons concerned being made aware of the services and benefits available to them under national legislation relating to the enjoyment of economic, social and cultural rights and invited Governments to disseminate information on those rights, services and benefits; considered that, on the basis of the information contained in the reports on economic, social and cultural rights, attention could be drawn to a number of specific points, which were enumerated in the resolution; and recommended that those States which had not yet ratified or acceded to the International Covenant on Economic, Social and Cultural Rights should accelerate to the extent possible their internal procedures leading to ratification or accession, in order to strengthen the role of the United Nations in the promotion of economic, social and cultural rights.

N. Human rights and scientific and technological developments

At its thirty-first session, the Commission on Human Rights had before it the report of the Secretary-General on uses of electronics that might affect the rights of the person and the limits that should be placed on such uses in a democratic society (E/CN.4/1142 and Corr.1 and Add.1 and 2), a part of his report on the protection of the human personality and its physical and intellectual integrity in the light of advances in biology, medicine and biochemistry (E/CN.4/1172 and Corr.1), his note on the programme of work (E/CN.4/L.1287) and a report on health aspects of human rights in the light of scientific and technological developments, prepared by WHO (E/CN.4/1173). As requested by the General Assembly in resolution 3268 (XXIX), the Commission decided to draw up a programme of work on the question of scientific and technological developments in so far as they concerned human rights, taking into account the reports of the Secretary-General, the replies of Governments and other relevant sources, and relating in particular to the definition of standards in areas which might appear to have been sufficiently analysed, and to transmit this work programme to the Economic and Social Council at its sixtieth session.

The General Assembly adopted the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind at its thirtieth session, by resolution 3384 (XXX) of 10 November 1975.²⁸

At its thirty-second session the Commission on Human Rights, after examining the documents before it,²⁹ adopted resolution 11 (XXXII) of 5 March 1976, in which it requested the Secretary-General to continue collecting documentation on the development

²⁸ For the relevant documents that were before the Assembly, see *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 69.

²⁹ See *Official Records of the Economic and Social Council, Sixtieth Session, Supplement No. 3 (E/5768)*, para. 155.

of new technology as it pertained to human rights, where necessary with the assistance of qualified experts, and to continue and, if necessary, strengthen co-operation and co-ordination between United Nations organs and the specialized agencies with regard to the impact of science and technology on human rights, in particular with a view to the proposed conference on science, technology and development.

On 16 December 1976, the General Assembly adopted resolution 31/128, in which, expressing its concern at the fact that scientific and technological achievements might be used to the detriment of fundamental human rights and freedoms, the dignity of the human person, international peace and security and social progress, it called upon Member States to take account in their programmes and plans of the provisions and principles contained in the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind. The Assembly asked the specialized agencies to take fully into account in their programmes and activities the pertinent provisions of the Proclamation of Teheran³⁰ and the provisions of the Declaration, and asked the Commission on Human Rights, in its consideration of the question of scientific and technological progress and human rights, to give special attention to the implementation of the provisions of the Declaration.

O. Further promotion and encouragement of respect for human rights and fundamental freedoms

At its thirty-first session the Commission on Human Rights considered the question of its long-term programme of work, and in resolution 10 (XXXI) of 5 March 1976 it requested the Secretary-General to submit to it reports on various subjects which would assist it in examining the question thoroughly and comprehensively at its thirty-second session. The Commission also requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to draw up a five-year programme of its work, in particular by establishing a calendar for the various studies undertaken and taking into account the continuing tasks assigned to it.

The Sub-Commission at its twenty-eighth session set up a working group to draw up a five-year programme of work. The report of the working group was approved by the Sub-Commission on 10 September 1975 (E/CN.4/1180, annex II).

At its thirty-second session the Commission on Human Rights had before it several documents prepared by the Secretary-General: an analysis of the replies received from Member States concerning the long-term programme of work of the Commission (E/CN.4/1168 and Add.1-3) and five reports concerning various matters relating to human rights within the United Nations system (E/CN.4/1189, 1190, 1191, 1192 and Corr.1 and 1193).

On 27 February 1976, the Commission adopted resolution 5 (XXXII) in which, *inter alia*, it recalled that everyone has the right to live in conditions of international peace and security and fully to enjoy economic, social and cultural rights and civil and political rights; expressed its firm conviction that unqualified respect for and the promotion of human rights and fundamental freedoms require the existence of international peace and security; welcomed every effort made by States to strengthen world peace and to reduce international tension; affirmed that flagrant and massive violations of human rights, including economic, social and cultural rights, might lead the world into armed conflicts; and emphasized (a) the legitimacy of the struggle against all forms of aggression, colonialism and neo-colonialism, against any form of foreign domination and against the practice of genocide and the mass extermination of persons, *apartheid* and racial discrimination and all other forms of flagrant and massive violations of human rights, and (b) the need for all States to create, both by their own efforts and with international assistance and co-operation, the most favourable conditions for the maintenance of international peace and security through the establishment of a new international economic order based on justice and through respect

³⁰ *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No. E.68.XIV.2), chap. II.

for and the promotion of human rights and fundamental freedoms, including the right to life, liberty and security of person.

On 3 March 1976, the Commission adopted resolution 7 (XXXII) in which it recommended to the Economic and Social Council that it authorize the officers of the thirty-second session of the Commission to hold preparatory meetings at least three days before the beginning of the thirty-third session; requested the Council to enable the Secretary-General to continue to organize world-wide and regional seminars on human rights; and recommended to the Council to invite the Committee for Programme and Co-ordination to analyse the programme in the field of human rights as contained in the medium-term plan for 1976-1979³¹ and the programme budget for 1976-1977,³² in order to ascertain to what degree the presentation of that programme and the resources allocated to it could efficiently achieve the aims and objectives of United Nations activities in that field.

On 12 May 1976, the Economic and Social Council adopted decision 146 (LX) by which it endorsed the above recommendations. Also on 12 May 1976, the Council adopted resolution 1992 (LX) in which it urged the Commission to continue its efforts to promote and encourage respect for human rights and fundamental freedoms for all and authorized, as an interim measure, the officers of the thirty-second session of the Commission to meet for three days before the opening of the thirty-third session to consider ways and means which might enable the Commission to carry out its functions well, having regard to the following aspects: (a) the establishment of a proper and balanced long-term programme of work in the field of human rights, considering however on a priority basis specific situations of alleged gross violations of human rights at every session, (b) the rationalization of the work by grouping of items and through advance planning of various sessions, and (c) recourse to the use of sessional working groups and informal consultations.

The General Assembly at its thirtieth session considered the item "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" and adopted resolution 3451 (XXX) of 9 December 1975, in which it expressed its appreciation to the Secretary-General for the report he had submitted (A/10235); urged Member States that had not already done so to submit their views to the Secretary-General in accordance with its resolution 3221 (XXIX); requested the Secretary-General, in the light of further replies from Member States and non-governmental organizations in consultative status with the Economic and Social Council and of the views expressed at the Assembly's thirtieth session, to submit an up-to-date version of his report to the Assembly at its thirty-second session; requested the Secretary-General to submit a report on the status of the international conventions in the field of human rights for which he acts as depositary; and decided to consider with high priority at its thirty-second session the question of alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms.

P. The role of youth in the promotion and protection of human rights

In accordance with its decision 9 (XXXI) of 5 March 1975, the Commission on Human Rights considered at its thirty-second session the question of the role of youth in the promotion and protection of human rights in two of its aspects: conscientious objection to military service, and channels of communication with youth and international youth organizations. On the first aspect, the Commission had before it a report by the Secretary-General (E/CN.4/1118 and Corr.1 and Add.1-3) containing information submitted by Member States. The Commission heard statements on this subject by the United Nations Educational, Scientific and Cultural Organization and by four non-governmental organizations: the International Youth and Student Movement for the United Nations, the World Federation of Democratic Youth, Amnesty International and the Friends World Committee for

³¹ *Official Records of the General Assembly, Thirtieth Session, Supplement No. 6 (A/10006/ Add.1).*

³² *Ibid., Supplement No. 6 (A/10006).*

Consultation. The Commission decided, by resolution 1 A (XXXII) of 11 February 1976, to consider this problem at its thirty-third session.

On the second aspect, the Commission had before it the report of the *Ad Hoc* Advisory Group on Youth on its first meeting (E/CN.5/508), the comments and recommendations of the Secretary-General on that report (E/5427, paras. 10 (c) and 12 (a)) and the summary records of the discussion in the Economic and Social Council (E/AC.7/SR.732-737 and 739 and E/SR.1896). It adopted resolution 1 B (XXXII) of 11 February 1976, in which it requested that the appropriate United Nations organs, specialized agencies and non-governmental organizations, as well as Governments, promote measures for the involvement of youth in human rights in such matters as: (a) participation of young people in the implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination and in the development of society; (b) development of a special curriculum on human rights for use in educational systems, (c) use of mass media, particularly television, to propagate respect for human rights, (d) identification and examination of situations where the human rights of young people are being seriously restricted or violated; and (e) study of the possibility of the appointment by youth organizations in each country of a youth correspondent with the United Nations for issues related to human rights; requested the Secretary-General to bring the resolution to the notice of all Member States, the appropriate United Nations organs, the specialized agencies and the non-governmental organizations in consultative status concerned, asking them to submit information on steps taken in promoting the above-mentioned measures; and decided to consider at its thirty-third session the question of the role of youth in the promotion and protection of human rights on the basis of a report by the Secretary-General summarizing the information submitted under the above request and of the reports of the *Ad Hoc* Advisory Group on Youth on its second and third meetings and also of all other relevant documents submitted by the Secretary-General to the Commission for its further consideration.

On 16 December 1976, the General Assembly adopted three resolutions concerning youth. In resolution 31/129 it addressed a solemn appeal to all States, as well as to inter-governmental and non-governmental organizations, to take appropriate measures to foster among youth respect for all people, irrespective of nationality, race, sex or religion, regard for human values and devotion to the ideals of peace, freedom and progress and to the cause of human rights. In resolution 31/130, considering that the development process as well as the promotion of international peace and security would benefit greatly by the integration and involvement of youth in all related activities, and considering it necessary to disseminate among youth, through appropriate education, ideas of peace, respect for human rights and fundamental freedoms, human solidarity and dedication to the objectives of progress and development, the Assembly urged all States, to that end, to undertake such further steps as might be necessary and appropriate. In resolution 31/132 the Assembly invited the Economic and Social Council to prepare, through the Commission for Social Development, appropriate recommendations concerning the best channels of communication between youth and youth organizations and the United Nations at the national, regional, inter-regional and international levels, and to report to the Assembly at its thirty-second session.

Q. Advisory services in the field of human rights

Under the programme of advisory services in the field of human rights, the Secretary-General organized an international seminar on the human rights of migrant workers at Tunis, Tunisia, from 12 to 24 November 1975 (ST/TAO/HR/50) and two training courses on human rights in the administration of criminal justice: one at San José, Costa Rica, from 24 November to 12 December 1975 and the other at Canberra, Australia, from 24 November to 17 December 1976.

The Secretary-General awarded 25 human rights fellowships to candidates from 25 countries in 1975 and 20 fellowships to candidates from 20 countries in 1976. This brought to 580 the total number of awards under this programme. Preference was given to persons having direct responsibilities in the field of implementation of human rights in their respective countries.

In accordance with Commission on Human Rights resolution 10 (XXXI) of 5 March 1975, the Secretary-General submitted to the Commission at its thirty-second session a report (E/CN.4/1192 and Corr.1) containing a complete description of the use made of the advisory services programme in all its components since the adoption of General Assembly resolution 926 (X) of 14 December 1955, with a view to a more effective utilization of the advisory services programme in the field of human rights in relation to the over-all work of the Commission and of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

On 3 March 1976, the Commission on Human Rights adopted resolution 7 (XXXII) in which, *inter alia*, it requested the Economic and Social Council to enable the Secretary-General to continue to organize world-wide and regional seminars on human rights, and requested the Secretary-General to give more publicity to United Nations activities in the field of human rights.

STATUS OF CERTAIN INTERNATIONAL INSTRUMENTS RELATING TO HUMAN RIGHTS *

* Concerning the status of these agreements at the end of 1974, see *Yearbook on Human Rights for 1973-1974*, pp. 295-317. The information contained in the present statement relating to International Labour Conventions, to agreements adopted under the auspices of UNESCO, the Organization of American States and the Council of Europe, and to the Geneva Conventions of 12 August 1949 was furnished by the International Labour Office, UNESCO, the Organization of American States, the Council of Europe and the International Committee of the Red Cross, respectively.

I. STATES PARTIES TO UNITED NATIONS HUMAN

× = Action taken before 1 January 1975. + = Action taken

<i>State</i>	<i>International Covenant on Economic, Social and Cultural Rights</i> (1)	<i>International Covenant on Civil and Political Rights</i> (2)	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i> (3)	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> (4)	<i>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity</i> (5)	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i> (6)	<i>Convention relating to the Status of Refugees</i> (7)	<i>Protocol relating to the Status of Refugees</i> (8)	<i>Convention relating to the Status of Stateless Persons</i> (9)	<i>Convention on the Reduction of Statelessness</i> (10)
Afghanistan				×						
Albania				×						
Algeria				×						
Angola										
Argentina				×		×	×	×	×	
Australia	+			×		+	×	×	×	×
Austria				×		×	×	×		×
Bahamas					+	+				
Bahrain										
Bangladesh										
Barbados	×	×	×			×			×	
Belgium				×		+	×	×	×	
Benin							×	×		
Bhutan										
Bolivia										
Botswana						×	×	×	×	
Brazil				×		×	×	×		
Bulgaria	×	×		×	×	×				
Burma				×						
Burundi							×	×		
Byelorussian Soviet Socialist Republic	×	×		×	×	×				
Canada	+	+	+	×		×	×	×		
Cape Verde										
Central African Empire						×	×	×		
Chad										
Chile	×	×		×		×	×	×		
China ²										
Colombia	×	×	×	×			×			
Comoros										
Congo							×	×		
Costa Rica	×	×	×	×		×				
Cuba				×	×	×				
Cyprus	×	×			×	×	×	×		
Czechoslovakia	+	+		×	×	×				
Democratic Kampuchea				×						
Democratic People's Republic of Korea										
Democratic Republic of Viet-Nam ³										
Democratic Yemen						×				

RIGHTS INSTRUMENTS¹ (31 DECEMBER 1976)

during 1975-1976: for further details, see table II. A below.

(11) <i>Convention on the Political Rights of Women</i>	(12) <i>Convention on the Nationality of Married Women</i>	(13) <i>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages</i>	(14) <i>Convention on the International Right of Correction</i>	(15) <i>Protocol amending Slavery Convention</i>	(16) <i>Slavery Convention as amended</i>	(17) <i>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery</i>	(18) <i>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others</i>	(19) <i>International Convention on the Suppression and Punishment of the Crime of Apartheid</i>	<i>State</i>
x				x		x			Afghanistan
x	x				x	x	x		Albania
									Algeria
x		x				x	x		Angola
x				x		x			Argentina
x		x		x		x			Australia
	+			+		+			Austria
									Bahamas
									Bahrain
x				+		x			Bangladesh
x				x		x	x		Barbados
		x					x		Belgium
								x	Benin
x									Bhutan
x									Bolivia
x	x	x			x	x	x		Botswana
x	x							x	Brazil
				x		x	x	x	Bulgaria
									Burma
									Burundi
x	x				x	x	x	+	Byelorussian Soviet Socialist Republic
									Canada
				x		x			Cape Verde
x									Central African Empire
x								x	Chad
									Chile
									China ²
									Colombia
x									Comoros
x									Congo
x		x							Costa Rica
x	x			x			x		Cuba
x									Cyprus
x			x					+	Czechoslovakia
									Democratic Kampuchea
									Democratic People's Republic of Korea
									Democratic Republic of Viet-Nam ³
									Democratic Yemen

I. STATES PARTIES TO UNITED NATIONS HUMAN

<i>State</i>	<i>International Covenant on Economic, Social and Cultural Rights</i> (1)	<i>International Covenant on Civil and Political Rights</i> (2)	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i> (3)	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> (4)	<i>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity</i> (5)	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i> (6)	<i>Convention relating to the Status of Refugees</i> (7)	<i>Protocol relating to the Status of Refugees</i> (8)	<i>Convention relating to the Status of Stateless Persons</i> (9)	<i>Convention on the Reduction of Statelessness</i> (10)
Denmark	x	x	x	x		x	x	x	x	
Dominican Republic										
Ecuador	x	x	x	x		x	x	x	x	
Egypt				x		x				
El Salvador				x						
Equatorial Guinea										
Ethiopia				x		+	x	x		
Fiji				x		x	x	x	x	
Finland	+	+	+	x		x	x	x	x	
France				x		x	x	x	x	
Gabon							x	x		
Gambia							x	x		
German Democratic Republic	x	x		x	x	x	x	x		
Germany, Federal Republic of	x	x		x		x	x	x	+	
Ghana				x		x	x	x		
Greece				x		x	x	x	+	
Grenada										
Guatemala				x						
Guinea					x		x	x	x	
Guinea-Bissau							+	+		
Guyana										
Haiti				x		x				
Holy See						x	x	x		
Honduras				x						
Hungary	x	x		x	x	x				
Iceland				x		x	x	x		
India				x	x	x				
Indonesia										
Iran	+	+		x		x	+	+		
Iraq	x	x		x		x				
Ireland				+			x	x	x	
Israel				x			x	x	x	x
Italy				x		+	x	x	x	
Ivory Coast						x	x	x		
Jamaica	+	+	+	x		x	x			
Japan										
Jordan	+	+		x		x				

RIGHTS INSTRUMENTS¹ (31 DECEMBER 1976) (continued)

(11) Convention on the Political Rights of Women	(12) Convention on the Nationality of Married Women	(13) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	(14) Convention on the International Right of Correction	(15) Protocol amending Slavery Convention	(16) Slavery Convention as amended	(17) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	(18) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	(19) International Convention on the Suppression and Punishment of the Crime of Apartheid	State
x	x	x		x		x			Denmark
x	x	x				x			Dominican Republic
x	x			x		x		+	Ecuador
			x	x		x	x		Egypt
			x		x				El Salvador
x			x		x	x			Equatorial Guinea
x									Ethiopia
x	x			x		x			Fiji
x	x	x		x		x	x		Finland
x			x	x		x	x		France
x									Gabon
x	x			x		x		x	Gambia
x	x	x		x		x	x	x	German Democratic Republic
x	x	x		x		x			Germany, Federal Republic of
x				x		x			Ghana
x	x								Greece
x			x						Grenada
				x					Guatemala
							x	+	Guinea
									Guinea-Bissau
									Guyana
x						x	x		Haiti
x	x					x			Holy See
x	x	+		x		x	x	x	Honduras
x									Hungary
x				x		x	x		Iceland
x				x		x	x		India
x						x			Indonesia
x	x			x		x	x		Iran
x	x			x		x	x	+	Iraq
x	x			x		x	x		Ireland
x				x		x	x		Israel
x						x			Italy
x						x			Ivory Coast
x	x		x		x	x			Jamaica
x						x			Japan
							+		Jordan

I. STATES PARTIES TO UNITED NATIONS HUMAN

<i>State</i>	<i>International Covenant on Economic, Social and Cultural Rights</i> (1)	<i>International Covenant on Civil and Political Rights</i> (2)	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i> (3)	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> (4)	<i>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity</i> (5)	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i> (6)	<i>Convention relating to the Status of Refugees</i> (7)	<i>Protocol relating to the Status of Refugees</i> (8)	<i>Convention relating to the Status of Stateless Persons</i> (9)	<i>Convention on the Reduction of Statelessness</i> (10)
Kenya	x	x			x		x			
Kuwait						x				
Lao People's Democratic Republic				x		x				
Lebanon	x	x		x		x				
Lesotho				x		x			x	
Liberia				x		+	x		x	
Libyan Arab Republic*	x	x				x				
Liechtenstein							x			
Luxembourg							x	x	x	
Madagascar	x	x	x			x	x			
Malawi										
Malaysia										
Maldives										
Mali	x	x		x		x	x	x		
Malta						x	x	x		
Mauritania										
Mauritius	x	x	x			x				
Mexico				x		+				
Monaco				x			x			
Mongolia	x	x		x		x				
Morocco				x	x	x	x	x		
Mozambique										
Nauru										
Nepal				x		x				
Netherlands				x		x	x	x	x	
New Zealand						x	x	x		
Nicaragua				x						
Niger						x	x	x		
Nigeria					x	x	x	x		
Norway	x	x	x	x		x	x	x	x	x
Oman										
Pakistan				x		x				
Panama				x		x				
Papua New Guinea										
Paraguay							x	x		
Peru				x		x				
Philippines	x			x	x	x				
Poland				x	x	x				

I. STATES PARTIES TO UNITED NATIONS HUMAN

<i>State</i>	<i>International Covenant on Economic, Social and Cultural Rights</i> (1)	<i>International Covenant on Civil and Political Rights</i> (2)	<i>Optional Protocol to the International Covenant on Civil and Political Rights</i> (3)	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> (4)	<i>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity</i> (5)	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i> (6)	<i>Convention relating to the Status of Refugees</i> (7)	<i>Protocol relating to the Status of Refugees</i> (8)	<i>Convention relating to the Status of Stateless Persons</i> (9)	<i>Convention on the Reduction of Statelessness</i> (10)
Portugal							×	+		
Qatar						+				
Republic of Korea				×					×	
Republic of South Viet-Nam ³				×						
Romania	×	×		×	×	×				
Rwanda	+	+		+	+	+				
Samoa										
San Marino										
Sao Tome and Principe										
Saudi Arabia				×						
Senegal						×	×	×		
Seychelles										
Sierra Leone						×				
Singapore										
Somalia						+				
South Africa										
Spain				×		×				
Sri Lanka				×						
Sudan							×	×		
Suriname	+	+	+							
Swaziland						×		×		
Sweden	×	×	×	×		×	×	×	×	
Switzerland							×	×	×	×
Syrian Arab Republic	×	×		×		×		×	×	
Thailand										
Togo						×	×	×		
Tonga				×		×				
Trinidad and Tobago						×			×	
Tunisia	×	×		×	×	×	×	×	×	
Turkey				×			×	×		
Uganda							+	+	×	
Ukrainian Soviet Socialist Republic	×	×		×	×	×				
Union of Soviet Socialist Republics	×	×		×	×	×				
United Arab Emirates						×				
United Kingdom of Great Britain and Northern Ireland	+	+		×		×	×	×	×	×

RIGHTS INSTRUMENTS¹ (31 DECEMBER 1976) (continued)

(11) Convention on the Political Rights of Women	(12) Convention on the Nationality of Married Women	(13) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	(14) Convention on the International Right of Correction	Slavery Convention of 23 September 1926		(17) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	(18) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	(19) International Convention on the Suppression and Punishment of the Crime of Apartheid	State
				(15) Protocol amending Slavery Convention	(16) Slavery Convention as amended				
						x			Portugal
								+	Qatar
x							x		Republic of Korea
x	x			x	x	x	x		Republic of South Viet-Nam ²
		x							Romania
									Rwanda
									Samoa
									San Marino
									Sao Tome and Principe
x						x			Saudi Arabia
x	x								Senegal
x	x		x			x			Seychelles
									Sierra Leone
x		x							Singapore
								+	Somalia
									South Africa
	x			+					Spain
									Sri Lanka
									Sudan
x	x								Surinam
x	x	x							Swaziland
									Sweden
									Switzerland
							x	+	Syrian Arab Republic
x									Thailand
									Togo
x	x								Tonga
x	x	x							Trinidad and Tobago
x									Tunisia
									Turkey
	x								Uganda
x	x							+	Ukrainian Soviet Socialist Republic
x	x							+	Union of Soviet Socialist Republics
								+	United Arab Emirates
x	x	x							United Kingdom of Great Britain and Northern Ireland

I. STATES PARTIES TO UNITED NATIONS HUMAN

State	International Covenant on Economic, Social and Cultural Rights (1)	International Covenant on Civil and Political Rights (2)	Optional Protocol to the International Covenant on Civil and Political Rights (3)	Convention on the Prevention and Punishment of the Crime of Genocide (4)	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (5)	International Convention on the Elimination of All Forms of Racial Discrimination (6)	Convention relating to the Status of Refugees (7)	Protocol relating to the Status of Refugees (8)	Convention relating to the Status of Stateless Persons (9)	Convention on the Reduction of Statelessness (10)
United Republic of Cameroon	✓				×	×	×	×		
United Republic of Tanzania	+	+				×	×	×		
United States of America								×		
Upper Volta				×		×				
Uruguay	×	×	×	×		×	×	×		
Venezuela				×		×				
Viet Nam ³										
Yemen										
Yugoslavia	×	×		×	×	×	×	×	×	
Zaire	+	+	+	×		+	×	+		
Zambia						×	×	×	×	
TOTAL NUMBER OF STATES PARTIES	42	40	15	82	21	92	68	63	31	6

¹ For more detailed information on the status of the instruments referred to, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions: List of Signatures, Ratifications, Accessions, etc. as at 31 December 1976* (United Nations publication, Sales No. E.77.V.7).

² The following instruments were ratified on behalf of the Republic of China on the dates indicated in parentheses: Convention on the Prevention and Punishment of the Crime of Genocide (19 July 1951); International Convention on the Elimination of All Forms of Racial Discrimination (10 December 1970); Convention on the Political Rights of Women (21 December 1953); Convention on the Nationality of Married Women (22 September 1958); Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (14 December 1955); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (28 May 1959).

It will be recalled that, by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided:

"...to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only

RIGHTS INSTRUMENTS¹ (31 DECEMBER 1976) (concluded)

(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	State
Convention on the Political Rights of Women	Convention on the Nationality of Married Women	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	Convention on the International Right of Correction	Protocol amending Slavery Convention	Slavery Convention as amended	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	International Convention on the Suppression and Punishment of the Crime of Apartheid	
+	x							+	United Republic of Cameroon United Republic of Tanzania United States of America Upper Volta Uruguay Venezuela Viet-Nam ³
+		x		x	x		x		
x	x	x	x	x		x	x	+	
x	+				x	+			Zaire Zambia
82	50	28	10	44	31	88	43	23	TOTAL NUMBER OF STATES PARTIES

legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it".

By a note dated 25 September 1972, addressed to the Secretary-General, the Minister for Foreign Affairs of the People's Republic of China stated, *inter alia*:

"As from 1 October 1949, the day of the founding of the People's Republic of China, the Chiang Kai-shek clique has no right at all to represent China. Its signature and ratification of, or accession to, any multilateral treaties by usurping the name of 'China' are all illegal and null and void. My Government will study these multilateral treaties before making a decision in the light of the circumstances as to whether or not they should be acceded to."

³ The Democratic Republic of Viet-Nam and the Republic of South Viet-Nam (the latter of which replaced the Republic of Viet-Nam) united on 2 July 1976 to constitute the Socialist Republic of Viet Nam; as at 31 December 1976 the Government of the Socialist Republic of Viet Nam had not indicated its position on the question of succession.

⁴ On 2 March 1977, the official name of the Libyan Arab Republic was changed to the Socialist People's Libyan Arab Jamahiriya.

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976

A. United Nations

	Date of entry into force	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Year	Text published in Yearbook on Human Rights		
		State	1975			1976	Number of States parties (31 December 1976)
1. International Covenant on Economic, Social and Cultural Rights (New York, 1966)	3 January 1976	Australia	10 Dec.	19 May ^a	42	1966 437-441	
		Canada					
		Czechoslovakia	23 Dec.				
		Finland	10 Aug.				
		Iran	24 June				
		Jamaica	3 Oct.				
		Jordan	28 May				
		Rwanda	16 Apr. ^a				
		Suriname					
		United Kingdom			28 Dec. ^a		
		United Republic of Tanzania			20 May		
		Zaire			11 June ^a 1 Nov. ^a		
		2. International Covenant on Civil and Political Rights (New York, 1966)	23 March 1976	Canada	23 Dec.	19 May ^a	40
Czechoslovakia	19 Aug.						
Finland	24 June						
Iran	3 Oct.						
Jamaica	28 May						
Jordan	16 Apr. ^a						
Rwanda							
Suriname							
United Kingdom					28 Dec. ^a		
United Republic of Tanzania					20 May		
Zaire			11 June ^a 1 Nov. ^a				
3. Optional Protocol to the International Covenant on Civil and Political Rights (New York, 1966)	23 March 1976	Canada			15	1966 450-452	
		Finland	19 Aug.	19 May ^a			
		Jamaica	3 Oct.				
		Suriname					
		Zaire			28 Dec. ^a 1 Nov. ^a		

4. Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 1948)	12 January 1951	Bahamas Ireland Romania	5 Aug. ^b 16 Apr. ^a	22 June ^a	82	1948	484-486
5. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (New York, 1968)	11 November 1970	Rwanda	16 Apr. ^a		21	1968	459-460
6. International Convention on the Elimination of All Forms of Racial Discrimination (New York, 1965)	4 January 1969	Australia Bahamas Belgium Ethiopia Italy Liberia Mexico Qatar Rwanda Somalia Zaire	30 Sept. 5 Aug. ^b 7 Aug. 20 Feb. 16 Apr. ^a 26 Aug.	23 June ^a 5 Jan. 5 Nov. ^a 22 July ^a 21 Apr. ^a	92	1965	389-394
7. Convention relating to the Status of Refugees (Geneva, 1951)	22 April 1954	Guinea-Bissau Iran Uganda		11 Feb. ^a 28 July ^a 27 Sept. ^a	68	1951	581-588
8. Protocol relating to the Status of Refugees (New York, 1966)	4 October 1967	Guinea-Bissau Iran Portugal Uganda Zaire		11 Feb. 28 July 13 July 27 Sept.	63	1966	452-454
9. Convention relating to the Status of Stateless Persons (New York, 1954)	6 June 1960	Germany, Federal Republic of Greece		2 Aug. 4 Nov. ^a	31	1954	369-375
10. Convention on the Reduction of Statelessness (New York, 1961)	13 December 1975				6	1961	427-430

STATUS OF CERTAIN INTERNATIONAL INSTRUMENTS

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (continued)

A. United Nations (continued)

	Date of entry into force	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights
		1975	1976		
11. Convention on the Political Rights of Women (New York, 1952)	7 July 1954		1 Nov. 4 May ^a 22 Nov. ^a	82	1952 375-376
		Luxembourg Mauritania Morocco Peru United Republic of Tanzania United States of America	1 July ^a 19 June ^a		
12. Convention on the Nationality of Married Women (New York, 1957)	11 August 1958	Bahamas Zambia	10 June ^b 22 Jan. ^b	50	1957 301-302
13. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (New York, 1962)	9 December 1964	Hungary	5 Nov. ^a	28	1962 389-390
14. Convention on the International Right of Correction (New York, 1952)				10	1952 373-375
15. Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (New York, 1953)	7 December 1953	Bahamas Barbados Spain	10 June ^b 22 July ^b 10 Nov. ^s	44	1953 345-346
16. Slavery Convention signed at Geneva on 25 September 1926 and amended by the Protocol done at the Headquarters of the United Nations, New York, on 7 December 1953 ¹	7 July 1955			31	
17. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Geneva, 1956)	30 April 1957	Bahamas Zaire	10 June ^b 28 Feb. ^a	88	1956 289-291

18. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (New York, 1959)	25 July 1951	Jordan	13 Apr. ^a	43	1949	388-391
19. International Convention on the Suppression and Punishment of the Crime of Apartheid (New York, 1973) ²	18 July 1976	Byelorussian Soviet Socialist Republic Czechoslovakia Ecuador Guinea Iraq Liberia Libyan Arab Republic Mongolia Poland Qatar Somalia Syrian Arab Republic Ukrainian Soviet Socialist Republic Union of Soviet Socialist Republics United Arab Emirates United Republic of Cameroon United Republic of Tanzania Yugoslavia	2 Dec. 12 May 3 Mar. 9 July 8 Aug. 19 Mar. 28 Jan. 10 Nov. 26 Nov. 15 Oct. 1 Nov. ^a 11 June ^a 1 July	23		

¹ For the text of the Slavery Convention of 25 September 1926 as amended, see United Nations, *Treaty Series*, vol. 212, No. 2861.

² For the text of the Convention, see *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 30 (A/9030)*, resolution 3068 (XXVIII), annex.

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (continued)

B. International Labour Organisation

	Date of entry into force	State	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights	Pages
			1975	1976			
1. Forced Labour Convention, 1930 (No. 29)	1 May 1932	Angola Bahamas Papua New Guinea Suriname Yemen	4 June 25 May 1 May 15 June 29 July	112	—	—	
2. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	4 July 1950	Colombia German Democratic Republic Suriname Switzerland Yemen	7 May 15 June 25 Mar. 29 July	85	1948	427-430	
3. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	18 July 1951	Angola Bahamas Colombia German Democratic Republic Papua New Guinea Yemen	4 June 25 May 16 Nov. 7 May 7 May	101	1949	291-292	
4. Equal Remuneration Convention, 1951 (No. 100)	23 May 1953	Angola German Democratic Republic Greece Guyana Jamaica Nepal Yemen	7 May 7 May 6 June 13 June 14 Jan. 10 June 29 July	90	1951	469-470	
5. Social Security (Minimum Standards) Convention, 1952 (No. 102)	27 April 1955	Japan Libyan Arab Republic Turkey	19 June 29 Jan.	27	1952	377-389	

6. Abolition of Forced Labour Convention, 1957 (No. 105)	17 January 1959	Angola Bahamas Papua New Guinea Suriname	4 June 25 May 1 May 15 June	95	1957	303-304
7. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	15 June 1960	Angola German Democratic Republic Guyana Haiti Jamaica Qatar	4 June 7 May 13 May 10 Jan. 18 Aug.	90	1958	307-309
8. Social Policy (Basic Aims and Standards) Convention 1962 (No. 117)	23 April 1964	Bahamas	25 May	26	1962	391-394
9. Employment Policy Convention, 1964 (No. 122)	15 September 1966	Barbados Czechoslovakia German Democratic Republic Jamaica Mongolia Papua New Guinea Philippines Suriname	15 Mar. 15 July 7 May 10 Jan.	57	1964	329-330
10. Minimum Wage Fixing Convention, 1970 (No. 131)	29 April 1972	Egypt Nicaragua Romania Sri Lanka Yemen	12 May 1 Mar. 28 Oct. 17 Mar.	20	1970	311-313
11. Workers' Representatives Convention, 1971 (No. 135) (Continued on next page)	30 June 1973	Finland Gabon German Democratic Republic Netherlands Norway Portugal Romania	13 Jan. 13 June 7 May 19 Nov. 24 Nov. 31 May 28 Oct.	27	1971	312-313

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (continued)

B. International Labour Organisation (continued)

	State	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		1976	Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights
		1975	1976			
11. (continued)	Senegal			24 Aug.		
	Sri Lanka			16 Nov.		
	Suriname			15 June		
	Syrian Arab Republic	6 Mar.				
	United Republic of Cameroon			5 April		
	Yemen			29 July		
	Costa Rica			11 June	8	
	Cuba			13 Jan.		
	Finland	7 Mar.				
	Germany, Federal			8 April		
	Republic of Libyan Arab Republic					
	Netherlands	19 June				
	Romania	19 Nov.		14 Sept.		
	Zambia			9 Feb.		
12. Minimum Age Convention, 1973 (No. 138)				19 June 1976		

C. United Nations Educational, Scientific and Cultural Organization

	Date of entry into force	1975		State	1976		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights	Pages
		Year	Year		Year	Year			
1. Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character with Protocol of Signature (Beirut, 1948)	12 August 1954						28	1948	431-433
2. Agreement on the Importation of Educational, Scientific and Cultural Materials, with annexed Protocol (Lake Success, 1950)	21 May 1952						69	1950	411-415
3. Universal Copyright Convention, with Appendix Declaration relating to article XVII and Resolution concerning article XI (Geneva, 1952)	16 September 1955			Bahamas Bangladesh Bulgaria Colombia Poland	13 July	5 May ^a 7 Mar. ^a	72	1952	398-402
4. Protocol 1 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of stateless persons and refugees (Geneva, 1952)	16 September 1955			Bangladesh Poland	9 Dec. ^a	5 May ^a	53	1952	402
5. Protocol 2 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of certain international organizations (Geneva, 1952)	16 September 1955						54	1952	403
6. Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of, or accession to, that Convention (Geneva, 1952)	19 August 1954						45	1952	403

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (continued)
 C. United Nations Educational, Scientific and Cultural Organisation (continued)

	Date of entry into force	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights
		State	Year		
7. Convention for the Protection of Cultural Property in the Event of Armed Conflict, with Regulations for the Execution of the Convention (The Hague, 1954)	7 August 1956	Niger	6 Dec. ^a	67	1954 380-388
8. Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954)	7 August 1976	Niger	6 Dec. ^a	58	1954 388-389
9. Convention concerning the Exchange of Official Publications and Government Documents between States (Paris, 1958)	30 May 1961	Belgium German Democratic Republic Netherlands	22 Oct. 19 Feb. ^c 21 Nov. ^c	39	— — —
10. Convention concerning the International Exchange of Publications (Paris, 1958)	23 November 1961	Belgium German Democratic Republic Netherlands	22 Oct. 19 Feb. ^c 21 Nov. ^c	38	— — —
11. Convention against Discrimination in Education (Paris, 1960)	22 May 1962	Barbados Jordan	24 June ^b 6 Apr. ^c	64 23	1961 437-439 1962 398-401
12. 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)	24 October 1968				
13. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970)	24 April 1972	Bolivia Iran Nepal Saudi Arabia	27 Jan. ^c 4 Oct. 23 June 8 Sept. ^c	28	1970 322-326

14. Universal Copyright Convention as revised at Paris on 24 July 1971 with Appendix Declaration relating to article XVII and Resolution concerning article XI (Paris, 1971)	10 July 1974	Syrian Arab Republic Tunisia	21 Feb. ^c 10 Mar.	23	1971	316-324
		Bahamas Bangladesh Brazil Bulgaria Colombia Mexico Morocco Poland Tunisia	5 May ^a 11 Sept. 7 Mar. ^a 31 July 28 Oct. ^a 10 Mar.	27 Sept. ^a 18 Mar. ^a 9 Dec. ^a		
15. Protocol 1 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to works of stateless persons and refugees (Paris, 1971)	10 July 1974	Bangladesh Brazil Morocco Poland Tunisia	5 May ^a 11 Sept. 28 Oct. ^a 10 Mar.	15	1971	324
16. Protocol 2 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to the works of certain international organizations (Paris, 1971)	10 July 1974	Bangladesh Brazil Morocco Poland Tunisia	5 May ^a 11 Sept. 28 Oct. ^a 10 Mar.	16	1971	324
17. Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Geneva, 1971)	18 April 1973	Brazil Chile Denmark Guatemala Hungary Italy Kenya Luxembourg New Zealand	6 Aug. 15 Dec. ^a 7 Dec. 14 Oct. ^a 24 Feb. ^a 20 Dec. 1 Jan. 25 Nov.	24		
18. Convention concerning the protection of the world cultural and natural heritage (Paris, 1972)	17 December 1975	Bolivia Canada Cyprus Ecuador France Germany, Federal Republic of	4 Oct. 14 Aug. ^c 16 June ^c 27 June ^c	27	1972	304-310

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II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (continued)

C. United Nations Educational, Scientific and Cultural Organisation (concluded)

	Date of entry into force	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		1976	Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights	Pages
		State	1975				
18. (continued)							
		Ghana	4 July				
		Iran	26 Feb. ^c				
		Jordan	5-May				
		Morocco	28 Oct.				
		Pakistan		23 July			
		Poland		29 June			
		Senegal		13 Feb.			
		Switzerland	17 Sept.				
		Syrian Arab Republic	13 Aug. ^c				
		Tunisia	10 Mar.				
		Yugoslavia	26 May				
19. Convention relating to the Distribution of Programme-carrying signals transmitted by Satellite (Brussels, 1974)	Not in force as of 31 December 1976	Kenya		6 Jan.	4		
		Mexico		18 Mar.			
		Nicaragua	1 Dec. ^a				
		Yugoslavia		29 Dec.			
20. Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean (Mexico, 1974)	14 June 1975	Chile		7 Jan.	4		
		Mexico	14 May				
		Panama	10 Mar.				
		Venezuela		7 Sept.			
21. Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (Nairobi, 1976)	Not in force as of 31 December 1976						
22. International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean (Nice, 1976)	Not in force as of 31 December 1976						

D. Council of Europe

STATUS OF CERTAIN INTERNATIONAL INSTRUMENTS

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	Date of entry into force	1975		State	1976	Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights
		1975	1976				
1. Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)	3 September 1953					18	1950 418-426
2. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 1952)	18 May 1954					17	1952 411-412
3. European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors, and Protocol thereto (Paris, 1953)	1 July 1954 (Agreement) 1 October 1954 (Protocol)					15	1953 355-357
4. European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, and Protocol thereto (Paris, 1953)	1 July 1954 (Agreement) 1 October 1954 (Protocol)					15	1953 357-358
5. European Convention on Social and Medical Assistance, and Protocol thereto (Paris, 1953)	1 July 1954 (Convention) 1 July 1954 (Protocol)			Turkey	2 Dec.	15	1953 359-361
6. European Convention on Establishment (Paris, 1955)	23 February 1965			Turkey	2 Dec.	14	
7. European Social Charter (Turin, 1961)	26 February 1965			Iceland	15 Jan.	11	1961 442-450
8. 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)	21 September 1970			Greece	8 Jan.	17	1963 424

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (continued)

D. Council of Europe (continued)

	Date of entry into force	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Year	Pages
		State	1975		
9. 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)	21 September 1970	Greece	8 Jan.	1963	425
10. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms other than Those Already Included in the Convention and in the First Protocol thereto (Strasbourg, 1963)	2 May 1968			1963	425-426
11. European Code of Social Security (Strasbourg, 1964)	17 March 1968			1964	331-334
12. Protocol to the European Code of Social Security (Strasbourg, 1964)	17 March 1968			1964	335
13. 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)	20 December 1971	Greece	8 Jan.	1966	462-463
14. European Convention on the Adoption of Children (Strasbourg, 1967)	26 April 1968	Italy		25 May 1967	386-389
15. Protocol to the European Convention on Consular Functions concerning the Protection of Refugees (Paris, 1967)	Not in force as of 31 December 1976	Norway		29 Nov. 1967	389-390

16. European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights (London, 1969).	17 April 1971			10	1969	383-385
17. European Convention on the Repatriation of Minors (The Hague, 1970)	Not in force as of 31 December 1976	Turkey	2 Dec.	1	1970	327-329
18. European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 1972)	Not in force as of 31 December 1976	Denmark Sweden	13 Nov. 7 Apr.	2	1972	316-320
19. European Convention on Social Security (Paris, 1972)	Not in force as of 31 December 1976	Austria Luxembourg Turkey	10 June 13 Nov. 2 Dec.	3	1972	321-326
20. European Convention on the Non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes (Strasbourg, 1974)	Not in force as of 31 December 1976					

E. Organization of African Unity

	Date of entry into force	State	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights	
			1975	1976		Year	Pages
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Addis Ababa, 1969)	20 June 1974	Burundi Ghana United Republic of Tanzania	10 Dec. 2 July 27 Jan.		18		

II. STATES THAT BECAME PARTIES TO CERTAIN INTERNATIONAL INSTRUMENTS DURING 1975-1976 (concluded)

F. Organization of American States

	Date of entry into force	State	Ratification, accession (a), succession (b), acceptance (c) or definitive signature (s)		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights
			1975	1976		
1. Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works (Washington, D.C., 1946) ¹	14 April 1947				15	—
2. Inter-American Convention on the Granting of Political Rights to Women (Bogotá, 1948)	22 April 1949	Chile United States of America	10 Apr.	24 May	18	1948 438-439
3. Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, 1948)	22 April 1949	Chile	10 Apr.		16	1948 439-440
4. Convention on Diplomatic Asylum (Caracas, 1954)	29 December 1954				12	1955 330-332
5. Convention on Territorial Asylum (Caracas, 1954)	29 December 1954				10	1955 329-330
6. Protocol of Amendment to the Charter of the Organization of American States (Buenos Aires, 1967)	27 February 1970				23	1967 391-394
7. American Convention on Human Rights (San José, 1969)	Not in force as of 31 December 1976				2	1969 390-400

¹ For the text of the Convention, see Pan American Union, *Law and Treaty Series*, No. 19.

G. Other instruments

	Date of entry into force		Ratification, accession (a), succession (b), acceptance (c) or definitive signature (g)		Number of States parties (31 December 1976)	Text published in Yearbook on Human Rights	
	1949	1950	1975	1976		Year	Pages
			State				
1. Geneva Conventions of 12 August 1949	21 October 1950		Bahamas Bolivia Papua New Guinea Qatar Sao Tome and Principe Suriname	11 July 10 Dec. 26 May 15 Oct. 21 May 13 Oct.	142	1948	299-309 ⁴
2. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961)	18 May 1964		Colombia Italy Luxembourg	17 Sept. 8 April 25 Feb.	18	1961	452-454

⁴ The Yearbook on Human Rights for 1949 contains extracts of the four Geneva Conventions of 12 August 1949; for the full texts, see United Nations, Treaty Series, vol. 75, Nos. 970-973.

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ABBREVIATIONS USED IN INDEX

Dem.	Democratic
Fed.	Federal
int.	international
Rep.	Republic
SSR	Soviet Socialist Republic
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
USA	United States of America
USSR	Union of Soviet Socialist Republics

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A

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