YEARBOOK ON HUMAN RIGHTS FOR 1957

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YEARBOOK ON HUMAN RIGHTS FOR 1957

INTRODUCTION

During the preparation of the present volume, the United Nations Economic and Social Council adopted resolution 683 D (XXVI) of 21 July 1958 concerning the *Yearbook on Human Rights*. "Recognizing the value of the *Yearbook on Human Rights* both as an annual record of developments in human rights and as a vehicle of international technical co-operation in this field", the resolution has as one of its objectives to delimit the scope of the *Yearbook* and that of the reports on human rights which States Members of the United Nations and of the specialized agencies have been invited to make to the United Nations every three years by resolution 624 B (XXII) of the Council. The resolution recommended to governments "that, when in reports under Council resolution 624 B (XXII) they describe 'developments and the progress achieved during the preceding three years in the field of human rights, and measures taken to safeguard human liberty in their metropolitan area and Non-Self-Governing and Trust Territories', they avail themselves of the opportunity to evaluate and interpret events, to indicate difficulties encountered and to discuss techniques found to be of particular value; and that in preparing their triennial reports they refer, where desirable, to the factual information furnished for, or published in, the *Yearbook*." The attention of governments and government-appointed correspondents of the *Yearbook* was drawn to "the desirability of having their contributions to the *Yearbook* consist of texts of, or extracts from, new constitutions, constitutional amendments, legislation, general governmental decrees and administrative orders, and reports on important court decisions, relating to human rights as defined in the Universal Declaration of Human Rights, and such introductory and explanatory comments as may be necessary to describe trends and to state results obtained". The Secretary-General was requested to publish in the *Yearbook* the above-mentioned types of information when they concerned States Members of the United Nations and of the specialized agencies, "this information to cover metropolitan areas and Trust and Non-Self-Governing Territories", together with "texts of, or extracts from, international agreements concerning such States or territories bearing on human rights; a table of ratifications of, and accessions to, such agreements; documentary references on United Nations action in relation to human rights;[1] an introduction and an index".

The Council also decided to limit the *Yearbook* to about 330 pages in the English edition, but to publish from time to time supplementary volumes containing statements of governments on specific rights or groups of rights. The first such supplementary volume was to contain statements on the right set forth in article 9 of the Universal Declaration of Human Rights, which reads: "No one shall be subjected to arbitrary arrest, detention or exile." The second supplementary volume was to contain statements on the right set forth in article 25, paragraph 2, of the Universal Declaration, reading as follows: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

The resolution demonstrates on the one hand the feeling of the Council that the reporting of judicial decisions, as distinct from the quoting at length of judgements delivered, is acceptable, and on the other hand its preference for texts of or extracts from constitutions, constitutional amendments, legislation and governmental decrees and orders, as distinct from summaries thereof. The Secretary-General in editing the *Yearbook* will attempt to meet this preference, while not neglecting legislation of types previously found to lend themselves more conveniently to summaries than to the quotation of reasonably short extracts; much legislation on economic, social and cultural rights is of this nature.

[1] In order to make it possible to utilize fully the limited space of the *Yearbook* for the presentation of material not available in other United Nations publications, the Commission on Human Rights at its fifteenth session, 16 March – 10 April 1959, recommended the omission from the *Yearbook* of the above-mentioned documentary references to United Nations action in relation to human rights (E/3229, para. 266).

PART I

STATES

AFGHANISTAN

NOTE[1]

Education

As provided in the Constitution of the Kingdom of Afghanistan, primary education is free and compulsory; secondary, technical and higher education are also free and, in addition, maintenance scholarships are granted to all students. All Afghan nationals have the right to an education in their own country without distinction as to religion, language or race, and the principles set out in the Universal Declaration of Human Rights of 10 December 1948 are thus being applied.

In view of the importance of education and of the need to train qualified teachers for all levels of education, a set of provisions constituting the "Code for the advancement of teachers" was enacted in December 1957 at the instance of the Ministry of Education.

The Code has a double purpose: to co-ordinate action by the public authorities with a view to enabling teachers to occupy their rightful place in society, and to improve the financial position of teachers so that the teaching profession will attract the intellectual elite of the country.

To achieve the first purpose, the Code institutes an annual "teachers' day", on which various public celebrations are to be held throughout the country (the reading of a message from His Majesty the King to members of the teaching profession, meetings in every province or territory, the award of decorations to the best teachers, etc.). On that day, newspapers are also expected to publish editorials and special articles on the subject of education and outstanding educators in order to give the Afghan people a full appreciation of the important role played by teachers in the country.

The Code also provides for more permanent action, stipulating that all provincial governors shall enhance the status of educators by all the means at their disposal (invitations to official receptions, participation in radio programmes, publication of their work in daily newspapers and in periodicals, printing and circulation of news items and articles concerning the teaching profession).

To achieve its second purpose (to raise the standard of living of teachers), the Code provides, *inter alia*, for a reclassification of teachers at the higher educational level. Henceforth, such teachers will be divided into six categories. A supplementary monthly allowance will be paid in each category, varying in accordance with the category. To enter a higher category, a teacher must not only have a certain seniority, but must also pass an examination or defend a thesis.

All these measures will do much to ensure that teachers occupy the place in the national life to which they are entitled by reason of their twofold duty of educating future generations and of promoting respect for human values in the country in accordance with the provisions of the Universal Declaration of Human Rights.

Public Health

The new hospitals built in 1957 comprised a hospital for women at Gardez, a hospital for men at Katawaz and a clinic at Kohdaman. Laboratories are in operation at Ghazni and at Parwan. Dental clinics were opened in the provinces of Nangrahar, Paktia and Kataghan. Public health departments were organized in the provinces of Kandahar and Nangrahar. Lastly, there was an increase in the number of beds in the hospitals at Nangrahar, Ghazni, Parwan and Sheberghan.

With regard to the prevention of disease, help was requested from the World Health Organization in connexion with the manufacture of smallpox vaccines and the equipment of a modern laboratory for the analysis of food products (milk, water, etc.). With the help of the modern vaccine-producing unit at Kabul, diseases such as cholera, typhoid, paratyphoid, rabies and smallpox can now be kept under effective control. The malaria eradication campaign has entered its active phase. An additional group of two million persons has been vaccinated against typhus. Consideration is being given to a plan for the home treatment of tubercular patients.

The Afghan Government has prohibited the cultivation of the poppy or the production of raw opium throughout the country.

Lastly, a department of public health education has been set up to provide instruction in basic health principles.

The Red Crescent

In 1957, the Red Crescent rendered assistance both in Afghanistan and abroad.

[1] Note kindly furnished by the Permanent Representative of Afghanistan to the United Nations. Translation by the United Nations Secretariat.

In Afghanistan, more than 30,000 persons received help in kind: 1,300 families who were victims of the Saighan and Kahmard earthquakes received 21,370 metres of clothing or supplies, 116 tons of wheat and 1.5 tons of sugar. During a period of two and a half to three months in the winter, clothing and food were distributed to nearly 6,000 people in the provincial centres. During the same period, 14,600 persons received care and treatment in the organization's clinic.

Funds were sent abroad, on behalf of Afghanistan, to assist earthquake victims (10,000 afghanis to India, $1,000 to Lebanon, £1,000 to Turkey and £500 to Iran).

Commerce and Economy

The commercial legislation enacted in 1956 and 1957 included a commercial code and acts concerning chambers of commerce, the registration of trade marks, and the granting of commercial licences to aliens. The commercial code has already come into effect, and the other acts mentioned will do so in the near future. An act concerning foreign investments has also been drafted and will be enacted shortly.

A five-year economic plan was started in 1957, and the results obtained thus far are satisfactory.

During 1956 and 1957, Afghanistan signed technica: and trade agreements with the following countriesl The Union of Soviet Socialist Republics, Poland, Czechoslovakia, the Federal Republic of Germany, India, and the People's Republic of China.

ARGENTINA

NOTE[1]

The most important constitutional measure promulgated during 1957 was the inclusion in article 14 of the National Constitution in force of an additional paragraph relating to social rights in their various forms. The new paragraph, which was approved by the National Reform Convention at Sante Fe in August 1957, reads as follows:

"Labour in its various forms shall enjoy the protection of the laws, which shall guarantee the worker: favourable and just conditions of work; a limited working day; rest and holidays with pay; just remuneration; a basic minimum wage with provision for its adjustment; equal pay for equal work; participation in the profits of undertakings, with the right to inspect production records and to be assisted therein by civil service employees; and the free and democratic organization of trade unions, which shall secure recognition by entry in a special register.

"Trade unions shall be guaranteed the right to enter into collective work agreements; the right to have recourse to conciliation and arbitration; and the right to strike.

"Trade union representatives shall enjoy the safeguards necessary to enable them to exercise their trade union functions, and guarantees relating to security of employment.

"The State shall provide social security benefits, which shall be comprehensive and may not be waived. In particular, the law shall establish compulsory social insurance, which shall be under the direction of financially and economically autonomous national or provincial bodies administered by the persons concerned, with the participation of the State, and which shall not entail overlapping contributions; retirement and other pensions, with provision for their adjustment; the comprehensive protection of the family; family welfare; family allowances and access to satisfactory housing."

The new article 14 of the Argentine National Constitution not only sets forth certain rights as a constitutional standard, but, as was recently affirmed by Dr. Luis M. Jauriguiberry, is also operative. Accordingly, it is established that labour may not be regarded as a commodity or the worker as a machine, thereby giving effect to a long-standing aspiration which was extensively debated in the International Labour Office of the League of Nations.

Other innovations in our law include participation by the worker in the profits of the undertaking to which he belongs; compulsory social insurance under the direction of state agencies; the provision for the adjustment of retirement and other pensions (the National Congress has this matter before it); satisfactory housing; family protection; and protection of trade union representatives in the exercise of their trade union functions.

[1] Note kindly furnished by the Permanent Mission of Argentina to the United Nations. Translation by the United Nations Secretariat.

REGULATIONS FOR THE FORTHCOMING ELECTIONS

Legislative decree No. 4034, of 22 April 1957[1]

Considering that since the people of the nation are called upon to elect the members of a constituent convention, it is necessary to enact regulations to guarantee that the principles of democracy are faithfully observed; that it is necessary in consequence to ensure that there is universal suffrage and that the vote is secret and compulsory, that the citizens enjoy their inalienable freedom and that the political parties are able to supervise the elections;

The provisional President of the Argentine nation, in exercise of the legislative power, decrees with force of law:

[1] Text published in *Boletín Oficial* No. 18383, of 25 April 1957. This enactment governed the elections to the Convention entrusted with amending the Constitution, which met in August 1957. Decree No. 15100, of 15 November 1957, requiring general elections to be held on 23 February 1958 (*Boletín Oficial* No. 18527, of 20 November 1957), provided that on the national level such elections were to be governed by legislative decree No. 4034, as amended by legislative decree No. 15099, of 15 November 1957. The amendments made by legislative decree No. 15099 (*Boletín Oficial* No. 18529, of 22 November 1957) to the articles reproduced above are set out in footnotes thereto. Translations by the United Nations Secretariat.

Legislative decree No. 4034, as amended by legislative decree No. 15099, repealed, among other enactments, Act No. 8871, extracts from which appeared in *Yearbook on Human Rights for 1948*, pp. 268–9.

TITLE I

Qualifications, Rights and Duties of Electors

Art. 1. All natural-born citizens, citizens by option, and naturalized citizens over the age of eighteen, without distinction of sex, are national electors, provided that they are registered on the electoral roll.[1]

Art. 2. For the purposes of the vote, only persons whose names appear in the electoral register, to be drawn up in accordance with the provisions of this legislative decree, shall be considered electors.

Art. 3. The following are excluded from the electoral roll:

1. (*a*) Insane persons certified by a court and insane persons not so certified, if they are confined in public asylums;

   (*b*) Deaf-mutes unable to make themselves understood in writing;

2. (*a*) Members of the army, navy and air force and police officers or gendarmes of the national, provincial or other armed police;

   (*b*) Persons detained by order of a competent judge, until they are released;

3. (*a*) Persons convicted of ordinary offences, for the duration of their sentence;

   (*b*) Persons convicted of offences under the national and provincial gaming laws, for a period of three years, and, if the offence is repeated, six years;

   (*c*) Persons convicted of desertion, in time of war, for twice the term of their sentence;

   (*d*) Persons who have violated the military service laws, until such time as they have satisfied the additional obligations established by law;

   (*e*) Persons who have failed to appear before a court in criminal proceedings against them, until such time as they appear or the prosecution is barred by lapse of time;

   (*f*) Persons against whom proceedings taken for offences punishable by penalty involving deprivation of liberty for more than three years have been discontinued for lack of evidence on three occasions, for a period of three years from the last such discontinuance of proceedings;

   (*g*) Persons against whom proceedings taken for the offence provided for in article 17 of the legislative decree No. 12331 have been discontinued for lack of evidence on three occasions, for a period of five years from the last such discontinuance of proceedings;

   (*h*) Persons disqualified under other legal provisions from the exercise of political rights.

The disqualifications provided for in paragraphs (*f*) and (*g*) shall not apply if a period of three or five years respectively elapsed between the first and third discontinuances of proceedings.

Art. 4. The period of disqualification shall run from the date of the final sentence with force of *res judicata.* A suspended sentence shall be counted for the purposes of disqualification. Persons convicted of offences by negligence shall not be liable to disqualification.

Disqualification shall be subject to summary investigation by the electoral judge *ex officio,* or at the instance of any elector or of the State Counsel's Department.

Art. 5. Restoration of electoral rights shall be made as a matter of course by the electoral judge, after review by the State Counsel's Department, provided that the cessation of the grounds for disqualification arises from the evidence presented when the disqualification was ordered. Electoral rights may otherwise be restored only at the instance of the elector concerned.

Rights and Duties of the Elector

Art. 6. No authority may imprison an elector during the period from twenty-four hours before the election until the closing of the polls, unless he is apprehended in the act of committing an offence or a warrant has been issued by a competent judge. Except in these cases an elector may not be prevented from proceeding from his residence to the polling premises, or hindered in the exercise of his functions.

No authority may obstruct recognized political parties in the installation and operation of offices to furnish information to electors and assist them to cast their votes correctly, provided that the parties do not contravene the provisions of this legislative decree.

Art. 8. Persons who because of their work would be occupied during polling hours are entitled to obtain special leave of absence from their employers for the purpose of going to cast their votes, without having any wages deducted and without having to work any additional time.[2]

Art. 9. Voting is a personal act, and no authority, person, organization, party or political association may compel electors to vote in groups of any nature or denomination whatsoever.

Art. 10. Any elector whose immunity, freedom or security is impaired or who is prevented from exercising his right to vote may request protection, either himself or through any other member of the

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[1] As amended by legislative decree No. 15099, article 1 read:

"*Art. 1.* All natural-born citizens, citizens by option, and naturalized citizens over the age of eighteen, of both sexes, are national electors, provided that they are competent and are registered on the electoral roll."

[2] As amended by legislative decree No. 15099, article 8 read:

"*Art. 8.* Persons who because of their work would be occupied during polling hours are entitled to obtain special leave of absence from their employers for the purpose of going to cast their votes or to fulfil functions connected with the poll without having any wages deducted or having to work any additional time."

public in his name, in writing or in person, by applying to the electoral judge or to the nearest magistrate or to any national or provincial official.

Art. 11. Any elector may request the assistance of the electoral judge in obtaining the return of his civic identity or registration book improperly held by another person.

Art. 12. It is the duty of every elector to vote whenever national elections are held in his district.

The following are exempt from this obligation:

1. Electors over 70 years of age;
2. Judges and their assistants who are required under this legislative decree to be present in their offices and to keep them open during election hours;
3. Persons who are more than 100 kilometres from the polling place on the day of election;
4. Persons who are ill or who can prove that they are prevented by circumstances beyond their control from casting their votes.

Art. 13. Every elector has a right to keep his vote secret.

Art. 14. All the functions conferred on electors by this legislative decree constitute a public duty and therefore may not be renounced.

. . .

TITLE XIV

Special Regulations for the Poll

Art. 67. Concentration of troops or any display of armed force on the day of the election is forbidden, provided that the chairmen of election committees shall have sufficient police at their disposal to ensure the fullest compliance with this legislative decree.

With the exception of the police required to keep order, the forces present in the area where the election is held shall remain in their quarters during polling.

Art. 68. Officers of the armed forces and of national, provincial, territorial or municipal police authorities may not lead groups of citizens during the election or use the influence deriving from their position to restrict the freedom of the vote, or hold meetings for the purpose of influencing the poll in any way.

Retired members of the armed forces, whatever their rank, may not attend any electoral function of a political nature in uniform.

Art. 69. The competent authorities shall ensure that on days when national elections are held a sufficient number of police to ensure that the voting proceeds freely and correctly are posted at each polling station, under the order of the chairman of the election committee.

The police so posted will receive orders only from the official acting as chairman of the election committee.

Art. 70. If the local authorities do not order police to be present in pursuance of the preceding article, or if the police in question do not attend, or if they are present but do not carry out the orders of the chairman of the election committee, the latter shall inform the electoral judge of the fact by telegram. The judge will then bring the matter to the notice of the local authorities so that they may provide the necessary police, and in the meantime may order the polling station to be guarded by members of the armed forces.

Art. 71. It shall be unlawful:

1. For any house-owner or tenant living in a house within eighty metres of the polling station in an urban centre to allow electors to meet or arms to be deposited on his premises. If the house is taken over by force, the owner or tenant must immediately inform the police;

2. To hold public spectacles in the open air or in enclosed areas, theatrical or sporting events, or any type of public meeting which is not related to the election, during polling hours;

3. To keep open establishments for the retail of alcoholic beverages of any sort during the day of the election until three hours after the poll is closed;

4. To offer or give electors ballots within a distance of eighty metres, counted along the highway, street or road, from the polling stations;

5. For electors to carry arms or to use banners, emblems or other insignia during the day of the election for twelve hours before and three hours after the end of the poll;

6. To engage in public canvassing during the twenty-four-hour period before polling begins.

. . .

AUSTRALIA

NOTE[1]

Legislation and judical decisions relating to human rights during 1957 are described below.

In the field of legislation, the *Aged Persons Homes Act*, 1957, and the *Social Services Act*, 1957, of the Commonwealth have increased the benefits available under the Commonwealth social services scheme. The *Aborigines Act*, 1957, of the state of Victoria makes new provision for the welfare of aboriginal natives in that state, while the *Judicial Proceedings (Regulation of Reports) Act*, 1957, of the same state gives protection from newspaper and other publicity to the victims of sexual or unnatural offences. By the enactment of the *Long Service Leave Act*, 1957, of the state of South Australia, workers in that state have been given the right to long service leave.

The judicial decisions referred to relate in the main to the fair treatment by persons before the courts. One important matter that has arisen for judicial decision is the question whether information given by a person under compulsion of law can be used in evidence against him in subsequent criminal proceedings.

Although it is not, strictly speaking, a decision of a judicial body, the decision of the Commonwealth Conciliation and Arbitration Commission concerning the basic wage for workers under federal awards is referred to.

I. LEGISLATION

A. Personal Rights

The Judicial Proceedings (Regulation of Reports) Act, 1957 (Victoria)

Freedom of the Press — Protection of the Victims of Sexual and Unnatural Crimes

This Act provides that a person shall not, in relation to any proceedings in any court or before justices in respect of a sexual or unnatural offence, publish in any newspaper or document or in any broadcast by means of wireless telegraphy or television (1) the name or any other particulars likely to lead to the identification of any male under the age of sixteen years or any female against whom the offence is alleged to be committed or (2) any picture of such male or female unless the court or justices order that the particulars or picture may be published.

Penalties are provided for contravention of the Act. A prosecution for an offence may not be commenced without the sanction of the Attorney-General of Victoria.

B. Social Service Rights

The Aged Persons Homes Act, 1954 (Commonwealth)

Social Services — Provision for the Aged

This Act increases the assistance the Commonwealth Government may give by way of grants to religious, charitable and certain other approved organizations to help in providing homes for aged people. Under the *Aged Persons Homes Act*, 1954, the Director-General of Social Services was authorized to make grants of monies to eligible organizations as assistance towards meeting the capital costs of homes for the aged. The 1957 Act doubles the scale of assistance by altering it from a £1-for-£1 to a £2-for-£1 basis. The Act further increases the assistance available by enabling the cost of land to be included in the capital costs in respect of which assistance is available.

In the debate in the Commonwealth Parliament on the 1957 Bill, the Minister for Social Services stated that the hopes on which the Aged Persons Homes Act, 1954, had been based had been justified and that organizations had made a magnificent response to the Government's leadership. He mentioned that grants totalling £2,214,028 have been made in respect of 192 projects.

The Social Services Act, 1957 (Commonwealth)

Social Services — Provision against Old Age, Invalidity, Widowhood and Unemployment

By this Act, increases were made in various benefits available under the Commonwealth social services scheme. The increases were as follows:

(*a*) The rates of age and invalid pensions were increased by 7*s.* 6*d.* per week, to bring the maximum general rate for these pensions up to £4 7*s.* 6*d.* per week. (*Note:* The maximum general rate referred to does not include additional pension which is payable in respect of any dependent children.)

(*b*) The rate of widows, pensions was increased by 7*s.* 6*d.* per week, making the maximum general rate of pension £4 12*s.* 6*d.* per week.

(*c*) The rates of unemployment and sickness benefits payable to an adult or married person were increased by 15*s.* per week so as to bring them to

[1] Note kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

£3 5*s*. a week. The rates for unmarried minors were raised by 5*s*. a week for those aged 16 and 17 years, and by 7*s*. 6*d*. a week for those aged 18, 19 and 20 years. The additional benefit payable for a dependent wife or unpaid housekeeper was increased by 7*s*. 6*d*. a week to £2 7*s*. 6*d*. per week. The 5*s*. a week additional benefit payable for the first child was doubled to 10*s*. a week. In addition, the weekly income which may be received by an adult or married person without reduction of benefit was raised from £1 to £2, and for others to £1.

C. Industrial Rights

The Long Service Leave Act, 1957 (South Australia)

Right to Periodic Holidays

Under this Act every worker is, subject to conditions, entitled to long service leave on ordinary pay. The amount of the entitlement is defined as seven consecutive days in the eighth and in each subsequent year of the worker's continuous service with his employer. By agreement with a worker, an employer may pay the worker the amount of pay which would have been payable to him in respect of the whole or any part of the leave which he would, in the absence of that payment, be entitled to under the Act; upon such payment, the long service leave entitlement is *pro tanto* reduced. That is, a worker may elect to take pay instead of long service leave on pay.

There are a number of ancillary provisions in the Act. An employer who is bound by an industrial award or agreement which provides for long service leave for any workers employed by him is exempted from the Act in relation to every worker to whom the award or agreement applies. The Act has effect notwithstanding any contract or arrangement to the contrary. An employer who fails to grant to a worker the leave to which the worker is entitled under the Act is guilty of an offence and liable to a fine of not more than one hundred pounds. For the purpose of ascertaining whether the Act has been complied with, inspectors are given certain investigatory powers.

D. Rights of Aboriginal Natives

The Aborigines Act, 1957 (Victoria)

Welfare of Aboriginal Natives

This Act replaces the previous legislation on the subject of aborigines contained in the *Aborigines Act*, 1928.

The Act creates an Aborigines' Welfare Board consisting of ten members, two of whom (if there are such persons suitable, available and willing to be appointed) are to be aborigines, and one of whom is to be an expert in anthropology or sociology. As well as a number of particular functions connected with the welfare of aborigines, the board is entrusted with the general function of promoting the moral, intellectual and physical welfare of aborigines with a view to their assimilation into the general community.

The Act repeals paragraph (*a*) of section 177 of the *Licensing Act*, 1928, under which it was made an offence for a licensed person to sell or dispose of any liquor to an aboriginal native. The Act also repeals paragraph (*a*) of section 69(1) of the *Police Offences Act*, 1957. That paragraph made it an offence for a person, not being an aboriginal native or the child of an aboriginal native, to lodge or wander in company with any aboriginal natives of Victoria unless the person, on being required by the court, could give a good account to the satisfaction of the court that he had a lawful fixed place of residence and lawful means of support, and that such lodging was for some temporary and lawful occasion only.

II. COURT DECISIONS

A. Right to Fair Trial

Smith v. *The Queen* (1957)

High Court of Australia[1]

Criminal Law — Interrogation by Police — Sufficiency of Confessions

Smith, a three-quarter-cast male aged nineteen years, of limited experience and education, was found guilty by the Supreme Court of the Territory of Papua and New Guinea of murdering a man and a woman, both of whom were friends of Smith. The main evidence against Smith was constituted by admissions made by him to members of the police force in the following circumstances: At 10.15 a.m. on the day after the discovery of the crime, Smith, at the request of two sub-inspectors of police, accompanied them to the investigating room of the police station in order to be interviewed by Inspector Carroll of the police. Carroll was not there when Smith arrived, and he was asked to sit down and wait. Upon his arrival about an hour later, Carroll told the accused that he was inquiring into the crime and, on Carroll's request, the accused told as to his movements on the night in question. Carroll then left the police station to make some investigations, returning at 1 p.m. to find the accused still sitting in the investigation room. After further interrogation, Carroll again left the police station and made further inquiries. He then went to the accused's home and took possession of all the accused's belongings. He returned to the police station at 3.30 p.m., and again questioned the accused in the investigation room. Reference was made to a letter from the female deceased to the accused, which Carroll had found among the accused's belongings. Eventually the accused, in answer to a question, stated that on the night in question he had followed the two persons who had been killed, and when he had found them embracing had gone mad and hit them. The accused then broke down and sobbed bitterly.

When the accused had composed himself, he was told by a sub-inspector present that he would be

[1] 97 Commonwealth Law Reports 100.

charged with murder, and asked whether he would like to tell about "this trouble". The sub-inspector warned the accused that he "need not tell me unless you want to, because anything you tell me about this trouble will be given in evidence in court. Do you understand me?" Smith answered "Yes" and, on being supplied with pen and paper, wrote and signed a confession of the murders. At no time was Smith informed that he was free to leave or to communicate with his father or a solicitor. About two hours later, after further inquiries and further interrogation of Smith, Smith was charged with wilful murder.

Smith appealed from the convictions to the High Court of Australia.

Held by the High Court (Williams, Webb and Taylor, JJ., McTiernan, J. dissenting) (1) that the confessional statements by the accused had not been shown to be free and voluntary, and therefore should not have been received at the trial; (2) that, even if the confessions were voluntary and therefore admissible at strict law, the case seemed to be one where the trial judge should have exercised the discretion he possesses to exclude statements obtained by unfair or improper police interrogation; (3) that even if the confessional statements were taken into account, in the absence of any independent evidence of confirmatory facts, their weight was insufficient to prove beyond reasonable doubt that the murders had been committed by Smith; and (4) that the appeal should be allowed and the convictions quashed.

In his judgement, Taylor, J. said:

"I approach the case by asking myself, first of all, whether a simple confession made by a half-caste and illiterate youth of nineteen years after having been detained on unreliable information and kept in custody for five hours by police officers who entertained strong suspicions that he had recently committed a crime should, by itself, satisfy me beyond reasonable doubt of the youth's guilt. The answer which I make immediately is that unless satisfied that I had been fully apprised of all the circumstances in which the confession had been made, I would not think for a moment of acting upon it. . . ."

The Queen v. *Travers* (1958)

Court of Criminal Appeal of New South Wales[1]

Criminal Law — Statement made under Compulsion of Law — Privilege against Self-incrimination — Admissibility of Confession

After complaints had been received regarding alleged criminal conduct on the part of Travers, who was a member of the police force, Travers' superior officer directed him to peruse the complaints made and "to submit a full and comprehensive report as to your knowledge of all matters referred to therein". Travers thereupon made a report to his superior officer and, in a prosecution brought against Travers, the Crown tendered the report in evidence against him.

Held (1) that the law required a member of the police force to obey orders given to him by his superior officer, including furnishing any information properly required of him by his superior officer in relation to his duties or conduct as a police officer; (2) that, in requiring an answer to be given, it was necessarily intended by the law, in the absence of any indication to the contrary, that any right against self-incrimination should be taken away; and (3) that, if the answer to an order would incriminate, it may possibly be that in some circumstances a member might properly decline to answer, but no such question arose in this case since Travers did in fact answer without protest.

Held also that the rule as to the inadmissibility of confessions that are not voluntary has its foundation in the probability that statements so obtained may be false. But it cannot be held by a court of law that compliance with a law requiring true answers and designed to elicit true answers should be assumed to be likely to produce false answers.

Held also that the mere existence of a duty upon Travers to make the report, which of necessity was required to be a truthful report, and the fact that legal sanctions existed should he fail to carry out that duty, were circumstances designed solely to ensure that the report was accurate and there was no basis for the rejection of the report as evidence on the ground that it was not voluntary because it might be untrustworthy.

Re Appeals of Kenyon (1957)

New South Wales Court of Quarter Sessions[2]

Criminal Law — Statement made under Compulsion of Law — Admissibility in Evidence

Section 5 (3) of the *Motor Traffic Act*, 1909–1955, of New South Wales provides that, where the driver of a motor vehicle is alleged to be guilty of an offence under the Act or any regulation, the owner of the vehicle shall give such information as he may be required by a member of the police force to give as to the identity of such driver.

In a case where the owner was the same person as the driver, the owner was required, pursuant to section 5 (3), to give information as to the driver of the vehicle. In a subsequent prosecution of the owner, the written statement supplied by him was received in evidence. It was objected that the statement constituted an involuntary confession, and should not have been admitted in evidence.

Held that the statement was properly admitted. The long established principle that to be admissible a confession or admission must be free or voluntary

[1] State Reports (New South Wales) 85.

[2] Weekly Notes (New South Wales) 185.

had no application to statements made under compulsion of law. It could not be held by a court of law that compliance with a law requiring true answers should be assumed to be likely to produce false answers.

Ex Parte P.: Re Hamilton (1957)

Supreme Court of New South Wales[1]

Criminal Law — Privilege against Self-incrimination

On 2 April 1957, while police were examining premises in which it was alleged abortions were being performed, P., an unmarried woman, knocked at the door, and was admitted by the police. She stated to the police that she had called at the premises previously and, after explaining that she was in trouble, had been told to return at a later date. She had called at the premises on 2 April 1957 in order to keep that appointment.

P., called as a witness for the prosecution in criminal proceedings against one R. for unlawfully procuring a miscarriage, objected to answering a question as to her whereabouts on 2 April 1957 on the ground that it might incriminate her. The police prosecutor thereupon gave an assurance that P. did not come within the ambit of any possible criminal proceedings.

Held that the witness was entitled to decline to answer the question. To ask the question was, in the light of the circumstances, to seek to forge a link in a chain of evidence which, if it were completed, would support a finding that the witness had conspired to procure the commission of a crime — namely, her own abortion.

The following is a summary of a statement on the nature of the privilege against self-incrimination appearing in the judgement of the court:

A witness cannot be compelled to provide evidence out of his own mouth that he is guilty of a crime, and he is entitled to claim the privilege of silence if, in the course of judicial proceedings, any question is put to him to answer which would have a tendency to expose him to a criminal prosecution. At the same time, care must be taken lest a *mala fide* claim of privilege be put forward with the object of obstructing the course of justice rather than of protecting the witness himself.

The bare oath of the witness that he is endangered by being compelled to answer is not necessarily conclusive of the matter. The court must see from the circumstances of the case and the nature of the evidence that the witness is called on to give that there is reasonable ground to apprehend danger to the witness from being compelled to answer. The danger must be real and appreciable and not of an imaginary and unsubstantial character. But the privilege of silence is not destroyed and a witness will not be compelled to answer a question directed to proving his commission of a criminal act merely on the ground that, in the particular circumstances of the case and on a balance of probabilities, it is unlikely that he will be prosecuted. As a general rule, it is true to say that any admission of a criminal offence, of which the witness has not hitherto been convicted, must "tend to criminate him" within the meaning of the rule.

[1] 74 Weekly Notes (New South Wales) 397.

Ryan v. *Harrison (1957)*

Supreme Court of Victoria[2]

Fair Trial — Change of Venue

The plaintiff, in an action for damages for wrongful and malicious prosecution against certain members of the police force, asked for trial of the action before a jury in Melbourne, although the matters complained of took place at Red Cliffs, a town about eleven miles from Mildura, where sittings of the Supreme Court were held.

Held by the Supreme Court that, as it had not been shown that a fair trial was unlikely to be had at Mildura and as the overwhelming convenience was that the trial should take place there, the action should be tried at Mildura.

The Court stated that it was undesirable, to say the least, that a jury summoned to try an action in which members of the police force were defendants should be served with their summonses by police officers and this should not take place in this case.

B. Industrial Rights

Re Basic Wages Enquiry (1957)

Commonwealth Conciliation and Arbitration Commission[3]

Remuneration for Work — Determination of Basic Wage

This was an application by the Amalgamated Engineering Union and seven other unions for alteration to the federal basic wage in the following respects:

(*a*) An immediate increase of £1 3*s*. per week in the basic wage;

(*b*) Restoration of the system of quarterly cost-of-living adjustments which had been abolished by the decision of the Commonwealth Court of Conciliation and Arbitration in the Basic Wage and Standard Hours Enquiry, 1952–1953.[4]

The decision of the Commission, delivered on 29 April 1957, was as follows:

(*a*) The application for restoration of automatic quarterly adjustments was refused;

(*b*) The basic wages of adult male employees covered by federal awards was increased by 10*s*. per week.

[2] Victorian Reports 210.

[3] Law Book Company's Industrial Arbitration Service, Current Review 87.

[4] See *Yearbook on Human Rights for 1953*, pp. 8–9.

In giving these decisions, the Commission affirmed and acted on the principle of basic wage fixation laid down by its predecessor, the Court of Conciliation and Arbitration, in 1953 and 1956. That is, the basic wage should be the highest that the capacity of the country as a whole could sustain.

Restoration of Quarterly Adjustments. — The Commission referred to the fact that the Court of Conciliation and Arbitration had abolished quarterly adjustments in 1953 because of its view that there was no justification for automatically adjusting in accordance with a price index a wage assessed as the highest that the capacity of the community as a whole could sustain.

An argument submitted on behalf of the unions to the effect that the capacity of the community to pay wages altered with the general level of prices was rejected. The Commission pointed out that a rise in the price paid for imported goods such as tea, cotton or petrol would increase the general level of prices without there being any change in the capacity of the economy. Again, if from one year to another there were no changes in any factor in the economy, including the price of wool, except a decrease in the quantity of wool exported, the capacity of the economy to pay would be diminished, yet the general level of prices could remain the same.

Increase in the Basic Wage. — The Commission, after considering all aspects of the economy and in particular the indicators of overseas reserves, overseas balances, rural industries, production and productivity other than rural, investment, including company profits, the competitive position of secondary industry, employment and retail trade and above all the change for the better in Australia's trading position and her strengthened reserves, decided that the basic wages in federal awards should be increased by 10*s.* per week. The increase would, of course, have the tendency to increase the prices of goods available locally. Therefore, it behoved employer and employee to work together for greater efficiency and reduced costs of production.

The Commission stressed that it was aware that any increase of wages must of itself alone mean some increase in costs; but, while attention had been paid to this fact and some hesitation caused because of it, the conclusion reached was that it was in the best interest of the whole community and constituted industrial justice that the worker under federal awards should receive an increase of 10*s.* in his basic wage.

Annual Review of Basic Wage. — The Commission agreed that an annual review of the basic wage was desirable, provided that any of the parties wished it to be held in the circumstances of a particular year.

AUSTRIA

PROTECTION OF HUMAN RIGHTS IN AUSTRIAN LEGISLATION AND JUDICIAL DECISIONS IN 1957[1]

A. LEGISLATION (Acts and Ordinances)

I. Fundamental Freedoms

1. *Freedom to own Property*

(*a*) The Second, Third and Fourth State Treaty Administration Acts, *BGBl.* Nos. 32, 176 and 177/1957, regulate matters of property rights arising in connexion with the Austrian State Treaty.

(*b*) Federal Act *BGBl.* 73/1957 also regulates matters of property rights connected with the State Treaty, and provides for the transfer to "collection agencies" of the property, legal rights or interests in Austria specified in article 26 (2) of the State Treaty.

(*c*) Federal Act *BGBl.* No. 258/1957 further amends Federal Act *BGBl.* No. 269/1955, which dealt with the application of article 26 of the State Treaty to ecclesiastical property.

(*d*) Federal Act *BGBl.* No. 168/1957 amends Federal Act *BGBl.* No. 73/1955 concerning the award of compensation for the requisitioning of goods (Restitution Act).

2. *Right to Nationality*

(*a*) Federal Act *BGBl.* No. 84/1957 amended the Transitional Act concerning nationality, as amended by Federal Act *BGBl.* No. 12/1952, to provide that persons deprived of Austrian nationality may file an application for restitution of Austrian nationality up to 31 December 1958.

II. Cultural Rights

(*a*) Federal Act *BGBl.* No. 109/1957 empowers the Federal Ministry of Justice to reduce by ordinance the term of protection for works which are protected in Austria exclusively in virtue of the Universal Copyright Convention, where such an ordinance is necessary for the protection of Austrian interests in the State concerned.

(*b*) Federal Act *BGBl.* No. 185/1957 amends and amplifies Federal Act *BGBl.* No. 190/1949 concerning religious instruction in schools.

(*c*) Federal Act *BGBl.* No. 259/1957 provides that the Cultural Tax Act, *BGBl.* No. 191/1949, as at present in force, will cease to be operative as from 31 December 1959.

III. Social Rights

1. Federal Act *BGBl.* No. 1/1957 makes regulations regarding conditions in hospitals.

2. Ordinance of the Federal Ministry of Social Administration, *BGBl.* No. 4/1957, raises the rates of contribution for sickness insurance payable by persons in receipt of pensions.

3. Ordinance of the Federal Ministry of Social Administration, *BGBl.* No. 16/1957, specifies the amounts to be withheld from pensions (special pensions payments) payable under section 5, paragraph 73, of the General Social Insurance Act.

4. The Federal Maternity Protection Act, *BGBl.* No. 76/1957, contains provisions for the welfare of pregnant and nursing mothers.[2]

5. Federal Act *BGBl.* No. 78/1957 provides for an increase in the small pension rates specified in Federal Act *BGBl.* No. 9/1955.

6. Ordinance of the Federal Ministry of Social Administration, *BGBl.* No. 99/1957 (tenth ordinance for the administration of the Unemployment Insurance Act), extends the compulsory unemployment insurance scheme to a further specific category of persons.

7. Federal Act *BGBl.* No. 140/1957 (First Military Pay Amendment Act) amends and amplifies the Military Pay Act, *BGBl.* No. 152/1956, and, in particular, provides for an increase in the daily rates of pay of persons performing their military service.

8. Ordinance *BGBl.* No. 165/1957 of the Federal Ministry of Social Administration extends sickness insurance under the Federal Salaried Employees' Sickness Insurance Act of 1937, *BGBl.* No. 94, to public employees of some communes in Carinthia, and ordinance *BGBl.* No. 166/1957 extends sickness insurance under the same Act to public employees of some communes in Styria.

9. Federal Act *BGBl.* No. 171/1957 (second amendment to the General Social Insurance Act) and Federal Act *BGBl.* 294/1957 (third amendment to the General Social Insurance Act) amend and amplify the General Social Insurance Act, *BGBl.* No. 189/1955, both as regards the scope of the social benefits provided (e.g., advance old-age pensions and miners' old-age pensions during periods of unemployment),

[1] Material kindly furnished by the Permanent Representative of Austria to the United Nations. Translation by the United Nations Secretariat.

[2] Translations of this Act into English and French appeared as International Labour Office: *Legislative Series* 1957 — Aus. 1.

and as regards the entry into force of the Self-employed Persons Pensions Insurance Act and the Agricultural Supplementary Pensions Insurance Act.

10. Federal Act *BGBl.* No. 172/1957 amends and amplifies the War Victims' Protection Act, *BGBl.* No. 152/1957, principally by increasing the income limits for the payment of supplementary pensions and parents' pensions.

11. Ordinance *BGBl.* No. 226/1957 of the Federal Ministry of Social Administration prohibits home work in certain branches of production for reasons of labour protection.

12. Ordinance *BGBl.* No. 229/1957 of the Federal Government lays down the supplementary retirement pension rates and supplementary maintenance allowance rates payable to persons formerly entitled to extra pay in respect of police, security or military service.

13. Federal Act *BGBl.* No. 279/1957 (Agricultural Labour Amendment Act 1957) amends the rules laid down in the Agricultural Labour Act, *BGBl.* No. 140/1948, with respect to labour in agriculture and forestry by amplifying and setting forth in detail the provisions for the protection of pregnant and nursing mothers.

14. Federal Act *BGBl.* No. 284/1957 (Amendment 1957 to the Family Liabilities Equalization Act) amends the Family Liabilities Equalization Amendment Act, *BGBl.* No. 18/1957, in particular by increasing family allowances and supplementary allowances.

15. Federal Act *BGBl.* No. 292/1957 (Self-employed Persons Pensions Insurance Act — GSPVG) deals with the pensions insurance of persons self-employed in business or industry in Austria, and of persons treated as such.

16. Federal Act *BGBl.* No. 293/1957 (Agricultural Supplementary Pensions Insurance Act — LZVG) deals with the supplementary pensions insurance of individuals self-employed in agriculture or forestry in Austria, and of children of such individuals assisting them in their work (Agricultural Supplementary Pensions Insurance).

IV. Legislation relating to Economic Questions

(*a*) The term of validity of the Acts on economic questions referred to in previous reports — *viz.*, the Milk Marketing Act, the Grain Marketing Act and the Cattle Trading Act — was again extended, to 31 December 1958 (*BGBl.* Nos. 269, 270 and 271).

(*b*) Federal Act *BGBl.* No. 71/1957 (Collection Agencies Act) provides for the establishment, in accordance with article 26(2) of the State Treaty, of "collection agencies" to which the property, legal rights or interests therein mentioned are to be transferred.

(*c*) Federal Act *BGBl.* No. 178/1957 (Industrial Code Amendment Act 1957) amends the Industrial Code and the Notice of Promulgation thereof, in particular by increasing the number of occupations for which licences and certificates of qualifications are required.

(*d*) Federal Act *BGBl.* No. 275/1957 again extended, without amendment, the Fair Prices Act, *BGBl.* No. 92/1950.

B. JUDICIAL DECISIONS

Fundamental Freedoms

1. *Equality before the Law*

(*a*) In its decision B 210/56 of 23 March 1957, the Constitutional Court pointed out that while the principle of equality does prohibit the legislator from making unobjective distinctions, it in no circumstances binds him to any particular positive course of action.

(*b*) In its decision B 18/57 of 19 October 1957, the Constitutional Court ruled, in a case in which an insured person had been assigned to a particular category of contributors on the basis of his total income from all sources, including income earned by other persons — by analogy with the rules applicable to joint assessment for taxation purposes — that the principle of equality had been infringed, since there were no specific or objectively valid grounds to justify a departure from the central principle underlying the general body of social insurance law.

(*c*) In a judgement of 14 October 1957, B 33/17, the Constitutional Court held that no claim to the enjoyment of specific rights could be derived from article 6, paragraph 1 of the State Treaty of 15 May 1955, *BGBl.* No. 152, in which Austria undertook to take all measures necessary to secure, to all persons under Austrian jurisdiction, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of political opinion and of public meeting.

2. *The Right to a Hearing by the Competent Tribunal*

(*a*) In conformity with its established practice, the Constitutional Court ruled in its decision B 8/1957 of 26 June 1957 that a person has no valid complaint that the decision of an administrative authority has infringed his constitutional right to a hearing by the competent tribunal, on the ground that the authority in question lacked jurisdiction, unless he is the subject of the authority's decision — i.e., unless his legal rights have been affected by the decision.

(*b*) In its decision B 127/57 of 14 December 1957 the Constitutional Court came to the conclusion that an administrative authority ruling on matters of civil law as preliminary questions did not, provided that it acted within the limits of its jurisdiction, commit a violation of the right to a hearing by a competent tribunal.

3. *Freedom to carry on a Trade*

(*a*) In its decisions B 55/57 of 25 June 1957 and B 62/57 of 11 October 1957, the Constitutional Court again ruled that the right freely to carry on a trade was violated only when a citizen was barred from access to or from the exercise of a trade by the decision of an administrative authority lacking statutory power to take such a decision restricting the exercise of a trade. The Court further stated, however, that the mere misinterpretation in a particular case of an Act which in itself was constitutional could not in any circumstances be considered a violation of the fundamental freedom to carry on a trade.

4. *Right to Freedom of Opinion and Expression*

(*a*) In conformity with its established practice the Constitutional Court ruled in its decision B 129/1957 of 12 December 1957 that the right to freedom of opinion and expression was guaranteed only subject to the law, and that measures in the nature of retrospective censorship — i.e., repressive measures — were fully compatible with the freedom of the press.

C. INTERNATIONAL AGREEMENTS[1]

I. Freedom of Movement

(*a*) An exchange of notes between the Austrian Federal Government and the Government of the Swiss Confederation (*BGBl.* No. 159/1957) abolished compulsory passport requirements as between Austria and Switzerland.

(*b*) An exchange of notes between the Austrian Federal Government and the Government of the Federal Republic of Germany (*BGBl.* No. 192/1957) abolished compulsory passport requirements as between Austria and the Federal Republic of Germany.

(*c*) An exchange of notes between the Austrian Federal Government and the Government of the Union of South Africa (*BGBl.* No. 193/1957) abolished charges for passport visas as between Austria and the Union of South Africa.

(*d*) An exchange of notes between the Austrian Federal Government and the Government of Pakistan (*BGBl.* No. 219/1957) abolished compulsory visa requirements as between Austria and Pakistan.

II. Cultural Rights

(*a*) An exchange of notes between the Federal Minister for Foreign Affairs and the Italian Ambassador in Vienna (*BGBl.* No. 22/1957) provides for the mutual recognition of certain academic diplomas and degrees.

(*b*) With effect from 9 October 1956, Austria acceded to the European Convention on the Equivalence of Diplomas leading to Admission to Universities concluded on 11 December 1953 (*BGBl.* No. 44/1957).

(*c*) An exchange of notes between the Office of the Federal Chancellor (Foreign Affairs) and the Royal Norwegian Legation (*BGBl.* No. 39/1957) extends the term of copyright for literary and artistic works.

(*d*) The European Convention on the Equivalence of Periods of University Study of 15 December 1956 was ratified by Austria, and came into force for Austria on 2 October 1957 (*BGBl.* No. 231/1957).

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[1] See also p. 306.

BELGIUM

NOTE[1]

I. Laws and Regulations

Right to Work

The royal order of 13 February 1957 (*Moniteur belge* of 22 March 1957), amending that of 31 March 1936, abolishes under certain conditions the prior authorization required to employ Netherlands workers in Belgium.

The royal order of 23 May 1957 (*Moniteur belge* of 17–18 June 1957) provides for the establishment of a national centre for vocational information and guidance and the preliminary selection of occupations for workers under twenty-five years of age.

The Act of 15 July 1957 (*Moniteur belge* of 26 July 1957), amending the Act concerning the work of women and children, forbids the employment of boys under eighteen years of age in underground areas of mines, surface mines and quarries. Previously, the minimum age of employment was fourteen years. The employment of youths between the ages of eighteen and twenty-one is to be prohibited for certain kinds of work to be defined by the Crown after consultation with occupational organizations.

The Act of 17 July 1957 (*Moniteur belge* of 26 July 1957) supplements the provisions of the Act of 10 June 1952 respecting the health and safety of workers. All employers shall set up a workplace safety, hygiene and improvement service; if they employ fifty or more workers, they shall also set up committees based on parity representation, for the same purpose.

Many collective agreements, some of which have been enforced by royal orders, deal with the shortening of the working day, such as the royal order of 22 February 1957 enforcing the decision of 13 November 1956 of the Commission paritaire nationale du transport on minimum hourly wages for the forwarding agencies (*Moniteur belge* of 15 March 1957).

Collective agreements also help to ensure equal remuneration for men and women workers for equal work.

Social Security

Under the royal order of 10 April 1957 (*Moniteur belge* of 15–16 April 1957), the Acts concerning family allowances of gainfully employed workers have been amended as follows: The worker need no longer be of Belgian nationality to apply for family allowances; the regular family allowances and the maternity allowance are increased; the rates vary in proportion to the movements of the retail price index.

The Act of 12 July 1957 (*Moniteur belge* of 21 July 1957) provides for employees' old-age and survivor's pensions.[2] These pensions are granted only to persons actually residing in Belgium whose occupational activity has ended and who are not recipients of sickness, invalidity or unemployment benefits. The old-age pension which is ordinarily granted at the age of sixty-five for men and sixty for women is calculated at the rate of one-forty-fifth per year for men and one-fortieth for women; it shall amount to 75 per cent of the average remuneration for an employee with a dependent wife, and to 60 per cent for others, depending on the pay ceiling. The survivor's pension is granted to widows of forty-five years of age or earlier if they are permanently incapacitated or have a dependent child; any widow who does not come under these categories is given an adaptation allowance.

Two royal orders of 20 March 1957 (*Moniteur belge* of 23 March 1957) increase unemployment benefits for unemployed persons with dependent children; they also provide that the amount of the allowances shall vary in proportion to the movements of the retail price index.

II. International Agreements[3]

An agreement between Belgium and France on the movement of refugees, signed at Paris on 15 February 1957, came into force on 15 May 1957 (*Moniteur belge* of 11–13 November 1957).

The Act of 29 March 1957 (*Moniteur belge* of 10 May 1957) ratifies the International Labour Convention No. 81, of 11 July 1947, concerning labour inspection in industry and commerce.

III. Judicial Decisions

A mother who has been granted temporary custody of a child during divorce proceedings may not take advantage of the rights of freedom of conscience and

[1] This note is based on texts and information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] The text of this Act and a translation into English have appeared as International Labour Office: *Legislative Series* 1957 — Bel. 4.

[3] See also pp. 306–307.

religion laid down in Article 18 of the Universal Declaration of Human Rights to induce the child to share with her certain beliefs contrary to the wishes of the father (judgement by the president of the Court of First Instance of Courtrai, of 14 February 1957).

In conformity with article 26, paragraph 3 of the Universal Declaration, the guardian of a child, who has been legally appointed by the Board of Guardians, shall possess *ipso jure* many attributes of parental authority — the rights to upbringing and supervision — even in the case of minors who have previously been entrusted to a public welfare body. The only exceptions to this rule are cases expressly specified by the Act: foundlings, abandoned or destitute children, or voluntary transfer of parental authority to a welfare body by the parents or guardian (judgement of the Court of First Instance of Courtrai, of 15 February 1957).

In a case where the sanity of an accused person was in doubt, the Assize Court rejected as endangering man's physical and moral integrity as well as his right to self-defence the following methods of investigation: narco-analysis, amphetamine shock, intravenous injection with cardiazol, electric shock (Limbourg Province Assize Court, judgement of 28 March 1957).

An adult person who shows a frivolous attitude with regard to matters of property and money, and does not appreciate the importance of certain types of transaction, may be debarred by a court from performing certain acts or entering into certain agreements without the assistance of a court-appointed adviser. Such grounds, however, are not sufficient to justify disqualification — i.e., deprivation of legal capacity and control of person and goods by a tutor. Such a measure would amount to deprivation of liberty, and would run contrary to Article 3 of the Universal Declaration of Human Rights (Court of First Instance of Courtrai, judgement of 17 May 1957).

The Civil Code of Belgium provides that the courts may, under certain conditions, allow the conversion of a legal separation into a divorce if the party who has been successful in the separation action does not consent to resuming marital life. According to the court, such a provision was inspired by the consideration that everyone has the right to live in the married state and that the unmarried state may not be imposed unconditionally upon anyone; and this consideration is further supported by Article 16 of the Universal Declaration of Human Rights. However, separation shall not be converted into a divorce if the offer to resume marital life is not sincere — i.e., if the person who makes such offer has not given to the other party sufficient time to inquire into his conduct and mode of life, and has not produced any evidence that his own conduct has been blameless (Court of First Instance of Courtrai, judgement of 6 December 1957).

BRAZIL

RELIGIOUS FREEDOM IN BRAZIL

Its Legal Guarantees[1]

Constitutional Provisions

The Constitution at present in force — that of 1946 — includes the following provisions dealing with the religious question:

Art. 31. The Union, the states, the municipalities and the federal district are forbidden:

I. To create distinctions between Brazilians . . .

II. To establish or to subsidize forms of religious worship or to interfere with religious observances;

III. To maintain relations of alliance or dependence with any religion or church, this provision to be without prejudice, however, to reciprocal co-operation in furtherance of the collective interest;

. . .

V. To levy any tax upon: . . .

(*b*) Places of worship of any denomination . . . provided that the income of any such place of worship is applied entirely within the country for the appropriate purposes; . . .

Despite the express terms of paragraph II, the Government of the Union has frequently subsidized religious works, with or without the justification of social assistance, which is always a valid one. The chapter of our 1946 Constitution which deals with the rights and guarantees of the individual contains the following provisions:

Art. 141. The Constitution guarantees to Brazilians and to aliens resident in the country the inviolability of the rights respecting life, freedom, individual security, and property, in the following terms:

Para. 1. All persons are equal before the law.

. . .

Para. 7. Freedom of conscience and belief is inviolable, and the free exercise of religious worship is assured, in so far as such worship is not inconsistent with public order or public decency. Religious associations shall acquire legal personality in the form specified by the civil law.

Para. 8. A person must not be deprived of any of his rights by reason of his religious, philosophic or political conviction; nevertheless, a person shall not claim, by reason of such conviction, to be exempt from any obligation, duty or service which is by statute binding on Brazilian nationals in general, nor may a person decline to perform the duties which, in deference to conscientious objection, are by law substituted for the aforesaid obligations, duties and services.

Para. 9. Without any compulsion of the persons who are to be benefited, religious ministrations shall be rendered to the armed forces by Brazilian nationals (whether by birth or by option) and also, at the request of the persons concerned or of their lawful representatives, in establishments of collective internment.

Para. 10. Cemeteries shall be secular in character, and shall be administered by the municipal authority. All religious confessions shall be permitted to practise their rites therein. Religious associations may maintain private cemeteries in the form prescribed by law.

The Constitution contains the following provisions concerning the family:

Art. 163. The family is constituted by marriage that cannot be dissolved. . . .

Para. 1. Marriage shall be a civil ceremony performed free of charge. A religious marriage shall be equivalent to a civil marriage if, upon the satisfaction of the legislative provisions concerning the impediments to marriage and the conditions of its validity, the officiating minister or any interested party so requests, provided that the marriage is registered in the public registry.

Para. 2. A religious marriage performed without the formalities prescribed in this article shall have effect in civil law if it is registered in the public registry. . . .

(In accordance with Brazilian law, an ecclesiastical decision annulling a religious marriage is deemed to be a foreign judgement and its enforcement requires confirmation by the Federal Supreme Court.)

As regards religious instruction, the Constitution provides as follows:

Art. 168. The legislation relating to education shall conform to the following principles. . . . V. Religious instruction shall be a part of the teaching schedule of public schools. It shall be optional and shall be given in accordance with the religious deno-

[1] The present note consists of extracts from a paper of the same title, kindly forwarded by the Brazilian Mission to the United Nations, which was prepared by Dr. Georges D. Landau, Assistant Professor at the Institute of Political and Social Studies, Pontifical Catholic University, Rio de Janeiro. Translation by the United Nations Secretariat.

mination of the pupil, as declared by him, if he is *capax juris*, or by his lawful representative or guardian.

These are the rules laid down by the Federal Constitution in force regarding religious freedom in its various forms. The constitutional reform now being considered does not so far envisage any amendment to those provisions.

Religious Freedom and the Penal Code

The 1940 Penal Code at present in force includes under one single heading all offences against religious sentiment and offences which involve disrespect to the dead. Article 208, the only one which specifically applies to our subject, provides as follows:

Art. 208. Publicly ridiculing any person on the grounds of his religious belief or office; preventing or disturbing any religious ceremony or service; publicly insulting an act of religious worship or an object of worship:

Penalty: Detention for a term of not less than one month and not more than one year, or a fine of not less than 500 cruzeiros and not more than 3,000 cruzeiros.

Sole paragraph. If violence is used, the penalty is increased by one-third, without prejudice to the penalty for the use of violence.

Penal legislation, outside the Code proper, also contains some provisions on religious freedom in its wider sense:

Act No. 1802, of 5 January 1935, which defines crimes against the State, and against the political and social order, contains the following provisions:

Art. II. Publicly to engage in propaganda:

. . .

(*b*) Of racial, religious or class hatred;

Penalty: Imprisonment with hard labour for a term of not less than one and not more than three years.

Para. 1. The penalty shall be increased by one-third if the propaganda was carried on in barracks, a government department, a factory or an office.

Para. 2. The following shall not constitute propaganda:

(*a*) Defence in court;

. . .

(*c*) The statement of any doctrine and criticism or debate thereof.

Para. 3. In addition, the open or clandestine distribution of handbills or pamphlets for the purposes of propaganda punishable under subparagraphs (*a*), (*b*) and (*c*) of this article shall be an offence punishable as herein specified, if there exists no doubt that the distribution was carried out in awareness of the facts.

The same Act further provides:

Art. 15. Publicly to incite or to prepare attacks against persons or property for political, social or religious motives.

Penalty: Imprisonment with hard labour for a term of not less than one and not more than three years, or the penalty applicable to the offence contemplated by the incitement of preparation.

The above account exhausts the provisions of Brazilian criminal law relating to religious freedom.

Religious Belief and Appointments to Public and Political Office

Article 73 of the 1891 Constitution gave to all Brazilians, provided that they fulfilled the special statutory conditions, access to all civic and military offices; on the other hand, it declared persons in holy orders (regardless of denomination) ineligible. This guarantee of access to public office was maintained by the 1934 Constitution, the provision relating to the ineligibility of clergymen or members of monastic orders being repealed. The 1937 Constitution, in turn, contained a similar provision in its article 122, paragraph 3, which was reproduced in the 1946 Constitution, with slight drafting changes, as follows:

Art. 184. All Brazilian nationals are eligible to public office, subject to fulfilment of the conditions laid down by statute.

The Federal Civil Service Regulations of 1939 did not contain any provision concerning the status of civil servants in relation to their religious beliefs; the regulations now in force, however (Act No. 1711 of 28 October 1952), contain the following provision:

Art. 248. A public servant shall not be deprived of any of his rights or suffer any alteration in his official activities by reason of his philosophic, religious or political conviction.

In other words, whatever restriction might have existed in law that affected appointments to public office by reason of religious belief or conviction has now been abolished; and the same is true of the eligibility of persons to membership of either of the Houses of Congress, of the legislative assemblies of the states and of municipal councils. Brazil can boast of having, in its highest legislative bodies, members who belong to various religious minorities.

BULGARIA

NOTE[1]

I. LEGISLATION

1. *Legal Status of Manual and Non-manual Workers; Right to Work and Social Security*

Substantial improvements have been made in this field by the provisions amending and supplementing the Labour Code, which were published in the *Journal of the Presidium of the National Assembly*, No. 92, of 15 November 1957, and which entered into force on 1 January 1958.

The length of annual holidays with pay is increased in proportion to length of employment. Manual and non-manual workers with ten years' employment or less are entitled to fourteen days' holiday, the period provided for under the previous regulations and retained as the basic entitlement. Workers with ten to fifteen years' employment are allowed sixteen days' holiday, and those with over fifteen years' employment, eighteen days. Entitlement to holidays with pay is now acquired after eight months' employment, and not after eleven months, as was previously the case.

Maternity leave increased from ninety to 120 days (forty-five days before, and seventy-five days after, confinement). In addition to the paid leave, a working mother with a child under twelve months may, if she so requests, obtain unpaid leave for not more than six months, the period of leave being counted as a period of employment. Unpaid leave for mothers with children under three years of age is increased from fourteen to forty-five working days, also counted as a period of employment. Nursing mothers are entitled to a two-hour rest period with pay daily until their children reach the age of eight months. If they continue to nurse their children after that age, they are entitled to one hour a day. The same regulation applies in respect of adopted children under eight months of age.

In order to ensure that a real rest is taken, cash payment may not be given in lieu of paid holiday periods, except in cases where workers or non-manual workers are dismissed before taking the holiday to which they are entitled.

To protect the health of young persons, the minimum age for employment, hitherto fourteen years, is raised to sixteen years. The employment of young persons under the age of eighteen on night work is prohibited, as is their employment on heavy and unhealthy work, and they are not allowed to work overtime.

Also with the purpose of protecting workers, the new legislation provides that maximum periods of employment may be established in the case of certain products and types of work harmful to health. On completion of the prescribed maximum number of years' service the worker must be transferred to another post where he will be employed on suitable work. The employment of women of any age in heavy work or work harmful to health is prohibited.

Substantial improvements have been made in regard to the amount of benefits payable in respect of sick leave or maternity leave. Cash benefits during maternity leave have been increased to 100 per cent of gross pay. Sick leave benefits, the minimum rate for which has been raised from 50 to 60 per cent of gross pay after less than three years' employment, increases progressively in proportion to length of employment: the maximum amount is 90 per cent of gross pay. The benefits are not taxable. The Council of Ministers may decide to grant higher benefits if the manual or non-manual worker's illness is particularly serious.

The number of cases in which allowance equal to pay is payable after termination of employment on grounds of old age, or service completed, has been increased.

The amendments to the Labour Code prohibit any extension of the working day in seasonal occupations without an increase in pay. The introduction of working days not governed by the regulations is also prohibited.

Provision is made for the payment of cash allowances, from public assistance funds, to temporarily unemployed manual and non-manual workers.

2. *Pensions*

1. The Agricultural Workers' Pensions Act (*Journal*, No. 1, of 1 January 1957) established an old-age insurance scheme for all agricultural workers who are members of co-operatives. This Act is an important step forward towards the establishment of a national old-age insurance scheme.

2. The Pensions Act, which was published in the *Journal of the Presidium of the National Assembly*, No. 91, of 12 November 1957 and entered into force on

[1] Note prepared by Mr. Anguel Anguéloff, Professor at the University of Sofia and Legal Adviser to the Ministry of Foreign Affairs, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

1 January 1958,[1] introduced substantial improvements in the existing pensions regulations. The Act governs the pensions of all workers (other than agricultural workers covered by the Act mentioned under paragraph 1 above).

Among other important innovations, the Act provides that persons who have reached the prescribed age (60 years for men and 55 years for women) can obtain an old-age pension even if they have completed only half the required period of employment. Consequently, manual and non-manual workers in the first category may draw their pension after seven and a half years' employment; for manual and non-manual workers in the second category, the period is ten years, and for those in the third category twelve and a half years (ten years for women). The full pension, which varies in proportion to the period of employment, is granted on completion of a full period of employment — i.e., fifteen, twenty and twenty-five (twenty) years of work for the first, second and third categories respectively.

A reduction of the required period of employment is applicable in the case of workers retired for disability (five years) and in the case of young persons under twenty-five years of age (three years). There is no requirement as to length of employment in the case of young persons under twenty.

Favourable conditions for retirement are also prescribed with regard to age. In the case of most workers, the prescribed age is sixty for men and fifty-five for women; for the second category, it is fifty-five for men and fifty for women; and for the first category, it is fifty and forty-five respectively. It should be pointed out that all teachers are pensionable under the regulations applicable to the second category (fifty-five years for men and fifty years for women). Even manual and non-manual workers engaged in lighter work and therefore placed in the third category, for which the retirement age is sixty (fifty-five), many receive their pensions five years before attaining the prescribed age, if they have completed a sufficiently long period of employment. If that condition is not fulfilled the pension is reduced by 10 per cent.

The amounts of pensions in all categories are considerably increased, in accordance with the following rules:

(*a*) All pensions are calculated on the basis of remuneration actually received, without restriction of any kind;

(*b*) The amount of the old-age pension is calculated on the basis of the gross monthly remuneration for any three consecutive years of the last ten years of the period of employment, at the choice of the beneficiary;

(*c*) The percentage rates upon which the calculation is based have been increased. The percentage rates vary in inverse ratio to the workers' wages or salary, the maximum rate (for the lowest wages) being 80 per cent.

The pensions thus established are supplemented by additional payments of up to twelve per cent in the case of old-age pension, and fifteen per cent in the case of disability pension, depending on length of employment. Disabled persons in the first group, requiring care by a third person, receive monthly pension supplements to the amount of 120 leva.

The Act provides that the amounts of existing pensions must be re-calculated if conditions become more favourable in the future.

The safeguards in connexion with the application of the Act have been strengthened. Representatives of occupational organizations participate in the bodies attached to the people's councils and pensions administration responsible for the assessment and award of pensions under the provisions providing for judicial reviews; questions relating to pensions may be brought by the persons affected before the Supreme Court of the People's Republic.

3. Under the decree concerning the determination of periods of employment (*Journal of the Presidium of the National Assembly*, No. 81, of 8 October 1957) the courts may accept the evidence of witnesses as proof of completion of a period of employment, without need, as was formerly the case, for the production of documents in support of the claim.

3. *Housing*

Order No. 262, of 27 November 1957, of the Council of Ministers (*Journal of the Presidium of the National Assembly*, No. 97, of 3 December 1957) is evidence of the growing attention which the Government is paying to the housing problem. Under the order, the National Bank of Bulgaria may, from 1 January 1958, grant loans to finance the complete repair of private residential buildings in towns. The new provisions are separate from those concerning the long-term loans granted by the Bulgarian Investment Bank for the construction of new housing units.

4. *Nutrition*

Order No. 136 of the Council of Ministers, of 13 June 1957, published in the *Journal of the Presidium of the National Assembly*, No. 69, of 27 August 1957, provides for the establishment of special dietetic canteens or dietetic sections of existing ordinary canteens in enterprises and administrations.

II. International Agreements

An agreement concerning social policy has been concluded between the People's Republic of Bulgaria and the Czechoslovak Republic (ratified by decree No. 155, *Journal of the Presidium of the National Assembly*, No. 60, of 26 July 1957).

[1] See International Labour Office: *Legislative Series* 1957 — Bul. 1.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

REPORT OF THE BYELORUSSIAN SSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1957[1]

In 1957, the second year of the sixth five-year plan, the plan for gross output of industry as a whole in the Byelorussian SSR was fulfilled to the extent of 106 per cent. As compared with 1956, the gross output of industry increased by 14 per cent. . . .

. . . Last year there was an increase in the total harvest of basic crops. The total grain harvest exceeded the 1956 figure by 21 per cent; that of sugar beet by more than 100 per cent. There were increases also in the total harvests of potatoes and vegetables. . . .

. . . The volume of capital investment by state and co-operative organizations (not including collective farms) amounted in 1957 to more than 4,000 million roubles, and exceeded that of 1956 by 17 per cent. . . .

. . . Capital investment by the State in housing construction rose considerably in 1957 as compared with 1956. The annual plan for housing construction so far as volume of capital investment was concerned was fulfilled to the extent of 104 per cent.

. . . As a result of construction by the State and by private individuals with their own resources and with the aid of state loans, a total area of over 1.1 million square metres of new housing was built and brought into use in towns, urban-type settlements, machine-tractor stations, state farms and lumber camps.

. . . In addition, more than 25,000 dwelling houses were built last year by collective farmers and the rural intelligentsia. . . .

In 1957, capital investment by the State resulted in the building and putting into use of general-education schools with a total capacity of 17,900 pupils, kindergartens and crèches for 2,200 children, and hospitals with a total capacity of 1,100 beds. . . .

. . . The increase in the production of consumer goods and in the cash income of manual and non-manual workers and peasants resulted in a considerable rise in the sale of goods by state and co-operative shops.

. . . There was a further decline in the prices of farm products on the collective-farm markets of the republic. In 1957, at collective-farm markets in large towns, prices of agricultural products fell by 7 per cent, and of livestock products by 4 per cent, as compared with 1956. Market prices of particular products declined as follows: grain products by 16 per cent, potatoes by 9 per cent, meat products by 5 per cent, animal oil by 6 per cent, fruit by 7 per cent. . . .

. . . At the end of 1957, the number of manual and non-manual workers in the national economy of the republic exceeded 1,400,000 — i.e., 85,000, or 6 per cent, more than at the end of 1956.

The total number of manual and non-manual workers in the various branches of production — industry, building, agriculture, transport and communications — rose by 65,000.

The number of workers in schools, other educational establishments, and institutions engaged in scientific research, cultural education and public health increased by 14,000, while the number of workers employed in retail trade, mass feeding and communal housing rose by 6,000.

In 1957, approximately 25,000 young skilled workers, 17,000 of them trained for mechanized agriculture, graduated from institutes and schools of the labour reserves system. All the graduates were given work in industry, construction, transport or agriculture.

There were further successes in the development of socialist culture and public health in 1957.

The number of secondary schools increased. In 1957, more than 65,000 persons graduated from secondary schools, including schools for workers, young people in rural areas and adults. A number of measures were taken to strengthen the material basis of education in the schools and to develop polytechnical education. There was an increase in the number of boarding schools.

In 1957, more than 111,000 students (including correspondence-course students) attended higher and specialized secondary educational establishments of the republic, more than 34,000 of them, or 8 per cent more than in 1956, pursuing their studies without separation from production.

[1] Published in *Sovetskaya Belorussiya* No. 32 (8125) of 7 February 1958. Extracts kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations, acting on behalf of the Minister of Foreign Affairs of the Byelorussian Soviet Socialist Republic. Translation by the United Nations Secretariat.

Of the students enrolled in day courses in higher educational establishments during 1957, 32 per cent had completed a period of practical work.

More than 25,000 young specialists graduated from higher and secondary specialized educational establishments in 1957.

The network of public libraries, clubs and cinemas was expanded. The number of theatre attendances rose by 7 per cent as compared with 1956, and of cinema attendances by 10 per cent.

The number of hospital beds increased by 5 per cent, and of places in permanent crèches by 10 per cent. In 1957, the number of children who had holidays in pioneer camps and playgrounds was 11 per cent greater than in 1956.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLES 31, 74, 135 AND 136 OF THE LABOUR CODE OF THE BYELORUSSIAN SSR

of 4 May 1957[1]

With a view to improving the conditions of employment of young persons, the Presidium of the Supreme Soviet of the Byelorussian SSR resolves:

To amend articles 31, 74, 135 and 136 of the Labour Code of the Byelorussian SSR to read as follows:

"31. Young persons of fifteen to eighteen years of age may themselves conclude work contracts. Parents, guardians, foster-parents and trustees, and also institutions and officials entrusted with supervision of the observance of laws regulating conditions of employment, have the right to demand cancellation before the date of expiry of a contract either directly harmful or tending to be harmful to the health of a minor."

"74. Young persons doing piece-work shall be paid for such work at the same rate as adult workers and shall, in addition, receive overtime at the applicable rates for the period by which the full working day fixed for adults exceeds the reduced working day for young persons."

"135. The employment of young persons under sixteen years of age is prohibited.

"In exceptional cases, young persons who have reached the age of fifteen years may be employed by agreement with factory, plant or local trade union committees."

"136. The working day for apprentices of fifteen to sixteen years of age who are undergoing individual or group training and for manual and non-manual workers of fifteen to sixteen years of age shall be fixed at four hours."

[1] An Act confirming this decree was adopted by the Supreme Soviet of the Byelorussian SSR on 30 May 1957 (published in the *Collection of Laws and Decrees of the Presidium of the Supreme Soviet of the Byelorussian SSR and Resolutions and Instructions of the Council of Ministers of the Byelorussian SSR*, No. 5, 1957).

Text kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations, acting on behalf of the Minister of Foreign Affairs of the Byelorussian Soviet Socialist Republic. Translation by the United Nations Secretariat.

DECISION OF THE CENTRAL COMMITTEE OF THE BYELORUSSIAN COMMUNIST PARTY AND OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON THE DEVELOPMENT OF HOUSING CONSTRUCTION IN THE BYELORUSSIAN SSR

of 20 November 1957[1]

The Central Committee of the Byelorussian Communist Party and the Council of Ministers of the Byelorussian SSR note that the decision of the Central Committee of the Communist Party of the Soviet Union and of the Council of Ministers of the USSR on the development of housing construction in the USSR provides further evidence of the concern of the Communist Party and the Soviet Government for the welfare and happiness of the people and for the improvement of their housing conditions; they will therefore ensure the full execution of this decision.

While consistently putting into effect Lenin's general policy giving priority to the development of heavy industry, the Communist Party and the Soviet Government none the less took all possible measures, even during the early five-year plans, to expand housing construction. The construction of dwellings in the Soviet Union did not cease, even during the trying years of the Great Patriotic War, while after

[1] Published in Sovetskaya Belorussiya No. 274 (8061) of 21 November 1957. Extracts kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations, acting on behalf of the Minister of Foreign Affairs of the Byelorussian Soviet Socialist Republic. Translation by the United Nations Secretariat.

the overthrow of the Fascist invaders it received a tremendous impetus, and is now being carried out on an ever-increasing scale.

Large-scale housing construction is also proceeding in the Byelorussian SSR.

Even in years of the pre-war five-year plans, the housing inventory in Byelorussian cities and villages considerably exceeded that available in pre-revolutionary days, the increase consisting of a large number of well-appointed dwellings.

The war did heavy damage to housing in the Byelorussian SSR. In the cities, more than 70 per cent of the total number of dwellings was destroyed, and 415,000 dwelling houses were demolished in rural areas. Such important Byelorussian cities as Minsk, Vitebsk, Mogilev, Gomel, Orsha and Polotsk were almost completely destroyed.

Owing to the assistance of the Central Committee of the Communist Party of the Soviet Union and of the USSR Government, the working people of Byelorussia not only restored but considerably increased the housing inventory of the republic during the period from 1945 to 1956. During those years state undertakings, local Soviets and individual builders put up dwelling houses with a total area of 8.6 million square metres, and collective farm workers and members of the rural intelligentsia built approximately 400,000 dwelling houses.

. . . The Central Committee of the Byelorussian Communist Party and the Council of Ministers of the Byelorussian SSR consider that the further development of housing construction is one of the prime tasks of all party, Soviet trade union, and economic organs of the republic.

The reorganization of the system of administration of industry and construction, the growth of state capital investment in housing, the steady rise in the material welfare of the people, and the broad creative initiative of the workers create favourable conditions for the intensive development of housing construction in the cities and villages of Byelorussia.

In pursuance of decision No. 931 of the Central Committee of the Communist Party of the Soviet Union and of the Council of Ministers of the USSR dated 31 July 1957, on the development of housing construction in the USSR, the Central Committee of the Byelorussian Communist Party and the Council of Ministers of the Byelorussian SSR resolve as follows:

(1) To require the State Planning Organization of the Byelorussian SSR, the Soviet of the People's Economy of the Byelorussian SSR, the Ministries and Departments of the Byelorussian SSR, the Executive Committees of the Council of Workers' Deputies of Regions and the city of Minsk, and the Regional Committee and the Minsk Municipal Committee of the Byelorussian Communist Party, when fixing the volume of housing construction under state plans for the development of the national economy, to be guided by the need to provide an apartment for every family by the end of the seventh five-year plan, with a view to increasing the area of per capita living space to an average of not less than eight square metres by the end of 1965.

(2) To set the target for state housing construction for the period 1956–1960 at a total area of 3.9 million square metres, of which 765,000 square metres are to be brought into occupancy in 1957, 830,000 square metres in 1958, 860,000 square metres in 1959 and 867,000 square metres in 1960.

To set the target for housing to be constructed by the population at its own expense with the aid of state loans in the period 1956–1960 in cities and urban-type settlements, machine-tractor stations, state farms and industrial forestry undertaking at a total area of 3.1 million square metres, of which 480,000 square metres are to be constructed in 1957, 655,000 square metres in 1958, 753,000 square metres in 1959, and 817,000 square metres in 1960.

To set the target for housing to be constructed in collective farms by collective farm workers and members of the rural intelligentsia in the period 1956–1960 at 104,000 dwelling houses, including 40,000 houses to replace those which have become unfit for habitation while being transported from independent farms; of this total, 12,000 houses are to be constructed in 1957, 20,000 houses in 1958, 25,000 houses in 1959, and 30,000 houses in 1960.

CAMBODIA

NOTE

According to Kram No. 223-NS, of 18 September 1957, respecting the annual leave with pay to be granted to the wage and salary earners and apprentices engaged in industrial, commercial and other occupations (*Journal officiel* No. 38, of 19 September 1957), every wage or salary earner and apprentice engaged in an industrial, commercial, mining or agricultural occupation or liberal profession and every person employed by a co-operative, in a lawyer's chambers, by an industrial association, by a non-trading corporation or by a group of any kind was to be entitled to not less than 15 days' annual leave with pay, of which not less than 12 days were to be working days, after one year's continuous service with the establishment concerned, the expense involved being borne by the establishment. Any agreement by an employee to forgo his leave with pay, even in return for compensation, was declared to be null and void. Detailed provisions for the administration of the Kram were promulgated in Prakas No. 3915, of 28 October 1957 (*Journal officiel* No. 44, of 31 October 1957).

The French texts of the Kram and Prakas and English translations thereof have appeared as International Labour Office: *Legislative Series* 1957—Cam. 1.

CANADA

NOTE[1]

I. Federal Legislation

Canada Council

An Act for the establishment of a Canada Council was passed at the 1957 session of Parliament,[2] implementing a recommendation of the Royal Commission on National Development in the Art, Letters and Sciences, which reported to Parliament in 1951.

The objects of the Council are to foster and promote the study and enjoyment of, and the production of works in, the arts, humanities and social sciences. In particular, the Council is to assists, co-operate with, and enlist the aid of organizations with similar objects; provide for grants, scholarships or loans for study or research in these fields; make awards to persons in Canada for outstanding contributions in the arts, humanities and social sciences; arrange for and sponsor exhibitions, performances and publication of works relating to these subjects; exchange knowledge and information with other countries, organizations or persons and arrange for representation and interpretation of Canadian works in other countries.

The other main objective of the Council is to make grants to assist universities and other institutions of higher learning with capital expansion. In addition, the Council is authorized to perform functions and duties in relation to UNESCO assigned to it by the Governor in Council.

Membership in the Council is to consist of a chairman, vice-chairman and 19 other members appointed by the Governor in Council. Meetings are to be held in Ottawa at least three times a year.

To carry out its programme the Council was granted a $50 million endowment to be invested in accordance with the advice of a special investment committee. It is the return on the investment which is to be used to assist the arts, humanities and social sciences. An additional sum of $50 million was provided to establish the University Capital Grants Fund from which disbursements to universities may be made, provided certain conditions are met. The Council was also empowered to receive, expend and administer any gifts and bequests that may be made to it.

Social Security

Hospital Insurance

The Hospital Insurance and Diagnostic Services Act[3] provided for a national hospital insurance scheme whereby the Federal Government will share with the provinces the cost of standard ward hospital care and diagnostic services. The contribution of the Federal Government will amount to 50 per cent of the cost of standard ward care for the country as a whole.

The hospital care insurance programme covers standard ward care and the services of operating room, case room and anaesthetic facilities and drugs normally provided in a hospital. Benefits also include laboratory, radiological and other diagnostic services for patients outside of hospitals as well as in them.

The plan will be carried out under agreements between the Federal Government and each province. Among other conditions, the Act stipulates that in order to qualify for federal contributions, the provincial hospital plans must make coverage universally available to all residents in the province. The agreement is to contain an undertaking by the province to make the necessary arrangements to ensure that adequate standards are maintained in hospitals.

Unemployment Insurance

An amendment to the Unemployment Insurance Act[4] (*Yearbook on Human Rights for 1955*, p. 27) extended the seasonal benefit provisions. Seasonal benefits were formerly payable during the period 1 January to 15 April, when unemployment is normally highest in Canada. The amendment lengthened the period by one month at each end so that it now covers the period 1 December to 15 May. The rates for seasonal benefit are the same as for ordinary benefits, but the conditions for eligibility are less stringent.

Unemployment Assistance

An amendment to the Unemployment Assistance Act[5] (*Yearbook on Human Rights for 1956*, p. 36) abolished the limitation in the Act by which federal government aid towards unemployment assistance in the provinces was authorized only when the number of needy persons receiving such assistance in any

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[1] Note kindly furnished by the Permanent Representative of Canada to the United Nations.

[2] *Statutes of Canada*, 1957, c. 3.

[3] *Statutes of Canada*, 1956–57, c. 28.

[4] *Statutes of Canada*, 1957–58, c. 8.

[5] Ibid., c. 20.

month rose above 0.45 per cent of the provincial population. The effect of rescinding this provision is that federal assistance of 50 per cent of the costs of local unemployment assistance will be given to the provinces regardless of the numbers who may receive assistance in any given month.

Old-age, Blind and Disabled Persons' Pensions

Benefits payable under the Old Age Security Act,[1] the Old Age Assistance Act,[2] the Blind Persons Act,[3] and the Disabled Persons Act[4] were increased twice during 1957, and other changes made to liberalize the provisions of the legislation.

Payments under the Old Age Security Act (*Yearbook on Human Rights for 1951*, p. 36) were raised to $55, from 1 November 1957. They had been increased from $40 to $46, from 1 July. Also from 1 November, the basic residence requirement was reduced from 20 to 10 years, and the length of permissible temporary absence from Canada in any calendar year without loss of pension was increased from three to six months.

With respect to old-age assistance, pensions to the blind (*Yearbook on Human Rights for 1951*, p. 36) and pensions to the disabled (*Yearbook on Human Rights for 1954*, p. 41), provision was made for increasing the maximum payments which the Federal Government shares with the provinces to $55, from 1 November (from $40 to $46 from 1 July). Provision was also made for changes in the permissible incomes where payments are related to the need of the recipient. Basic residence requirements for old-age assistance were reduced from 20 to 10 years and, with respect to pensions for the disabled, provision was made for payments to patients otherwise qualified who are in institutions where their stay is paid for by relatives, friends or any non-governmental agency.

Crop Failure Assistance

The Prairie Farm Assistance Act was amended, as from 1 August 1957.[5] This Act, passed in 1939, provides for direct money payments by the Federal Government, on an acreage basis, to farmers in areas of low crop yields in the prairie provinces and the Peace River district of British Columbia. To assist in financing these payments, one per cent of the purchase price of all grains (wheat, oats, barley and rye) marketed in the prairie provinces is paid to the Government and set aside in a special fund for the purposes of the Act. If a farmer (either owner or tenant) is located in a crop failure area, he may be awarded assistance on not more than one-half of his cultivated land or a maximum of 200 acres.

The 1957 amendment increased the amount of the assistance payable per acre from a maximum of $2.50 to a maximum of $4, and changed the definition of crop failure area so as to make the assistance available in some circumstances not previously covered.

II. Provincial Legislation

Labour Legislation

Equal Pay

Legislation was enacted in Alberta[6] prohibiting any employer from employing a female employee at any lesser rate of pay than that at which he employs a male employee for identical or substantially identical work. A difference in rates of pay based on any factor other than sex is permissible if the factor on which the difference is based "would normally justify such a difference".

Employment of Children

New regulations[7] governing employment of children were issued under the Alberta Labour Act specifying certain occupations in which children over 12 years of age and under 15 may be employed after school, and limiting the number of hours that may be worked each day.

The period of employment may not exceed three hours (later changed to two hours) in any day on which the child is required to attend school, or eight hours on any other day. Employment after 8 p.m. is forbidden. The occupations in which a child may engage are: clerk in a retail store or delivery of small wares; vendor of newspapers and small wares; clerk or messenger in an office; express or dispatch messenger; shoe-shiner; water boy on a construction project; front-end service boy in a service station or garage; gardener and landscaper: providing that such employment is not likely to be injurious to the life, limbs, health, education or morals of the child. The parent or guardian is required to file with the employer written consent for the child's employment.

Prohibition of employment during school hours, and of certain kinds of employment considered to be unsuitable for young persons, is usual in Canada, but odds jobs after school are less frequently supervised and regulated.

Workmen's Compensation

Amendments were enacted in four provinces to workmen's compensation Acts, the legislation under which benefits are provided for workmen injured in the course of their employment or to dependants of workmen in the case of fatal industrial accidents. In Prince Edward Island,[8] the monthly allowance in respect of a child living with a parent was raised from $15 to $20 and for an orphan child, from $25 to $30. In Saskatchewan,[9] an increase of $10 a month in

[1] Ibid., c. 3.
[2] Ibid., c. 6.
[3] Ibid., c. 4.
[4] Ibid., c. 5.
[5] *Statutes of Canada*, 1956–57, c. 32.
[6] *Statutes of Alberta*, 1957, c. 38.
[7] Alta. Reg. 56/57, under the Alberta Labour Act, replaced by Alta. Reg. 70/58.
[8] *Statutes of Prince Edward Island*, 1957, c. 38.
[9] *Statutes of Saskatchewan*, 1957, c. 72.

children's payments was provided for, bringing the monthly allowance to a child in the care of a parent to $35, and that payable to an orphan to $45. An increase from $3,000 to $4,000 in the maximum annual earnings on which compensation is based was provided for in New Brunswick.[1] The Nova Scotia[2] Legislature authorized the appointment of a workmen's counsellor to assist injured workmen, at their request, in preparing and presenting their claims for compensation.

Indian Welfare

In British Columbia the Indian Inquiry Act (See *Yearbook on Human Rights for 1950*, p. 43), under which a programme has been carried on to investigate means of improving federal-provincial co-operation in the administration of health and welfare services to Indians and to co-ordinate the efforts of both governments, was replaced by the Indian Advisory Act.[3] There will continue to be a committee functioning under the Minister of Labour to consider matters regarding the status and rights of North American Indians in the province referred to it by the Minister. Provision is made for staff which will carry on the work of collecting and correlating information related to Indians, in co-operation with other federal and provincial departments, and will investigate such questions relating to civil rights of Indians and other matters affecting Indians as may be designated by the Minister. About 30,000 of Canada's approximately 152,000 Indians live in British Columbia.

III. Judicial Decisions

1. On 8 March 1957, the Supreme Court of Canada, allowing an appeal from a judgement of the Quebec Court of Queen's Bench (Appeal Side), held that the Act Respecting Communistic Propaganda of the Province of Quebec (commonly referred to as the Padlock Act) was wholly *ultra vires* of the provincial legislature as being legislation in relation to the criminal law, a subject exclusively within the powers of the Parliament of Canada.

The circumstances of the case, as related in the judgement, were that in January 1949 the Attorney-General of the Province of Quebec ordered the Director of the Provincial Police to close for a period of one year the premises occupied by the appellant, John Switzman, and to seize and confiscate all newspapers, reviews, pamphlets, circulars, documents, or writings published in contravention of the Act Respecting Communistic Propaganda.

In February 1949 the owner of the premises, the respondent Elbling, brought an action against the appellant for cancellation of the lease and for damages in the amount of $2,170. The appellant admitted that the premises had been used to propagate Communism, but pleaded that the Act was *ultra vires* of the province. The trial judge ordered cancellation of the lease, and rejected the claim for damages, holding that the Act was related to property and civil rights in the province, and to a matter of a merely local or private nature, and therefore constitutional. This judgement was affirmed by the appeal court in Quebec, one judge dissenting.

The pertinent sections of the Act, sections 3 and 12, read as follows:

"3. It shall be illegal for any person, who possesses or occupies a house within the province, to use it or allow any person to make use of it to propagate communism or bolshevism by any means whatsoever."

"12. It shall be unlawful to print, to publish in any manner whatsoever or to distribute in the province any newspaper, periodical, pamphlet, circular, document or writing whatsoever propagating or tending to propagate communism or bolshevism."

The Act provides that the Attorney-General, upon satisfactory proof that an infringement of section 3 has been committed, may order the closing of the house. Section 13 provides for the imprisonment of anyone infringing section 12. The Act gives a broad definition of the word "house" so as to include any building or other construction whatsoever.

The Supreme Court held that the Act in question was legislation in relation to the criminal law over which the Parliament of Canada has exclusive legislative authority, and therefore *ultra vires*. It was not, in the opinion of the majority, legislation in relation to property and civil rights or to local works within the province. Mr. Justice Rand summed up the argument by stating:

"The aim of the statute is, by means of penalties, to prevent what is considered a poisoning of men's minds, to shield the individual from exposure to dangerous ideas, to protect him, in short, from his own thinking propensities. There is nothing of civil rights in this; it is to curtail or proscribe those freedoms which the majority so far consider to be the condition of social cohesion and its ultimate stabilizing force."

Further, he said, the political theory embodied in the British North America Act was that of parliamentary government by the free public opinion of an open society. Such a public opinion demanded a virtually unobstructed access to a diffusion of ideas. Freedom of discussion as a subject-matter of legislation had a unity of interest and significance extending equally to every part of Canada and was thus not a local matter. He went on to say that this constitutional fact was the political expression of the primary condition of social life, thought and its communication by language, and that liberty in this was little less vital to man's mind and spirit than breathing was to his physical existence. It was embodied in an individual's status of citizenship. Further, he added:

"Prohibition of any part of this activity as an evil

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[1] *Statutes of New Brunswick*, 1957, c. 68.

[2] *Statutes of Nova Scotia*, 1957, c. 57.

[3] *Statutes of British Columbia*, 1957, c. 28.

would be within the scope of the criminal law, as sections 60, 61 and 62 of the Criminal Code dealing with sedition exemplify. Bearing in mind that the endowment of parliamentary institutions is one and entire for the Dominion, that Legislatures and Parliament are permanent features of our constitutional structure, and that the body of discussion is indivisible, apart from the incidence of criminal law and civil rights, and incidental effects of legislation in relation to other matters, the degree and nature of its regulation must await future consideration; for the purposes here it is sufficient to say that it is not a matter within the regulation of a province." (*Switzman* v. *Elbling and Attorney-General of Quebec* (1957), 7 D.L.R. (2d), 337.)

2. On 13 May 1957, the Supreme Court of Canada upheld with variation a decision of the Manitoba Court of Appeal awarding damages to a Winnipeg milk driver for losses suffered as the result of unlawful expulsion from his union in 1947.

The dispute started when the milk driver was expelled from Local No. 119 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and consequently lost his employment with a Winnipeg dairy. In September 1953 he brought an action before the Manitoba Court of Queen's Bench against the seven members of the Local's executive board in their individual capacities and as representing all other members of the Local asking for damages to compensate for his unlawful expulsion from the union and for an injunction to prevent the union from interfering with his rights as a member. The trial judge held that the purported expulsion of the plaintiff was in bad faith, that the rules of the union constitution had not been observed, and that the fundamental principles of justice were disregarded, and granted the injunction sought by the plaintiff and awarded him $5,000 in damages, a decision which was upheld in the appeal court in the province. The Supreme Court modified the judgement of the court below by restricting the liability for damages to the individual members of the executive board in their personal capacities, on the ground that the executive board had no authority from their fellow members to act in the manner complained of, and there was therefore no liability upon the general membership of the union. (*Orchard et al* v. *Tunney* (1957), 8 D.L.R. 273.)

3. The Quebec Court of Queen's Bench, Appeal Side, on 14 August 1957, held that the School Commissioners of Lamorandière were obliged to admit the children of a member of Jehovah's Witnesses to school, and that these children are not obliged to follow the programme of religious instruction to which their father objected, nor to participate in the acts of devotion of Roman Catholics.

In his reason for decision, Mr. Justice Pratte set out the facts as follows: At Lamorandière, where the great majority of the inhabitants are Roman Catholics, public schools are under the control of the commissioners. The course of studies and disciplinary regulations followed in these schools are those laid down by the Catholic Committee of the Council of Education, and catechism and Bible history are taught there, and the children are called upon to recite in common certain prayers used by Roman Catholics.

In 1953 the children of Chabot, a member of Jehovah's Witnesses, began the school year as Catholics. Shortly afterwards Chabot gave a notice to the teacher that he was no longer a Catholic, and that he was opposed to having his children take part in the exercises of devotion or follow the religious teaching of Catholics. The teacher conformed to the father's wishes, but after some weeks the children were expelled from school, the commissioners being of the opinion that the exemption allowed by the teacher was contrary to law. Following this expulsion, Chabot applied to the school commissioners, who told him that the children could return to school, but only on condition that they submit to the regular practices. Chabot then took action in court demanding that the commissioners be obliged to admit his children to school, that the court declare that the children are not obliged to take part in the Catholic devotions or instruction, and that regulations of the Catholic School Board requiring that it shall be the duty of school boards to take the measures necessary to have the course of study authorized followed in each school should be declared invalid.

Mr. Justice Pratte then described the school system in the province as follows:

"In this province it was desired to establish a school system which would take into account the rights of the family in the matter of education. Also, and because the great majority of the inhabitants are Roman Catholics or Protestants, the law leaves to one and to the other respectively the duty of establishing their schools, imposing the necessary taxes for their maintenance, and determining the course of studies.

"To ensure the functioning of this school system, the Education Act (Division III) has created the Council of Education, which is composed of Roman Catholic members and Protestant members. This council is divided into two committees, the one formed of Roman Catholic members, the other of Protestant members. These committees have the same powers, notably that of issuing regulations[6] 'for the organization, administration and discipline of public schools' (s. 29(1)(am. 1945 (Que.) c. 26, s. 1). The school questions in which the interests of the Roman Catholics or Protestants are exclusively concerned are decided by whichever of the two committees represents the religious beliefs professed by the party concerned (s. 23); those in which the interests of the Roman Catholics and the Protestants are both concerned are within the competence of the Council, and not of one of the committees (s. 22).

"Within the municipalities, the schools are under

the control of the school corporations, whose members are elected by the ratepayers. These corporations have a duty to establish schools and to impose the taxes necessary to maintain them; they also employ the teachers; they must also, as much as possible, follow the programme of studies laid down by the Catholic Committee or the Protestant Committee, as the case may be (s. 221 (3)), and see that no books other than those approved are used. It is important to note, however, that the books which have to do with religion and morals must be chosen by the parish priest for the pupils of his religious belief, or by the Protestant Committee in the case of Protestants (s. 221 (4)).

"The members of these school corporations are called commissioners or trustees, according to whether they are elected by the religious majority or minority.

"When a municipality is set up, all the taxpayers, regardless of what religion they belong to, are called upon to elect the five commissioners who are going to form the first school corporation. After the formation of this corporation 'any number of property-owners, tenants or ratepayers . . . give to the chairman of the school commissioners or to their secretary, a notice in writing informing him of their intention to withdraw from the control of the school commissioners in order to form a separate corporation under the administration of school trustees' (s. 99 (am. 1942, c. 20, s. 2)). Once the trustees are elected (to the number of three), every taxpayer of the municipality belonging to the religious denomination of the dissidents and who gives advice of his dissidence is considered as a dissident. And 'So soon as the ratepayers who have signed one of the notices mentioned in the first paragraph of this section shall amount to two-thirds of the ratepayers of the municipality professing a religion different from that of the majority of the inhabitants thereof, then all the ratepayers of the municipality of the religious denomination of such dissentients, who have not given such notice, and who do not send their children to a school under the control of the school commissioners, shall also be deemed dissentients.' (s. 103, para. 2) Thus, from the time of the forming of the corporation of trustees, all the taxpayers who have declared themselves dissidents or the law considers as such, are withdrawn from the authority of the commissioners and come under that of the trustees.

"These are, in short, the provisions destined to assure to Roman Catholics and to Protestants the schools which conform to their respective beliefs."

He then described the law making school attendance compulsory, which obliges the commissioners and the school trustees of a municipality to receive all the children required to attend school. In a municipality where there are two school corporations, only the dissentients and those which the law considers such have the right to demand that their children should be admitted to the school of the trustees. In the municipalities where there is only one school corporation, all taxpayers, whether Roman Catholic or Protestant, are subject to this corporation, and required to pay taxes to maintain the school. Under these conditions all must be able to send their children there. He concluded, therefore, that Chabot had the right to demand that his children be admitted to the Lamorandière school. There remained to decide whether the children of a belief other than that of the majority who have the right to attend at the school are required to follow, on matters which touch on religion, a teaching to which their father is opposed. He then recalled the fact that it has often been recognized by the courts that the right to give one's children the religious education of one's choice, like freedom of conscience, is anterior to positive law. Turning to the Education Act, he said that it provides not only a safeguard for the right of instruction but at the same time protects the principle that the will of the parents in the matter of religious instruction must be respected. The right to remain Catholics and Protestants, to have their respective schools and to teach the truths of their religion in them, does not include the right to impose this religious instruction on children of another belief. In the light of this, he would interpret that the regulations, in the sense that the commissioners are obliged to see that the teachers give the instructions provided by the programme, are valid with respect to Roman Catholic children, but that they should be interpreted as not applicable to Protestant children. (*Chabot* v. *School Commissioners of Lamorandière and Attorney-General for Quebec* (1958), 12 D.L.R. (2d) 796.)

4. The British Columbia Court of Appeal, in a judgement given 28 November 1957, held that the province's compulsory school attendance legislation did not infringe upon religious freedom.

The legislation in question was the Public Schools Act, R.S.B.C. 1948, c. 297, which requires, subject to certain exceptions, that every child over the age of seven years and under the age of fifteen years shall attend a public school; and the Protection of Children Act, R.S.B.C. 1948, c. 47, which provides that a child "who is habitually truant from school and is liable to grow up without proper education" may be detained by the Superintendent of Child Welfare and brought before a children's judge, who may commit the child to the custody of the Superintendent of Child Welfare.

The issue came before the court when the parents of a Doukhobour child appealed from an order given by a magistrate acting under this legislation committing the child to the Superintendent of Child Welfare because of his habitual truancy from school.

The court held that the Public Schools Act is valid provincial legislation in relation to education under section 93 of the B.N.A. Act, and is not *ultra vires* or inapplicable to Doukhobour children as being legislation in relation to religion. Mr. Justice Smith, in his reasons for decision, stated that he did not consider that there was any religious element involved in

the true legal sense. In his view religion is one thing, a code of ethics another, a code of manners another. To seek the exact dividing line between them is perhaps perilous, but he rejected the contention that any group of tenets that a sect decides to proclaim as part of its religion thereby necessarily takes on a religious colour. An affidavit submitted by the parents and made by the secretary of a group of Doukhobours indicated that the objection to public schools is that they interpret history so as to glorify, justify and tolerate intentional taking of human and animal life or teach or suggest the usefulness of human institutions which have been or can be put to such purposes. He said also that Doukhobours believe that public schools expose their children to materialistic influences and ideals, and object to education on secular matters being separate from education on spiritual matters. "This clearly to my mind involves the claim that a religious sect may make rules for the conduct of any part of human activities and that these rules thereby become for all the world a part of that sect's religion. This cannot be so." The fact that a religious sect purports to govern itself by certain rules on human activities does not entitle it to ascribe them to freedom of religion so as to be protected as such. (*Perepolkin et al.* v. *Superintendent of Child Welfare* (No. 2) (1958), 11 D.L.R. (2d) 417.)

IV. International Instruments[1]

Canada signed, on 20 February 1957, the Convention on the Nationality of Married Women, done at New York on the same date. On 30 January 1957 Canada acceded to the Convention on the Political Rights of Married Women, done at New York on 31 March 1953.

The international Convention concerning Food and Catering for Crews on Board Ships, done at Seattle on 27 June 1946 entered into force on 24 March 1957. Canada ratified the Convention on 19 March 1951.

[1] See also p. 305.

CEYLON

NOTE[1]

In the year 1957 there have been no constitutional changes or important judicial decisions relating to human rights.

The Prevention of Social Disabilities Act, No. 21 of 1957, was passed for the purpose of removing any social disabilities suffered by any persons as a result of caste discrimination. Section 2 of this Act makes it an offence for any person to impose any social disability on any other person by reason of such other person's caste. Any person found guilty of this offence, after a summary trial before a magistrate, is liable to rigorous or simple imprisonment for a term not exceeding six months or to a fine not exceeding Rs. 100/–. Section 3 of the Act sets out the circumstances in which a person shall be deemed to impose a social disability on any other person.

[1] Information kindly furnished by the Minister of External Affairs of Ceylon.

CHILE

NOTE[1]

I. Legislation

Social Security

Act No. 12435, of 31 January 1957 (*Diario Oficial* No. 23671, of 12 February 1957), provided that the widows and orphans of crew members having died in shipwrecks of boats sailing on foreign waters under the Chilean flag during the Second World War had the right to an industrial accident pension. Family allowances were granted to those receiving industrial accident pensions for permanent, total incapacity, and to widows receiving pensions as a result of industrial accident resulting in death. The children of persons fatally injured in industrial accidents were, up to the age of 18 years, to enjoy preference in obtaining scholarships granted by the State in all branches of public education.

Article 40 of Act No. 12462, of 4 July 1957 (*Diario Oficial* No. 23788, of 6 July 1957), granted the right to family allowances to pregnant private employees and manual workers who have paid contributions, this right being effective as from the sixth month of pregnancy.

Nationality

By Act No. 12548, of 12 September 1957 (*Diario Oficial* No. 23858, of 30 September 1957), Congress approved amendments to articles 5 and 6 of the Constitution,[2] having the following effects, among others: (i) persons born in Spain and securing Chilean nationality by naturalization after ten years of residence in Chile were not required to renounce their Spanish nationality, provided that at the time of a person's thus acquiring Chilean nationality the same benefit was accorded in Spain to Chilean nationals; (ii) a certificate of naturalization granted to a person could not be cancelled after his having taken up office as a result of popular election.

Refugees

Supreme decree No. 743, of 6 December 1957, approved the Convention relating to the Status of Refugees of 28 July 1951.

[1] Note based upon information kindly furnished by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See United Nations Legislative Series: *Laws Concerning Nationality* (United Nations publication, Sales No.: 1954. V.1), p. 91.

II. Judicial Decision

Asylum

On 24 September 1957, the Supreme Court of Chile delivered judgement in a case involving a request by the Government of Argentina for the extradition of Héctor Cámpora and five others. The grounds upon which the Court decided to grant asylum to five of the persons involved but not the sixth have been reported as follows in *Revista de Derecho, Jurisprudencia y Ciencias Sociales*, Nos. 7 and 8 of September and October 1957, pp. 197–203:

Where application is made for the extradition from Chile of a fugitive offender, the decision of the competent Chilean court is made in accordance with the treaties in force with the countries concerned or, in the absence of such treaties, in conformity with the principles of international law.

The Montevideo Convention of 26 December 1933 is not applicable to the request for extradition made to Chile by the Republic of Argentina if the facts on which the requisition is founded antedate Argentina's ratification of the Convention.

The principles of international law which are the fundamental rules of this branch of the law must have been generally accepted both by jurists and by a large number of States. These principles are stated at the conferences or congresses which are held by the various nations for this purpose and which thus give expression to the commonly accepted rules.

In Chile, preference must be given to those international principles which have been approved by the constitutional bodies of the republic, for they are the law of the land. In the matter of extradition, the sources of such binding rules are the Code of Private International Law (the Bustamante Code) and the Montevideo Convention of 26 December 1933.

The principles contained in the Convention on Territorial Asylum approved at the Caracas Conference of 28 March 1954[3] cannot be considered as having the same authority, since the Convention has not been ratified by the republics of Chile and Argentina. As far as Chile is concerned, the Convention is merely a draft which cannot until such time as it is ratified affect the rules embodied in the Montevideo Convention.

[3] See *Yearbook on Human Rights for 1955*, pp. 329–30.

From the fact that the Caracas Convention on Territorial Asylum has been ratified by only six of the twenty States which signed it, it must necessarily be concluded that the Convention lacks general acceptance among nations.

The opinion of a few teachers of law, recognition in a judgement of a court of law, the existence of a foreign code or law which embodies a provision and the existence of an unratified convention in the matter or of drafts currently in the process of preparation have not sufficient importance or authority to endow what has been decided at an international conference with the character of a principle. It is necessary that an international practice should exist in the matter or that the rule should be generally accepted.

This requirement is particularly necessary when the clause in question would have the effect of amending the provisions of a Chilean law (such as the Bustamante Code), or of a convention ratified by the two countries concerned (such as the Montevideo Convention), or of treaties which Chile has concluded with various countries. None of the twelve extradition treaties concluded by Chile contains provisions which exclude ordinary offences committed for political ends or which bar any extradition requested for predominantly political reasons.

In consequence, it is impossible to consider as principles of international law the provisions of articles 3 and 4 of the Caracas Convention on Territorial Asylum, the first of which establishes that no State is obliged to surrender a person prosecuted for political reasons or offences and the second that a person may not be extradited if, in the opinion of the State from which his extradition is sought, he is being prosecuted for political offences or for ordinary offences committed for political ends, or if extradition is requested for predominantly political reasons.

Only if Chile had, through its constitutional bodies, placed the stamp of its approval on these rules, or if the doctrine embodied in the Caracas Convention had in fact been converted into a general practice accepted as such by jurisconsults and judges would the provisions of the Convention constitute principles of international law capable of amending the provisions of the Bustamante Code and the Montevideo Convention.

The fundamental provisions governing extradition from Chile are as follows: (*a*) the facts on which extradition is claimed must constitute an offence both in the country from which extradition is sought and in the country demanding extradition; (*b*) the minimum penalty for the offence in respect of which extradition is sought must be deprivation of liberty for not less than one year; (*c*) the offence must be one in respect of which the offender can be prosecuted, in the sense that a warrant has been issued for his arrest and that the offence was committed in the territory of the State claiming extradition; (*d*) the offence must not be a political offence or an offence related thereto.

In accordance with the generally accepted principles of international law, a political offence is an offence committed against the political organization of the State or against the political rights of the citizens. The legal good protected, and that injured by the offence, is the constitutional normalcy of the country concerned. Offences directed towards changing the political or social order established in the country are also considered as political offences.

The majority of learned authors also consider it essential as a means of distinguishing between political and ordinary offences to take into account the goal and motives of the offenders, in other words to consider both the objective and the subjective aspects of the offence; political and social offences are governed by motives of political or social interest and are characterized by the altruistic or patriotic sentiment that inspires them, whereas ordinary offences are inspired by an egoistical sentiment that may be in varying degree excusable (passion, love, honour) or reprehensible (revenge, hatred, profit).

In this matter a distinction is to be made between pure political offences, which are directed against the political organization and form of the State; imperfect political offences, which threaten the social or economic peace of the State; mixed or complex political offences, which simultaneously impair the political system and violate the ordinary law, as, for instance, the assassination of the Chief of State for political reasons; and related offences, which are ordinary offences committed in the course of attempts against the security of the State or are incidental to political offences, it being necessary to consider the motive in order to determine whether the ordinary offence is or is not related to a political offence.

Under Chilean law, which must apply in the present case since it is the law of the State from which extradition is sought, the term "related offence" is defined by article 165 of the Organic Code of Judicial Procedure, which considers as related offences offences committed simultaneously by two or more persons acting in concert; offences committed by two or more persons in different places or at different times if the offenders acted in accordance with a plan prearranged between them; offences committed for the purpose of committing another offence or facilitating its commission; and offences committed in order to obtain freedom from punishment in respect of another offence.

It is not enough that extradition should be claimed on grounds which are considered sufficient by the requesting judge or authority; the grounds must be weighed by the courts by which the claim is considered and, as the matter is one of domestic jurisdiction, the decision rests solely with those courts and is therefore independent of the foreign court.

By virtue of the provisions of articles 647 (3) and 649 of the Code of Criminal Procedure, which safeguard the sovereignty of Chile, it is for the Chilean courts, after weighing the evidence sent by the State

claiming the extradition of the offender or the evidence produced in the extradition proceedings, to determine whether or not the facts on which the requisition is founded constitute an offence and whether there is a well-founded presumption that the refugees are guilty of the alleged offences. Consequently, the fact that an order for committal to prison has been issued in the country claiming extradition of the offender cannot be regarded as conclusive proof.

The aforementioned provisions of articles 647 (3) and 649 of the Code of Criminal Procedure, as national legislation, take precedence over the provision in article 365 of the Bustamante Code, under which presumptive evidence of the guilt of the person whose surrender is sought is sufficient.

The foreign court's decision binds the Chilean judge only in one respect; under article 648 of the Code of Criminal Procedure, he is bound to order the arrest of the accused on the sole basis of the foreign court's sentence or warrant of arrest, and in accordance with article 650 the accused must be held in custody until such time as the extradition proceedings are completed.

The evidence upon which the charges are based having been submitted, in addition to the warrant of arrest, in the form of photostatic copies of evidence taken in the Republic of Argentina before courts of law or the authorities and in some cases commissions of inquiry, full weight must be attached to the evidence taken in the courts and some weight to the evidence taken by police authorities while the evidence taken in proceedings before commissions of inquiry must be considered merely indicative and may even by disregarded.

The application must be rejected for the extradition of the former President of the Chamber of Deputies of the Republic of Argentina on charges of fraud or of having defrauded the public administration by arranging for repairs to be done in state-owned garages to the motor-car he used for private purposes, if the evidence does not include the date on which the repairs were done, the name of the driver who ordered the repairs to be done on the instructions of the accused, and whether the motor-car was the private property of the accused or was an official car for the exclusive use of the President of the Chamber of Deputies.

Even if it be admitted that the President of the Chamber of Deputies of the Republic of Argentina is a public official having in his administration or custody moveable property belonging to the Chamber, and notwithstanding the fact that he is charged with malversation in that he conveyed such property to basic units of the government party, the application for his extradition on that charge must also be rejected because the offence is not punishable by deprivation of liberty under either the Argentine (article 260) or the Chilean (article 236) Criminal Codes.

The violent language against the revolutionaries used by another of the refugees in a speech made after an unsuccessful attack and in circumstances in which the government supporters were in a high state of excitement is incontestably political in character because it is directed against the public order and is prompted by a political motive. In consequence, in accordance with the principles of international law, he cannot be extradited for the offence of public intimidation with which he is charged.

Likewise, there is no ground for the extradition of a third refugee who is charged with unlawful association, the charge being based on the existence of a political plan in which tactical commandos were designated to carry out personal attacks, set off explosions and commit arson in the event of an attempt to assassinate the President of the republic, if it is not duly established that such association was formed or organized.

Even if the existence of the unlawful association be considered to have been proved, as the association would have been organized to protect the Chief of State by intimidating his political opponents through attacks, explosions and arson in reprisal for any act of violence committed against him, it is incontestable that the offence would be political in character since it affects the security of the State and is committed for a political purpose (to protect the life of the President of the republic).

The actions of both the opponents and the supporters of a government may, if they transgress the bounds set by law, constitute political offences and in this case the offence of unlawful association would be of such a character, for which reason the application for extradition cannot be granted.

The public intimidation and malversation with which another of the refugees is charged, consisting in the preparation, on the day the revolt broke out, of explosive bombs for the purpose of resisting the forces which had risen against the Government, and the use for that purpose of state-owned motor spirit and cotton waste, are acts justified by the provisions of article 235 of the Argentine Criminal Code and article 134 of the Chilean Criminal Code, which require public employees to resist uprisings. In any case, the offences would be political offences in respect of which extradition may not be granted.

Nor is it possible to accede to the claim for the extradition of the same refugee for systematic fraud consisting in the use of official materials, trucks and labour to build a chalet owned by him, if it appears from the evidence that it was impossible to prove that the said materials were used in the construction or that the materials were missing from the establishments from which they were alleged to have been removed.

Extradition cannot be claimed for the offence of establishing a monopoly in the importation of television sets into Argentina, which is alleged to have

been committed by another of the refugees, since that offence is not a punishable offence in Chile.

In view of the importance and influence of this refugee in financial life and in the Government of Argentina, his explanation that the weapons and the spirituous liquors bearing no revenue stamp discovered in his home were received by him as gifts from foreign ambassadors or missions exempted from the payment of customs duties is wholly plausible, and the discovery does not therefore substantiate the charge of unlawfully introducing the said goods into Argentina or of smuggling.

Extradition cannot be claimed for the offence of bribery, since the offence is punishable in Chile by deprivation of certain rights and a fine, penalties that do not involve deprivation of liberty.

The fraud on commerce and industry with which the same refugee is charged on the ground that he cornered the market in motor-cars by securing the arbitrary grant of import licences thereby bringing about an increase in their prices cannot be considered an offence under Chilean law as the only provision of a somewhat similar nature — article 41 of supreme decree No. 1262 of 18 November 1953 — prescribes a penalty for the cornering of essential goods, a category in which motor-cars cannot be included.

In order to have been defrauded, a person must have suffered an actual loss, and not merely been deprived of a prospective source of profit. Consequently, even if it be admitted that fraud was practised in that a trade agency, in order to favour a company with which the refugee was connected, charged a third party an unduly high price for goods sold by it to that party, thus compelling the latter to withdraw from the transaction, the facts do not constitute the offence of obtaining by false pretences if it is established that the said company purchased the goods by open bidding at the market price and there is no evidence that any transaction was entered into or offer made at a higher price.

The offence punishable under article 265 of the Argentine Criminal Code (a provision similar to that contained in article 240 of the Chilean Criminal Code) relates specifically to the civil service, and requires as principal a public employee who obtains an unlawful interest in operations with which he is officially concerned. While it is conceivable that a private person might also be liable as a joint principal or accessory, he would be liable only if it were clearly shown that the offence was committed by the public official.

Consequently, if it is not shown that a public servant obtained an unlawful interest in transactions relating to purchases of oleaginous by-products from the Argentine Trade Institute a private person, such as the refugee in question, cannot lawfully be charged with the offence.

The last refugee is extraditable on the charge of extortion made against him in the Republic of Argentina if the evidence establishes that, in company with other persons and by threatening a third party with arrest for having engaged in an unlawful exchange transaction, he obliged that party to give him a sum of dollars and to sign a receipt acknowledging payment for the dollars at the official rate, when in fact no such payment was ever made.

The offence is an ordinary offence punishable, both under article 168 of the Argentine Criminal Code and article 438 of the Chilean Criminal Code, by a penalty involving deprivation of liberty for more than one year.

The requisition for his extradition is not invalidated by the procedural defect constituted by the failure to transcribe article 168 of the Argentine Criminal Code, an omission subsequently rectified by the representative of the country seeking his extradition.

The fact that in Chile extortion is punishable as an offence involving violence and menaces against other persons does not violate the requirement of identity of provisions, for this principle requires only that the act charged shall be punishable as an offence under the laws of both countries; it is not essential that the offence should be described in identical terms.

In the case of the same refugee extradition may also be granted for the offences of homicide and theft if it is established that in company with a group of persons he attacked premises of the Communist Party, that he caused the death of the janitor and that he and his companions removed various goods which they subsequently sold or pawned, including a suit of clothes which they presented to the janitor of their own party office and which, according to some witnesses, was that worn by the deceased on the day of the attack.

As the murder was not committed in the course of attempts against the security of State, but occurred at a time of public calm, it cannot be considered an offence related to offences of a political character. While it may possibly have had a political purpose (the liquidation of Communists), an ordinary offence is not transformed into a political offence solely by reason of its purpose.

Although the same refugee is charged with unlawful association, it having been proved that the political party to which he belonged engaged in a great number of unlawful acts, such as kidnapping, injury, torture, flogging and other acts of barbarism, extradition may not be granted if it is established that the ordinary offences he committed were related to others which were political in character by reason of their purpose (anti-Communist shock unit) and of the motives which inspired the members of the party in committing acts against the security of the State.

The extradition of this refugee having been accepted as legitimate, it must be stated that the only offences for which he may be tried in the Republic of Argentina are the offences of extortion, homicide and theft from the aforementioned Communist premises, the only offences in respect of which extradition is granted, and that he may not, under any circumstances, be sentenced to death.

CHINA

NOTE[1]

The regulations governing security measures against persons convicted of larceny or the offence of receiving stolen goods during the period of national emergency were specially designed to meet the local situation in Taiwan. They were promulgated on 30 December 1955, and came into force on the same date.

On 30 January 1957, the regulations were amended in the following ways:

(*a*) According to the original text, while young persons between the age of fourteen and eighteen who were convicted of larcency or the offence of receiving stolen goods were exempt from punishment, they had nevertheless to be committed to reformatory institutions as a security measure. As this provision was considered too severe in respect of those whose offence was of a minor character and relatively insignificant, the amended regulations provided that, in the case of those young offenders whose offence is of a minor character and who have no previous criminal record and, therefore, have never been subject to punishment or security measures, the procurator may waive prosecution in accordance with article 232 of the Code of Criminal Procedure.

(*b*) According to the original text, persons over eighteen years old who were convicted of larcency or the offence of receiving stolen goods and who had no regular occupation and no fixed place of abode were to be ordered to work in certain labour institutions. This provision was deleted, because it failed to take into account the actual social conditions.

(*c*) According to the original text, the court could dispense with direct hearings and oral proceedings and rely on written proceedings alone in deciding to commit an offender to a reformatory institution. As this procedure did not give full protection to the interests of the defendant, the amended regulations specifically provided that such a decision should be announced in the form of a judgement after a direct hearing and oral proceedings.

(*d*) Under the original regulations, the period of confinement in a reformatory institution was uniformally set at three years. Not until an inmate had completed two years' confinement could the organ responsible for the execution of the sentence certify to the procurator that no further confinement was necessary, with the recommendation that the court be requested to grant a remission of the sentence. On the other hand, after an inmate had completed the three years' confinement, the organ concerned could still certify to the procurator that in its opinion the period of confinement should be extended, with the recommendation that the court be requested to authorize such an extension. The amended regulations were much more flexible in this respect. They provided that the period of confinement may be set anywhere from one to three years, and that, after an inmate has completed one year's confinement, the organ responsible for the execution of the sentence may certify to its superior organ that in its opinion no further confinement is necessary, with the request that a remission of the sentence be granted, and notify the procurator accordingly. Moreover, the amended text contained no provisions regarding the extension of the period of confinement.

(*e*) With regard to offenders sentenced to compulsory labour as a security measure, the original regulations provided that the organ responsible for the execution of the sentence could apply to the court, through the procurator, for a remission of the sentence only when the offender had served three years of his term and the organ concerned was satisfied that no further execution of the sentence was necessary. The amended text changed the three-year to a two-year period. It also stipulated that the sentence of compulsory labour could not be extended for more than two years, instead of five years as provided in the original regulations.

[1] Information kindly furnished by the Permanent Mission of China to the United Nations. Translation by the United Nations Secretariat.

COLOMBIA

NOTE

Electoral Rights: Constitutional Amendments

Extracts appear below from legislative decree No. 247 of 1957, of 4 October 1957, as amended by legislative decree No. 251 of 1957, of 9 October 1957. A plebiscite was held under this enactment on 1 December 1957, when the constitutional amendments set out therein were adopted.

Freedom of Association

Legislative decree No. 204, to lay down certain rules respecting trade union privileges, of 6 September 1957 (*Diario Oficial* No. 29516, of 19 October 1957), amended the provisions of the Labour Code concerning the protection afforded to certain categories of employees (having exercised the right to freedom of association) against being dismissed, placed in a less favourable position as regards conditions of employment or transferred to other establishments forming part of the same undertaking or to a different municipality, until just cause has been proved to the satisfaction of the labour judge. Translations of the legislative decree into English and French have appeared as International Labour Office: *Legislative Series*, 1957 — Col. 1.

Freedom of the Press

Extracts appear below from legislative decree No. 271 of 1957, setting forth press regulations.

Legislation concerning Public Health[1]

Decree No. 2968 of 1956, of 5 December 1956, creating a National Service for the Eradication of Malaria, was one of a number of measures against malaria adopted during 1956 and 1957.

Among various enactments adopted in 1957 concerning aspects of leprosy mention is made of resolution No. 313 of 1957, of 28 March 1957, granting payments to certain healthy children of sufferers from leprosy, and decree No. 319 of 1957, of 21 November 1957, providing special procedures to accord to such sufferers the right to vote in the national plebiscite, while safeguarding public health.

[1] Note derived from texts kindly furnished by the Permanent Representative of Colombia to the United Nations.

LEGISLATIVE DECREE No. 247 OF 1957 CONCERNING A PLEBISCITE ON CONSTITUTIONAL REFORM

of 4 October 1957, as amended by legislative decree No. 251 of 1957, of 9 October 1957[1]

Sole article: Colombian men and women, over the age of twenty-one years, who are not deprived of the right to vote by judicial sentence, shall be summoned on the first Sunday in December 1957, to express their approval or disapproval of the following text, which shall be indivisible:

In the name of God, Supreme Source of all authority, and in order to guarantee national unity, which is founded in part on the acknowledgement by the political parties that the Apostolic Roman Catholic Religion is the religion of the nation and that as such the public powers shall protect it and shall ensure that it is respected as an essential element of the social order, and in order to ensure the benefits of justice, liberty and peace, the Colombian people, in a national plebiscite,

DECREE

The Political Constitution of Colombia shall be the Constitution of 1886 with the permanent reforms introduced up to and including Legislative Act No. 1 of 1947, with the following amendments:

Art. 1. Women shall have the same political rights as men.

Art. 2. In the popular elections held to elect public bodies until and including 1968, the posts for each electoral district shall be allocated equally between the traditional parties, the Conservative and the Liberal. If there are two or more lists of one and the same party, and if the posts corresponding to the party exceed two, the electoral quota system shall be applied in allocating those posts, taking into account, however, only the votes issued for the lists

[1] Texts published in *Diario Oficial* No. 29517, of 21 October 1957. Translation by the United Nations Secretariat. The constitutional amendments set out in the legislative decree were adopted in a plebiscite held on 1 December 1957 in accordance with its provisions.

of that party. In the elections held during the period referred to in this article, an equal number of members of the public bodies shall be elected in all electoral districts. To obtain this result, the constitutional standards fixing the number of members of such bodies shall be observed, but a post shall be added whenever the number is unequal. No department with more than one million inhabitants shall have less than six senators or less than twelve representatives.

. . .

Art. 4. Cabinet Ministers may be freely appointed and dismissed by the President of the republic who, nevertheless, must allow the political parties to participate in the Administration in the same proportion as that in which they are represented in the Legislative Chambers.

Since it is the purpose of the present constitutional reform that the two political parties, the Conservative and the Liberal, placed on an equal footing, in a broad and permanent agreement, should have joint responsibility of government, and that government should be exercised in the name of both parties, appointments of officials and employees who do not belong to the established civil service shall be made in such a way that the various branches of the executive shall reflect equitably the political composition of the Congress.

The foregoing shall not prevent members of the armed forces from being called on to fill posts in the public administration.

Art. 5. The President of the republic, governors, mayors and in general officials empowered to appoint and dismiss administrative employees shall not exercise this power, except in accordance with the rules made by Congress, to establish and regulate conditions for entry into the public service, for promotion on the basis of merit and seniority, and for pension, retirement or dismissal.

Art. 6. Employees and public officials in the established civil service are prohibited from taking part in the activities of political parties or in political disputes, but without prejudice to their right to vote. Failure to observe this prohibition shall constitute grounds of dismissal for bad conduct.

Art. 7. The political affiliations of citizens shall not in any case determine their appointment to a post or public office in the established civil service, or their promotion or dismissal.

. . .

Art. 11. As from 1 February 1958, the national government shall spend not less than 10 per cent of its general expenditure budget on public education.

Art. 12. The membership of the Supreme Court of Justice and the Council of State shall be composed of an equal number of members drawn from the two political parties.

The judges of the Supreme Court and the councillors of state shall remain in their posts as long as they maintain good conduct and have not reached the compulsory retirement age.

Vacancies shall be filled by the respective corporations.

A law shall be issued to regulate the present provisions and to organize the Judiciary.

. . .

Art. 14. This reform shall become effective immediately after the official results of the voting are known.

. . .

LEGISLATIVE DECREE No. 0271 SETTING FORTH PRESS REGULATIONS of 29 October 1957[1]

Art. 1. The press shall be free in time of peace, but shall bear responsibility in accordance with the provisions of this decree.

1. In applying this decree, the authorities shall bear in mind that responsibility must be required of the press without any infringement of freedom of thought and expression as recognized and proclaimed by the National Constitution. They shall, in addition, ensure that the freedom of the press is not impaired in practice and that the independence of publications and those who write for them is effectively guaranteed.

2. In the event that, as provided in article 121 of the National Constitution, the public order is declared to be disturbed, preliminary censorship of the press, if considered essential, shall be introduced by virtue of a legislative decree which shall specify the matter subject to censorship and the period during which censorship shall be in force.

3. In view of the lofty social function of the press, the Government shall give preferential attention to requests for the materials normally necessary for publishing periodicals.

Art. 2. Any person who is editor, manager or owner of a periodical dealing with national politics must be a natural-born Colombian citizen.

Commercial agencies engaged in publicity or advertising may operate in the country only if their capital or the majority of their shares is held by Colombian nationals.

Art. 3. No periodical may be circulated until its editor-owner, or its editor and owner jointly if they are separate persons, has, or have, furnished a bank guarantee, mortgage or personal surety, or a surety bond issued by an insurance company, as a guarantee

[1] Text published in *Diario Oficial* of 2 December 1957. Translation by the United Nations Secretariat.

for the payment of pecuniary penalties or damages arising from press proceedings as referred to in this decree.

The said guarantee shall be deposited with the chief political authority of the place where the periodical is published, and the category and amount of the guarantee shall be fixed by the Minister of the Interior in the light of the economic circumstances of the undertaking as follows: first category, 10,000 to 35,000 pesos; second category, 5,000 to 20,000 pesos; third category, 500 to 2,000 pesos.

The category of a guarantee may not be changed, but the amount of the guarantee within a particular category may be increased by order of the Minister of the Interior when it is reduced or exhausted through the payment of damages covered by the guarantee and awarded in press proceedings as dealt with in this decree.

The guarantee may be annulled after a year has passed from the date of the last number of the periodical to be published, on condition that no penal or civil proceedings which might give rise to pecuniary penalties covered by the guarantee are pending against the periodical.

In the case of publications of a purely scientific, literary, religious, educational or commercial character, the Ministry of the Interior may, at its discretion and on the application of the editor, exempt the publication from providing the guarantee prescribed by this article and may revoke that exemption if the publication accepts writings of a political nature which may give rise to press proceedings.

If an application for exemption from the provision of a guarantee is not dealt with by the Ministry of the Interior within the ten days following the date on which it is submitted, the publication shall be authorized to go into circulation immediately.

Art. 4. An appeal from a decision of the Ministry of the Interior under the preceding article shall lie to the General Department of the Council of State, which may alter the category and amount of the guarantee. The appeal may be lodged by the person concerned within three working days after notification of the relevant ministerial order.

Art. 5. Another indispensable requirement for the circulation of a periodical is that the chief political authority of the place of publication be informed in writing of the following particulars:

(*a*) The title of the periodical and manner of publication;

(*b*) The name, domicile and nationality of the editor;

(*c*) Information concerning the printing establishment;

(*d*) Whether the publication is of a political, scientific, literary, religious, educational or commercial character.

Any change in these particulars shall be notified in writing to the authority aforesaid on the same day that the decision concerning such change is adopted.

Art. 6. Publications already in circulation shall comply with the requirements of this decree within sixty days of its entry into force.

Art. 7. Liability for an offence dealt with in this decree shall rest with the editor of the periodical or with the author of the offending article if he can be quickly and easily identified. If the author does not appear to answer for the article, liability shall rest with the editor of the periodical, who shall in any case be held liable directly or subsidiarily for any damages or fines which are not paid by the recognized author of the offending article within the time-limit specified in the judgement.

Art. 8. If the pecuniary penalties prescribed by this decree are not paid within the time-limit specified in the relevant judgement, they shall be converted into detention at the rate of one day for every 50 pesos, but the period of such detention shall in no case exceed three years.

Art. 9. Detention may be replaced by a fine at any time. If the offender requests that detention be commuted into a fine and the fine is not paid within ten days of the date of such commutation, the detention shall take effect immediately, and no further commutation shall be allowed.

Art. 10. Detention pending trial shall be prohibited in connexion with press proceedings. Conditional sentence or absolute discharge may be sought by the defendant in press proceedings under the general rule set out in articles 80 and 91 of the Penal Code.

Art. 11. The offences with which this decree is concerned shall cease to be grounds for legal proceedings one year after the date of commission.

SPECIAL SECTION

TITLE I

Chapter I

DEFAMATION AND INSULT

Art. 12. Any person who through an effective communications medium falsely imputes to another person a specific personal act which is punishable by law or which because of its dishonourable or immoral character exposes the person to whom it is imputed to public hostility or contempt shall, without prejudice to any damages awarded in civil proceedings, be liable to detention for a term of six (6) months to three (3) years and to a fine of 1,000 to 10,000 pesos (Ps $1,000 to Ps $10,000), which shall accrue to the National Treasury. The offender may, however, request that all or part of the term of detention be commuted into a fine at the rate of fifty pesos (Ps $50.00) a day, which sum shall also accrue to the Treasury.

Art. 13. The penalty prescribed by the preceding article shall not apply if the person imputing an act to another person proves that the imputation is true.

Such proof shall not, however, be admitted if the act imputed:

(*a*) Has been the subject of an acquittal, permanent stay of proceedings, amnesty, pardon, time-limitation, conditional sentence or absolute discharge;

(*b*) Not being included in the preceding subparagraph and not relating to a person holding or running for public office, took place more than ten years previously;

(*c*) Relates to married or family life or to an offence against decency subject to investigation only on the basis of a private complaint.

Art. 14. Any person who through an effective communications medium attacks the honour or reputation or detracts from the dignity of another person, or reveals the private or domestic misdeeds or vices of another person, shall, without prejudice to any damages awarded in civil proceedings, be liable to detention for a term of three (3) to eighteen (18) months and to a fine of five hundred (Ps $500.00) to five thousand (Ps $5,000.00) pesos, which shall accrue to the National Treasury. The offender may, however, request that all or part of the term of detention be commuted into a fine at the rate of fifty (Ps $50.00) pesos a day, which sum shall also accrue to the Treasury.

This provision shall also apply to any person who, with the intention of insulting another person, recalls or divulges criminal acts committed by that person's spouse or by a relative of that person within the fourth degree of consanguinity or the second degree of affinity.

Art. 15. The penalties prescribed by the preceding articles shall be increased by one-sixth to one-half if the offence is directed against the President of the republic or any person acting in his stead, or against a government minister, the State Consul-General, a judge of the Supreme Court of Justice, a president of the Legislative Chambers, the governor of a department, a state councillor, a judge of the higher courts of justice, the head of a diplomatic mission abroad, a general or commander-in-chief of the armed forces or a person holding ecclesiastical office.

Art. 16. No person shall be held to have committed the offence of insult who, acting in the public interest and on the basis of factual information or of information regarded as factual because of its source and without using offensive language, criticizes, censures or comments on:

(*a*) Acts or contracts of the Government or administration;

(*b*) Public services or services which affect the public;

(*c*) Artistic, literary, scientific, educational or cultural works or productions, or any public entertainment, spectacle or contest.

Art. 17. In proceedings for insult, proof of the factual character of the imputations constituting the insult shall be inadmissible.

Chapter II

General Provisions

Art. 18. Any person who, in published form, repeats or reproduces an insult or a defamatory statement uttered by another person shall be deemed to have uttered it himself.

Art. 19. Proceedings for defamation or insult may not be taken with regard to statements made in the Legislative Chambers or reports submitted to the said Chambers by members, nor with regard to the publication of such statements or reports or of the records of meetings which are a faithful account of the relevant meetings, except where such publication has been expressly prohibited by the Chamber itself.

Proceedings for defamation or insult shall likewise be barred in respect of statements made before a court or judge at public hearings, the publication of such statements, a faithful record of the proceedings and the total or partial publication of dossiers which are not restricted, unless the court has prohibited publication of such statements, records or dossiers.

The exceptions provided for in this article shall not apply where the editor of a periodical or the author of an article adopts as his own and embodies in the content or title of an article any defamatory material or insult contained in a statement, report, record or dossier as aforesaid.

Art. 20. Even where qualified by an expression such as "it is said", "it is asserted", "it is rumoured", "we have been informed" or the like, a defamatory or insulting imputation shall be deemed in law to have been made by the author of the article or the editor of the periodical in which such imputation appears.

Liability for defamation or insult shall not be lessened through the use of indirect expressions or means if the elements of the offence are present and the reference to the aggrieved person is unmistakable.

Chapter III

Corrections

Art. 21. Where false information concerning the actions of an individual, a public official or a body corporate, or insulting or defamatory material concerning any person, is published by a periodical, a correction or clarification from the aggrieved party shall be published without charge by the editor of the periodical within three days of receipt in the case of a daily publication or in the next issue in all other cases.

Where in the opinion of the editor the correction or clarification is insulting, he may refrain from publishing it pending a decision by the judge referred to in article 70 of this decree, due account being taken

of the provisions of the last three paragraphs of this article.

The correction or clarification shall be published, without any insertions, in the same place and in the same type, including headings, as the original matter. Corrections to material appearing in the editorial columns of a periodical need not be inserted in the same column but shall be printed on the editorial page.

A correction or clarification may not be longer than the original article, provided that it may take up as much as an entire column even though the original article was less than a column in length.

Where, in the opinion of the person submitting it, a correction or clarification depends for its effectiveness on the publication of accompanying documents which will occupy more space than is permitted under the preceding paragraph, and for this reason the editor refuses to publish it, the question shall be submitted to the judge referred to in article 70 of this decree, who, within two days of the date on which he receives the necessary evidence, shall decide, without formality, whether the documents in question shall or shall not be published.

The said decision shall be without appeal.

The provisions of this article shall apply to the right of reply where the correction or clarification is published together with fresh comment or information.

Art. 22. If for any reason a correction or clarification as provided in the preceding article cannot be made by the aggrieved party, it may be made by a relative or a legal representative of that party as specified in article 286 of the Code of Criminal Procedure.

Where, within the time-limit for the publication thereof, a correction or clarification is received from more than one relative or legal representative of the aggrieved party, only that correction or clarification shall be published which in the opinion of the editor of the publication is most complete.

Art. 23. If the correction or clarification is not published within the time-limit or in the manner laid down in article 21, the person concerned may lodge a complaint with the judge, who, within the two days of the date on which the complaint is lodged, shall summon the parties to be heard in person.

After this hearing, if both parties appear, or at the end of the period specified in the preceding paragraph, the judge, within the following two days, shall, as the circumstances require, order the correction or clarification to be published and the editor of the periodical to pay the plaintiff a sum of 500 to 5,000 pesos.

The said order shall be without appeal.

Art. 24. No proceedings for defamation or insult may be initiated where a correction or clarification published in the prescribed manner is accompanied by a statement from the editor of the periodical that he is in full agreement therewith.

Chapter IV

Art. 25. Any person who publishes news, comment or opinion which by its nature brings pressure to bear on the Council of State or on a court, judge or other authority to take or refrain from taking a particular decision shall be liable to a fine of 2,000 to 10,000 pesos.

The same penalty shall apply to any person who by the same means — and, in particular, by inciting to disobedience or insulting the relevant authority — seeks to prevent a judgement for which leave to proceed has been given from being carried out or complied with, and to any person who promotes a public subscription to pay the pecuniary penalties prescribed by this decree.

Art. 26. Any person who publishes false news or documents that are apt to disturb the social order or the peace shall be liable to a fine of 2,000 to 10,000 pesos.

Art. 27. Where news or other material prejudicial to the external security of the country is published in a periodical, the editor of the periodical and the author of the material shall be liable to a fine of 2,500 to 10,000 pesos in addition to such other penalties as may be prescribed by the Penal Code. In such cases, proceedings shall be initiated by the State Counsel-General.

Art. 28. Any person who, without the permission of the Ministry of Foreign Affairs, publishes information on the course of diplomatic negotiations being conducted by the country shall be liable to a fine of 1,000 to 5,000 pesos.

The foregoing provision shall not prevent journalists or writers from discussing the interests of the country in its relations with foreign powers.

Art. 29. Any person who causes damage to another person by publishing or reproducing false news or forged documents shall be liable to a fine of 1,000 to 5,000 pesos.

Art. 30. Any person who through an effective communications medium incites to non-compliance with a law, regulation or obligation, or who defends an offence or type of offence, shall be liable to a fine of 1,000 to 5,000 pesos.

The provisions of this article shall not apply to any legitimate criticism of laws or discussion of their effects that recognizes the binding force of those laws and refrains from encouraging disobedience thereto.

Art. 31. Any person who through an effective communications medium incites to indiscipline or insubordination in the armed forces or to refusal to recognize the authorities shall be liable to a fine of 2,500 to 10,000 pesos.

If insubordination in the armed forces or refusal to recognize the authorities is in fact caused, the fine shall be doubled.

Art. 32. Any person who imputes a criminal act

to a political, religious or other group shall be liable to a fine of 1,000 to 5,000 pesos.

The same penalty shall apply to a person who in publishing an account of a criminal act gives it a political, religious or racial colouring and thus makes it apt to arouse anxiety and a desire for retaliation amongst the members of the relevant political, religious or racial group.

Art. 33. Any person who publishes news, comment or opinion which is contrary to morality or public decency or constitutes an incitement to depravity, or who describes, illustrates or comments upon real or imaginary events in a scandalous manner, shall be liable to a fine of 500 to 2,500 pesos.

Chapter V

CONTRAVENTIONS

Art. 34. On pain of a fine of 500 to 5,000 pesos, to be imposed summarily by the judge or officer having jurisdiction, no information relating to a preliminary investigation may be published by word of mouth or in writing except as regards:

(*a*) The fact that the investigation has been opened and the name of the officer having jurisdiction;

(*b*) The issue or revocation of warrants of arrest, and the grant of bail, but not the grounds therefor in fact and law;

(*c*) The bringing of a civil action and the name of the plaintiff;

(*d*) Procedural orders, other than those for the production of evidence;

(*e*) The warrant of committal as soon as it becomes effective.

Art. 35. It shall be unlawful to give any account in the press of proceedings for defamation or insult where the provisions of article 13, second paragraph, sub-paragraphs (*a*), (*b*) and (*c*), of this decree apply, of proceedings in respect of the offences dealt with in book II, titles VII, XII and XIV, of the Penal Code, or of proceedings for the determination of paternity or for divorce or judicial separation.

Any infringement of this provision shall be punished by a fine of 1,000 to 5,000 pesos which, on the initiative of the agent of the State Counsel Department, shall be levied by the single-judge court hereinafter referred to.

Art. 36. No undertaking publishing periodicals may receive any subsidy from a foreign government or company except with the permission of the Government of Colombia.

An infringement of this provision shall be punished by a fine, which shall be levied on the undertaking and the editor of the periodical receiving the subsidy and shall be equivalent to twice the amount of the subsidy or shall, alternatively, be 2,500 to 10,000 pesos if the amount of the subsidy is less than half these sums.

Art. 37. Paid official propaganda in the press of the country shall be prohibited.

Paid official propaganda shall be deemed to exist where any payment based on funds from the public treasury is made to an establishment publishing periodicals and is received with such frequency and regularity as to constitute a subsidy.

Any official infringing this provision shall be dismissed from office and shall be fined 500 to 1,000 pesos by the person who appointed him.

Art. 38. The date, the name of the editor and publishing undertaking and the place of publication shall appear on the first page of every periodical. On each occasion that any of these particulars is omitted, the editor, manager or owner shall be liable to a fine of 250 to 1,000 pesos.

The person whose name appears as editor of the publication shall be deemed in law and for the purposes of this decree to fulfil the functions of editor.

Art. 39. At the time of distribution or sale, one copy of every periodical shall be sent, for preservation in the respective archives, to the Ministry of the Interior, the governor of the department and the mayor of the municipality in which the periodical is printed.

The official responsible for receiving and keeping the said copies shall request them in writing on every occasion that he does not receive them. If his request is not complied with, the editor, manager or owner of the periodical shall be liable to a fine of 20 pesos (Ps $20.00) to 200 pesos (Ps $200.00), which may be repeated on each occasion that such a request is not complied with.

Art. 40. Any public employee who acts as the editor, as the editor liable at law or as a member of the editorial staff of any periodical dealing with political matters or whose name appears in such a publication permanently as the manager or owner thereof or of the undertaking publishing it shall be liable to dismissal from his post and to a fine of 500 to 2,500 pesos, which, at the instance of the State Counsel Department or of any citizen, shall be imposed, as a matter of course and on the face of the evidence alone, by the person or body who appointed him or, in default thereof, by the national government.

[Title II lays down procedure for dealing with offences, and title III concerns jurisdiction over offences. Among the previous enactments specifically repealed by article 75 are legislative decrees Nos. 1723 of 1953,[1] 3000 of 1954[2] and 2535 of 1955.[3] Article 76 provides that the decree is to enter into force ten days after publication.]

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[1] See *Yearbook on Human Rights for 1953*, p. 53.

[2] See *Yearbook on Human Rights for 1954*, pp. 58–60.

[3] See *Yearbook on Human Rights for 1955*, pp. 36–7.

COSTA RICA

NOTE

I. Legislation

Act No. 2160 (Basic Act on Education), of 25 September 1957 (*La Gaceta* No. 223, of 2 October 1957), which entered into force on publication, provided in its article 1 that: "Every inhabitant of the republic has the right to education, and the State has the duty to strive to offer that education in the fullest and most suitable form." Article 8 read: "Primary education shall be compulsory; primary, pre-school and secondary education shall be free and shall be financed by the nation." The Act contained details concerning, *inter alia*, pre-school, primary, secondary, technical and higher education, special education for handicapped children and the training of teachers. Among the provisions relating to school staff, article 39 provided that: "No staff member may be punished, transferred, removed, suspended or downgraded for expressing his political or religious views. Nevertheless, it is prohibited to hold discussions or to make propaganda of a sectarian nature or on electoral politics within teaching establishments." The Act also contained provisions implementing articles 86 and 79 of the Constitution,[1] according to which, respectively, "The State shall train teachers through special institutes and the University of Costa Rica", and "Freedom of education is guaranteed. All private educational centres shall nevertheless be subject to State inspection." Article 36 of the Act provided that: "All pupils shall be admitted to private schools without distinction of race, religion, social position or political belief." The Act also required the State to organize and sponsor adult education in order to eliminate illiteracy.

II. Court Decisions[2]

1. *Decision of the Supreme Electoral Tribunal, San José, 9 April 1957*

The political parties in opposition to the present government required the Supreme Electoral Tribunal, in the exercise of the exclusive power vested in it by article 102, paragraph 3, of the Political Constitution, to rule that the correct interpretation of article 88 of the Electoral Code, which provides that officials of the Government "may not take part in the activities of political parties or . . . demonstrate partisanship in any other manner", was that the President of the republic is prohibited from expressing support for any political party or from publicly stating to which party he himself belongs.

The President of the republic appeared in person before the Tribunal, and opposed the interpretation placed on article 88 by the opposition parties, arguing that the President, having been elected by a political party, should continue to belong to that party, and should have the right to say so.

The Supreme Electoral Tribunal found in favour of the opposition parties and held that the President might not in any way express partisanship while in office, as the Tribunal considered that that was the only way in which to prevent the President from using his high office to influence the political decisions of the citizens and to enable those citizens to preserve their full electoral freedom.

A few days later the President stated in a broadcast speech that his position on the subject continued to differ from that of the Supreme Electoral Tribunal, but that, in view of the fact that the Tribunal was empowered by the Constitution to give a legally binding interpretation of the electoral laws, he would respect the Tribunal's finding and would in future refrain from making any demonstration of his political views. (Full text in the records of the Tribunal.)

2. *Decision of the Supreme Court of Justice, San José, 15 April 1957*

Francisco Jiménez Rodríguez made an application requesting that article 948 (*f*) of the Code of Civil Procedure be declared unconstitutional as being contrary to article 39 of the Constitution, according to which no person shall be made to suffer any penalty, even for a minor offence (falta de policía), except in virtue of a final sentence passed by the competent tribunal, the accused having had an opportunity to present his defence and the required guilt having been proved. The above-mentioned article 948 (*f*) of the Code empowered a judge to impose a fine on a litigant showing lack of respect to him during a hearing. The court unanimously decided that article 948 (*f*) was not contrary to article 39 of the Constitution, since the sanction of a fine imposed upon Fran-

[1] See *Yearbook on Human Rights for 1949*, p. 43.

[2] Information kindly furnished by Dr. Fernando Fournier, formerly Ambassador of Costa Rica to the United States of America, government-appointed correspondent of the *Yearbook on Human Rights*.

cisco Jiménez Rodríguez by a lower court was not to be regarded as a penalty for which it was necessary for a final sentence of a tribunal to have been passed, defence guarantees having been provided for and guilt having been shown in a contested trial, in accordance with the Constitution. The fine imposed was a mere act of disciplinary correction. The constitutional requirements of article 39 referred to the cases contemplated by the Penal Code, and not to the sanctions and acts of correction set out in the Disciplinary Law. (Full text in *Boletín Judicial* of 22 May 1957.)

3. *Decision of a Criminal Court of First Instance of 30 September 1957*

Salvador Ureña Garro made an application for *amparo* against the Cantonal Highways Board on the ground that the Board had occupied land belonging to him for the purposes of widening a road. The court held that no authority could deprive a person of his property without due process and the prior payment of appropriate compensation, and on that ground allowed the application. (Full text in *Boletín Judicial* of 5 September 1957.)

CZECHOSLOVAKIA

NOTE[1]

I. LEGISLATION

The Act of 6 March 1957, No. 10, *Collection of Laws and Ordinances*, amending and supplementing the Act on the National Committees,[2] provides for an increase in the number of members of the National Committees, and thus opens greater possibilities for the citizens to participate in the administration of the State. Even those citizens who are not members of the National Committees may be co-opted as members of the permanent commissions of the National Committees.

The Act of 6 March 1957, No. 11, *Collection of Laws and Ordinances*, amending and supplementing the Act concerning the Election of Members of National Committees,[3] pursues the same objectives as the preceding one. It implements the principles of the latter in the field of suffrage.

The Act of 6 March 1957, No. 13, *Collection of Laws and Ordinances*, concerning the badge of honour, "Maternity", introduced a badge of honour expressing publicly appreciation to those mothers who gave the most children to society. The badge of the first grade is awarded to mothers of 10 and more children, that of the second grade to mothers of 9 and 8 children and that of the third grade to mothers of 7, 6 or 5 children. These badges are usually awarded on the occasion of International Women's Day.

The Act of 6 March 1957, No. 14, *Collection of Laws and Ordinances*, amending and supplementing the administrative penal Act No. 88/1950, *Collection of Laws and Ordinances*, provides for reducing the upper limit of fines imposed for administrative offences in most cases to a half. The penalty of prohibition of occupational activity on account of an administrative offence may be imposed only for a period not exceeding three years. The act affords the possibility of punishing pilfering and intentional damage caused to property in socialist ownership, if the offence is of small importance, as an administrative offence, subject to administrative penal procedure.

In pursuance of the Act of 6 March 1957, No. 17, *Collection of Laws and Ordinances*, amending and supplementing Act No. 103/1951, *Collection of Laws and Ordinances*, relating to unified preventive and medical treatment, the State provides sanitary as well as preventive and medical care and treatment in such a way as to ensure smooth, regular and effective care of persons, especially the working people, and the securing of a healthy development of the new generation. In the organization and direction of this care the responsible organs of the state health administration are looking for support, in co-operation with voluntary organizations and especially the Revolutionary Trade Union Movement, to the largest possible body of working people, who are also entitled to exercise direct control with respect to the implementation of preventive and medical care. Unified preventive and medical care includes especially preventive care, treatment in case of illness and accident, maternity care, dental care, assistance in the event of maiming, disfigurement and physical defects, and in the event of sterility, and rehabilitation. The provision of medicines, drugs and medical and orthopaedic aids forms also a part of preventive and medical care. This care is extended to the overwhelming majority of the population free of charge in the medical establishments attached to different enterprises, in the regional medical establishments and in medical establishments in the spas.

The Act of 6 March 1957, No. 18, *Collection of Laws and Ordinances*, amending and supplementing the Act No. 4/1952, *Collection of Laws and Ordinances*, relating to hygienic and anti-epidemic care, provides for the organization of those types of care, the aim of which is to ensure that the environment in which man is living and working, as well as other conditions of his life, shall be from the health point of view as favourable as possible. By this system of health care, the occurrence and spreading of diseases are fought, the healthy development of the people being thus promoted, their creative forces developed and the productivity of work increased.

The Act of 18 April 1957, No. 24, *Collection of Laws and Ordinances*, relating to disciplinary prosecution of those pilfering and damaging property in socialist ownership, provides that pilfering and other intentional damage to property in socialist ownership, when committed with respect to the property administered by an enterprise, office, institution and/or any other organization of the socialist sector by an employee of the latter, shall be an offence subject to disciplinary prosecution, especially when objects are involved to which the employee has access during the performance of his work. The damage, however,

[1] Information kindly furnished by the Permanent Representative of Czechoslovakia to the United Nations.

[2] See *Yearbook on Human Rights for 1954*, pp. 70–1.

[3] See ibid., p. 72.

must not exceed the amount of 500 Kčs (Czechoslovak crowns). The manager of the enterprise, or an employee empowered by him, or the disciplinary organ, has the right of decision in matters concerning disciplinary offences. They can take the following disciplinary measures: reproof and public reproof with fine; the fine, however, must not exceed the amount of Kčs 1,000.

The Act of 4 July 1957, No. 32, *Collection of Laws and Ordinances*, relating to medical care in the armed forces, contains provisions regarding medical care for the members of the armed forces and the members of their families. Under this Act these persons are entitled to protection of their health and security in the case of illness, injury or any other accident. The necessary preventive and medical care is extended to them free of charge. The expenses connected with the medical treatment and care are borne by the State.

The Act of 4 July 1957, No. 33, *Collection of Laws and Ordinances*, relating to social care extended to the professional members of the armed forces, after the termination of their services therein, and to the members of their families, supplements the system of social security in the Czechoslovak Republic, taking account of the special conditions of service in the armed forces. The social security provisions involve social care and pension facilities. The following benefits are granted under the pension insurance scheme:

1. Pensions: (*a*) retirement pension benefit; (*b*) disability and partial disability pension benefit; (*c*) widow's pension benefit; (*d*) widower's pension benefit; (*e*) orphan's pension benefit; (*f*) wife's pension benefit; (*g*) personal pension benefit.

2. Education allowance.

3. Increase of pensions in case of total incapacity.

The Act of 4 July 1957, No. 36, *Collection of Laws and Ordinances*, relating to the election of judges and people's judges, contains provisions regarding the eligibility of judges and people's judges of the regional and people's courts. The judges are elected by the district and regional National Committees for a period of three years. They can be recalled only by the National Committee for reasons prescribed by law. Every citizen who has reached twenty-three years of age, who is of unimpeachable character and has the right of electing members of the National Committees, is eligible for the post of a people's judge; to become a judge the necessary professional knowledge is required as a condition of eligibility.

The Act of 19 December 1957, No. 68, *Collection of Laws and Ordinances*, relating to artificial interruption of pregnancy, contains provisions regarding artificial interruption of pregnancy enacted in the interests of promoting a healthy development of the family threatened by the dangers to the health and lives of women when the artificial interruption is carried out by unscrupulous persons and outside medical institutes. Pregnancy can be interrupted only with the consent of the pregnant woman and in a medical institute provided with beds, permission having been requested by the pregnant woman, having been considered by a commission set up for this purpose and having been granted. The permission can be granted only for reasons of health or for other special reasons. The act provides also penal sanctions against any person who interrupts the pregnancy of a woman in any other way than that prescribed by law, or who induces a pregnant woman to take such a step or helps her in this respect. Any pregnant woman who artificially interrupts her pregnancy or asks somebody to do it is not subject to punishment.

II. International Agreements[1]

The Czechoslovak Republic acceded on 25 June 1957 to the International Convention on the safety of life at sea, concluded in London on 10 June 1948.

On 16 January 1957, the agreement on co-operation in the field of social policy, with final protocol, concluded between the Czechoslovak Republic and the German Democratic Republic on 11 September 1956, entered into force.

On 1 August 1957 the agreement concluded on 25 January 1957 between the Czechoslovak Republic and the Bulgarian People's Republic on co-operation in the field of social policy became effective.

The first supplementary protocol to the agreement of 5 April 1948, between the Czechoslovak Republic and the Polish People's Republic, on co-operation in the field of social policy and administration, concluded on 30 September 1955, entered into force on 27 February 1957.

The first supplementary protocol to the agreement of 5 April 1948, between the Czechoslovak Republic and the Polish People's Republic, on social insurance, concluded on 30 September 1955, entered into force on 27 February 1957.

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[1] See also p. 306.

ACT No. 34 CONCERNING INVENTIONS, DISCOVERIES AND RATIONALIZATION PROPOSALS

of 5 July 1957[1]

Chapter I
INVENTIONS

PART ONE

Art. 1. — Subject-matter of the Law

(1) For the purposes of this Act, the term "invention" means such solution of a technical problem as is new and represents an advance over or improvement in the existing state of technology.

(2) Patents shall be granted for inventions the subject-matter of which can be manufactured industrially or serve as the basis for a manufacturing process.

(3) With regard to foods, medicines and substances produced by chemical processes, patents shall be granted only in respect of the method of manufacture.

(4) A certificate of authorship shall be granted in lieu of a patent in the case of new methods for the treatment and prevention of disease, new varieties of seeds and plants and new breeds of animals. Regulations concerning certificates of authorship, and in particular their issuance and effect and also any relevant remuneration, shall be made by the competent ministers, with the concurrence of the Minister of Finance and the President of the State Office for Inventions and Standardization (hereinafter referred to as the Office), and shall be published in the *Official Gazette*.

Art. 2. — Persons affected by the Law

(1) A patent may be granted only in the name of the author of the invention. A patent may be applied for by the author or his heir by filing an application on the invention.

(2) Where an invention is the result of collective work, only one patent may be granted and then only to the co-author or co-authors who filed the application on the invention. A person shall not be considered a co-author merely on the ground that he supplied the author with technical assistance.

(3) If the invention was discovered by the author or one of the co-authors in connexion with his work at an undertaking, or if the author (co-author) received material support for the invention from the undertaking, it shall be the obligation of the author (co-author), if he files an application on the invention, to mention these circumstances in the application and at the same time to notify the undertaking thereof. Should the author (or all the co-authors) refuse to file an application on such invention and should the interests of the State be threatened thereby, the undertaking, with the consent of the Office, may itself file an application in the name of the author (co-author).

(4) In cases of doubt as to whether an invention was discovered in the circumstances referred to in paragraph 3, a decision shall be made by the Office.

(5) In the event that there are no heirs, the State shall be deemed to be heir.

(6) Any reference in this Act to an undertaking shall, unless the context otherwise requires, be regarded also as a reference to any kind of business or budgetary organization.

Art. 3. — Effects of the Patent

(1) Save as otherwise hereinafter provided, an invention for which a patent has been granted may not be used by any person without the consent of the proprietor of the patent (the author or his heir) or of the person to whom the right to give such consent has been assigned.

(2) An invention shall be deemed to be used by any person who manufactures, trades in or makes industrial use of the subject-matter thereof, or who uses such subject-matter as the basis for a manufacturing process.

(3) Consent for the use of an invention shall be granted by virtue of a contract setting out the following particulars: the extent of the rights to the invention, the effective date and duration of the contract, the conditions under which the author (heir) shall participate in the development and introduction of the invention, and the amount and manner of payment of the remuneration for the use of the invention.

(4) A contract concerning the use of a patent shall come into force when it is entered in the Register of Patents.

(5) If it is of advantage to the national economy for the subject-matter of a patent application to be used even before a patent is granted, the undertaking shall enter into a contract concerning the use of the subject-matter of the patent application, the validity of such contract being conditional upon the grant of the patent; if the patent is not granted, the said contract may be replaced by an agreement concerning the use of and the remuneration for a rationalization proposal (hereinafter referred to as a use and remuneration agreement).

(6) Where a patent is granted on an invention that was discovered under the circumstances referred to in article 2, paragraph 3, the right to use the invention

[1] Czech text in issue No. 19/1957, *Sbírka zákonů* (Collection of Laws), of 24 July 1957, text No. 34. Translation by the United Nations Secretariat. Government ordinances of 2 August 1957 (Collection of Laws No. 23/1957, of 15 August 1957, texts Nos. 43, 44 and 45) were adopted in implementation of the Act, which entered into force on 15 August 1957.

shall vest in the State. The same shall apply where an invention is assigned to the State by an author (heir) who has discovered the invention independently of his work at an undertaking or has received no material assistance for the invention from the undertaking. Such assignment to the State may be effected at the time when an application is filed on the invention or — save where the right to use the invention already belongs to some other person — during the pendency of the application or during the entire term of the patent. If the State does not make use of the invention in the aforementioned cases, a contract shall be entered into with the author (heir) concerning his participation in the development and introduction of the invention and concerning the relevant remuneration and the manner of payment thereof.

(7) Where the right to use an invention vests in the State, the invention may, under the conditions laid down in respect of understandings, be used also by people's co-operatives and by undertakings organized on a co-operative basis.

(8) If no agreement on remuneration is reached in the cases referred to in paragraph 6, and if the dispute has not been settled by arbitration within the framework of the competent trade-union organization, a decision shall be made by the court. Unless such arbitration has been resorted to, the author (heir) may not assert his claim by an action in court. The period during which negotiations are conducted before the competent trade-union organization shall not be included in the limitation of time.

(9) The author of an invention the right to the use of which vests in the State shall comply in time with the requirements of the undertaking in respect of the filing of a patent application abroad. If a patent is granted abroad in respect of such invention or the use thereof, the author (heir) shall be entitled to special remuneration, the amount of which shall be determined by virtue of a contract. If he fails, without serious reasons, to comply with the said requirements, the undertaking shall be entitled to file the application itself, making mention of the name of the author. Remuneration may be reduced or denied if the author (heir) fails to comply in time with the requirements of the undertaking in respect of the filing of an application abroad. If no agreement is reached concerning remuneration, the provisions of paragraph 8 shall apply as appropriate.

. . .

Art. 4. — Term of a Patent

(1) The term of a patent shall be fifteen years from the date on which the application on the invention is filed.

(2) A patent shall cease to have effect:

(*a*) When its term expires;

(*b*) If the official fees are not paid within the prescribed period;

(*c*) If it is surrendered by its proprietor, in which event the patent shall cease to have effect when written notice of the surrender has been received by the Office.

. . .

Limitations on the Effects of a Patent

Article 8

(1) A patent shall have no effect with respect to a person who, independently of the author and before the filing of an application on the invention, was using the subject-matter of the invention or had taken steps necessary for such use.

. . .

Article 9

In cases where an invention is of unusual importance to the State (for example, for defence purposes) but no understanding is reached between the competent undertaking and the proprietor of the patent concerning the terms of a contract for its use, a decision shall be made by the Office on the right of the State to use the invention without the consent of the proprietor of the patent. If no agreement is reached concerning remuneration for the invention so used, a decision on a claim for compensation shall be made by the court.

Article 10

The effects of a patent shall not apply to transport facilities (vehicles, vessels, aircraft, etc.) or to equipment used in connexion therewith when such facilities come into Czechoslovakia solely on a temporary basis in connexion with their use for transport purposes.

[Article 11 concerns dependent patents.]

PART TWO

Procedure for filing Applications on Inventions

Article 12

(1) The grant of a patent shall be requested by filing an application on the invention (hereinafter referred to as the application), the said application to be filed with the Office.

. . .

(4) The applicant shall be entitled to priority from the date on which the application is received by the Office. If the applicant modifies the nature of the subject-matter of the application while the application is pending, he shall be entitled to priority only from the date on which the application containing such modification is received by the Office.

. . .

[Part three (articles 23–25) of the Act concerns relations with foreign countries.]

Chapter II

DISCOVERIES

Article 26

(1) The term "discovery" means the determination of a previously unknown but objectively existing phenomenom, property or law of the physical universe.

(2) The author of a discovery on which an application is filed under this Act shall be granted a certificate by the Office after consultation with the Czechoslovak Academy of Sciences or, as the circumstances require, the Czechoslovak Academy of Agricultural Sciences.

(3) No certificate shall be granted in respect of geographical or geological discoveries.

(4) Discoveries shall be recorded by the Office in the Register of Discoveries.

Article 27

The authors of a discovery for which a certificate has been granted shall be remunerated.

. . .

Chapter III

RATIONALIZATION PROPOSALS

Article 30

The term "rationalization proposal" means a proposal with regard to industrial production, or to industrial or economic organization, which makes possible an improvement in known techniques, technology or experimental or research methods; the improvement of products; a more effective utilization of equipment, raw materials, industrial materials, fuel, manpower, motive power, factory space or other productive resources; an improvement in work safety and protection; or the improvement of system, supply or records procedures, of technical standards and so on.

Article 31

(1) In the case of identical proposals for rationalization, the proposal which is received by the undertaking first shall have priority.

(2) If, before the receipt of a proposal, an undertaking has made demonstrable preparations for testing or introducing the proposed measure, the proposal shall be rejected.

(3) If an undertaking considers that a rationalization proposal will be advantageous, it shall make provision for the introduction of the proposal. The author of the proposal shall be entitled to remuneration; the undertaking shall therefore, with respect to the amount of such remuneration and also the conditions of participation in the development and introduction of the proposal, conclude a use and remuneration agreement with the author of the proposal.

(4) If no agreement is reached with the author of the proposal, the provisions of article 3, paragraph 8, shall apply as appropriate.

. . .

DOMINICAN REPUBLIC

ACT No. 4729
PROHIBITING THE SECT KNOWN AS JEHOVAH'S WITNESSES
of 24 July 1957[1]

Considering that the doctrines of the sect known as Jehovah's Witnesses have been propounded in our country in such a way as to constitute a violation of the principles on which the Dominican Republic was founded;

Considering that the provision of article 8, paragraph 5, of the Constitution of the Dominican Republic guaranteeing "freedom of conscience and worship" makes this guarantee subject to "the exigencies of public order and propriety" and that articles 2, 8, 15 and 91 of the said Constitution[2] prescribe the form of government and the division of powers in the State, as well as the basic duties of citizens and the prerogatives of the State, whose foundation cannot be altered without injury to the political and social structure of the nation;

Considering that freedom of conscience and religion should not serve as a cover for doctrines opposed to the basic aims of the very State which protects that freedom, doctrines which seek to destroy the democratic ideal, and which, moreover, propagate and advocate contempt for and refusal to discharge the duties imposed on citizens by the law, including the duty to bear arms in defence of the Fatherland in case of need and the duty to undergo the military training required for the preservation of the nation;

Considering that disregard of these duties and lack of reverence for the national anthem and flag as symbols which express the very essence of the soul of the people and for which all those to whom we owe our Fatherland have fought and suffered are advocated by the proselytizers and followers of this sect, which is thus openly attempting to undermine the foundations of the Dominican State, of its laws and of its government;

Considering that this attitude on the part of the said sect calls for strong action to prevent, in the interest of preserving the nation, the dissemination of such disruptive ideas and such subversive aims,

The National Congress, in the name of the Republic:

In accordance with articles 1, 2, 8 (paragraph 5), 15 (paragraphs 1 and 2) and 91 of the Constitution of the State,

Has adopted the following Act:

Art. 1. The sect known as "Jehovah's Witnesses", and the pseudo-religious and proselytizing practices and any other practices of the said sect aimed at propagating its destructive doctrines in the Dominican Republic, are hereby prohibited.

Art. 2. Any person who contravenes the provisions of the preceding article shall be punished by corrective imprisonment for a term of one to three months or a fine of from RD $30.00 to RD $100.00, or both. Subsequent offences shall be punishable by double the penalties aforesaid.

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[1] Text published in *Gaceta Oficial* No. 8147, of 27 July 1957. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1955*, pp. 47–50.

EGYPT

NOTE[1]

Political Rights

Act No. 110, of 9 May 1957 (*Official Journal* No. 37 *bis*, of 9 May 1957), amended the National Assembly Membership Act, No. 246 of 1956,[2] so as to add the following paragraph 6 to its article 3:

["*Art. 3.* A candidate for election to the National Assembly shall:]

(6) Not be one of the persons whom the Minister of the Interior was authorized to place under administrative surveillance by the decision of the Revolutionary Council of 22 June 1956."

Right to Education

Act No. 55, of 19 February 1957 (*Official Journal* No. 16 *bis*, of 23 February 1957), provided for a three-year course of preparatory education, to be granted free to pupils of either sex having completed their primary education and having met the appropriate examination requirements. Pupils were not to be less than eleven years of age or more than fourteen years on 1 October of the year of admission.

The subjects taught were to include religion, Arabic, a foreign language, social studies (including history), mathematics (including arithmetic, algebra and geometry), science and hygiene, physical and social training, singing and music. Boys' schools were also to teach practical work and give agricultural training and girls' schools were to teach needlework and domestic science. Pupils were to receive a free lunch. Corporal punishment was forbidden. Pupils successful in an examination to be held at the end of the third year were to receive a Preparatory Education Certificate.

Articles 2–18 of Act No. 211 of 1953[3] and all other provisions inconsistent with the present Act were repealed.

[1] Note derived from texts kindly furnished by Mr. Adel El Tahry, *Délégué* of the Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Yearbook on Human Rights for 1956*, pp. 61–2.

[3] Act No. 211 of 1953 was summarized in *Yearbook on Human Rights for 1954*, pp. 80–1.

PENAL CODE AS AMENDED BY ACT No. 112 OF 1957[1]

PART II

Chapter 1

CRIMES AND OFFENCES AGAINST THE EXTERNAL SECURITY OF THE STATE

. . .

Art. 80(c). Any person who, in time of war, wilfully disseminates false or tendentious news, information or rumours, or engages in subversive propaganda likely to prejudice the military preparations for the defence of the country or the military operations of the armed forces, or to spread public alarm or despondency, shall be punished by detention.

If the offence is the outcome of dealings with a foreign State, the penalty shall be a term of imprisonment at hard labour.

If the offence is the outcome of dealings with an enemy State, the penalty shall be imprisonment at hard labour for life.

Art. 80(d). Any Egyptian who wilfully disseminates abroad false or tendentious news, information or rumours concerning the internal situation of the country, likely to undermine confidence in the finances of the State or to damage its prestige or repute, or who, by any means whatsoever, carries on an activity likely to prejudice the national interests of the country, shall be punished by detention for a term of six months to five years, or by a fine of £E 100 to £E 500, or by both.

If the offence is committed in time of war, the penalty shall be imprisonment.

. . .

Art. 83. With respect to the offences specified in this chapter, the court may, in cases other than those mentioned in articles 78, 79 and 79(*a*) of this code, impose, in addition to the penalties prescribed for the said offences, a fine of not more than £E 10,000.

Art. 83(a). Any of the offences specified in chapter 2 of this part of the Penal Code shall be punishable with death if committed with intent to impair the independence, unity or territorial integrity of the country, or if committed in time of war with intent

[1] Act No. 112 appears in *Official Journal* No. 39 *bis* d, of 19 May 1957. Text kindly furnished by Mr. Adel El Tahry. Translation by the United Nations Secretariat.

to assist the enemy or hamper the military operations of the armed forces, provided that the offence could, by its nature, have served to attain that purpose.

Any of the crimes or offences specified in this chapter shall likewise be punishable with death if the intent of the offender was to assist the enemy or hamper the military operations of the armed forces, provided that the offence could, by its nature, have served to attain that purpose.

. . .

Art. 85 (a). For the purposes of this chapter:

. . .

(*c*) A state of war shall be deemed to exist during a period when diplomatic relations have been broken off, and a period in which there is a threat of war shall, if war in fact ensues, be deemed to be a time of war.

(*d*) A political entity which Egypt does not recognize as a State but which is treated as a belligerent shall be deemed to constitute a State.

The application of all or some of the provisions of this chapter may, by decree of the President of the republic, be extended to the acts specified therein when directed against an associated, allied or friendly State.

. . .

Chapter 2

CRIMES AND OFFENCES AGAINST THE INTERNAL SECURITY OF THE STATE

. . .

Art. 102 bis. Any person who disseminates false or tendentious news, information or rumours, or spreads subversive propaganda likely to disturb public order, spread public alarm or prejudice the public interest, shall be punished by detention for a term not exceeding two years, or by a fine of £E 50 to £E 200, or by both.

The same penalties shall be imposed on any person who, personally or through an intermediary, holds or obtains correspondence or printed matter containing any of the material mentioned in the previous paragraph for distribution or for perusal by others, and on any person who has in his possession any printing, recording or reproduction equipment used, even in a temporary manner, to print, record or disseminate the material aforesaid.

. . .

Chapter 5

ABUSE OF AUTHORITY BY PUBLIC OFFICIALS AND NEGLECT OF OFFICIAL DUTIES

Art. 120. Any official who, by means of an order, request, plea or recommendation, intercedes with a judge or court for or against one of the parties to a case, shall be punished by detention for a term not exceeding six months or by a fine not exceeding £E 50.

Art. 121. Any judge who, as a result of any of the acts mentioned in the foregoing article, refuses to give judgement or gives a decision found to be unjust, shall be punished by the penalties prescribed by article 105 and by removal from office.

. . .

Chapter 14

CRIMES AND OFFENCES COMMITTED BY MEANS OF THE PRESS, ETC.

. . .

Art. 179. Any person insulting, by any of the means aforesaid, the President of the republic shall be punished by detention for a term not exceeding two years.

. . .

Art. 193. Any person publishing by any of the means aforesaid:

(1) Information concerning a criminal examination in progress, if the examining authority has ordered that the parties should not be present or has prohibited the report of any part thereof in the interests of public order, decency or the ascertainment of the truth; or

(2) Information concerning the examination or proceedings in cases of divorce, separation or adultery;

shall be punished by detention for a term not exceeding six months, or by a fine not exceeding £E 50, or by both.

CODE OF CRIMINAL PROCEDURE AS AMENDED BY ACT NO. 113 OF 1957[1]

BOOK I

PART 3

Chapter VII

EXAMINATION AND CONFRONTATION

Art. 123. When the accused is first summoned to the preliminary examination, the examining authority shall establish his identity, inform him of the charges against him and place his statements on record.

A person charged with defamation by means of publication in a newspaper or other printed matter shall, when first summoned to the preliminary examination or not later than five days thereafter, furnish to the examining authority proof of the veracity of any accusation against a civil servant or a person holding public office or fulfilling a public function, failing which he shall forfeit the right, set forth in the

[1] Act No. 113 appears in *Official Journal* No. 39 *bis* d, of 19 May 1957. Text kindly furnished by Mr. Adel El Tahry. Translation by the United Nations Secretariat.

second paragraph of article 302 of the Penal Code, to furnish such proof. If the accused is summoned before the court direct without preliminary examination, he shall inform the Public Prosecutor's Department and the civil claimant, within the five days following service of the summons to appear, of the evidence which he intends to produce, failing which he shall likewise forfeit the right to furnish proof. In such cases, the proceedings may be adjourned once only and for not more than thirty days. When pronounced, the judgement shall state the reasons on which it is based.

EL SALVADOR

DECREE No. 2503 AMENDING THE PENAL CODE of 29 October 1957[1]

Art. 4. Article 19 [of the Penal Code] shall be replaced by the following:

Art. 19. Conditional release may be granted to a person sentenced to long-term imprisonment, if he has completed one-half of his sentence, or to a person sentenced to imprisonment with hard labour, if he has completed three-quarters of his sentence, provided that he can be deemed to have acquired habits of work and a sense of order and good behaviour, on the basis of the considered opinion of the judge, who shall hold a special investigation for the purpose, and of a detailed report from the director of the penal establishment in which the person concerned has been detained.

Before conditional release is granted, the following conditions must be fulfilled:

(*a*) The accused shall not have previously served a sentence for an offence.

(*b*) In offences involving property the person granted conditional release shall have made restitution and compensated for the damage caused or provided an adequate guarantee to cover the amount; and, in other offences, he shall have paid for damages for which he was found liable in the sentence, or furnished adequate security to cover that liability, if the amount thereof has been determined.

(*c*) The released person shall take up an occupation, craft, trade or profession, within the time-limit specified in the decision, unless he has other means of support.

Conditional release shall be granted by the judge in a decision laying down the conditions to which it shall be subject, which may include residence in a particular place, abstention from alcoholic beverages and submission to such forms of supervision as the judge may specify.

If during the probationary period, which shall cover the time necessary to complete the sentence and may be extended up to one-third, the released person commits a further offence or fails to comply with the obligations imposed on him, the conditional release shall be revoked and the remainder of the suspended penalty shall be enforced, irrespective of the penalty for the further offence committed.

If the probationary period expires without the person concerned having committed the acts referred to in the foregoing paragraph, the release shall be considered final.

. . .

Art. 8. A chapter numbered VI, entitled "The Conditional Sentence", and consisting of the following articles, shall be added to section III of part I.

Art. 67-A. When the offence is of a type for which imprisonment for a longer or shorter period is provided, the judge may suspend the sentence for a period equal to twice the length of the sentence, but never less than one year, except in cases of swindling and other forms of fraud, theft, robbery and wilful harm, provided that the following conditions are fulfilled:

(*a*) The accused shall not have previously served a sentence for an offence;

(*b*) There shall have been no aggravating circumstances indicating that the accused is capable of more serious offences; and

(*c*) He shall have previously been of good conduct and led an honest life.

Suspension of sentence shall be granted by the judge in a decision laying down the conditions to which it shall be subject, which may include residence in a particular place, abstention from alcoholic beverages and submission to such forms of supervision as the judge may specify.

Art. 67-B. If during the probationary period the released person commits a further offence, for which an enforceable sentence is imposed, or if he fails to comply with the obligations imposed on him by the judge for the reform of his conduct, the sentence shall immediately be enforced by the competent judge or court and the offender shall not be entitled to conditional release under article 19 or to suspension of sentence under this chapter.

Art. 67-C. The sentence shall be finally annulled if, on the completion of the probationary period, beginning on the date of the judge's decision granting suspension of the penalty, the released person has not given cause for a further trial culminating in a sentence.

. . .

[1] Text published in *Diario Oficial* No. 219, of 20 November 1957. Translation by the United Nations Secretariat.

Art. 25. Article 415 is amended as follows:

Art. 415. The offence of libel or slander may be committed not only by direct means but also by means of allegory, caricature, symbol or allusion; and also by means of public performances in which, without the consent of the person concerned, incidents of his life or his habits are reproduced or imitated in such a way as to suggest that he has committed unlawful acts or are such as to dishonour, to discredit or to disparage him.

Art. 26. A chapter numbered IV, entitled "Defamation", and consisting of the following articles, shall be added to section X, entitled "Offences against Honour".

Art. 422-A. Anyone attributing to another person, body corporate or legal entity, whether civil, military or religious, any act, attribute or form of behaviour liable to damage his or its reputation and divulging it by publishing it or communicating it to two or more persons, shall be punishable by one year of imprisonment. The same penalty shall apply to persons disseminating the report.

Art. 422-B. In cases of defamation, evidence of the truth shall be admissible in the following circumstances:

I. If the report was made for the purpose of defending or safeguarding a public interest;

2. If the defamed person is a public official and the report refers to the discharge of his duties.

In no case may evidence of the report be admitted when it refers to conjugal or family life or to an offence for which a person may not be prosecuted *ex officio.*

Art. 422-C. No person shall be punished for defamation unless he has been accused of it by the injured party. If the offence is committed against a public official, the Office of the Attorney General of the republic may intervene at the request of the injured party.

In offences of defamation, the provisions of article 419 of this code shall apply.

. . .

Art. 33. Article 529 shall be replaced by the following:

Art. 529. The following shall be liable to a penalty of twenty-one days' detention and a fine of twenty-five colones:

1. Persons who disturb a religious service or offend the religious sentiments of those attending it, in a manner not constituting an offence under part II of this code.

2. Persons who, by the display, sale and dissemination of books, publications, prints, photographs or engravings or by other actions or means of dissemination, offend public morals and decency without committing an offence.

Art. 34. The following shall be inserted between sections IV and V of part III:

Section IV-A

OFFENCES AGAINST PUBLIC MORALS

Art. 547-A. The following shall be punishable by twenty-one days' detention and a fine of twenty-five colones:

1. Persons who, by exposure of the body or by obscene speech, words, actions or songs, or by any other means, offend public decency.

. . .

Art. 35. The present decree shall enter into force eight days after its publication in the *Diario Oficial.*

DECREE No. 2467 ADDING CERTAIN ARTICLES TO THE PRESS LAW of 4 September 1957[1]

Art. 1. The following additional articles shall be inserted after article 6 of the Press Law enacted on 6 October 1950 and published in the *Diario Oficial* No. 219, volume 149, of 9 October 1950:

Art. 6-A. The owners or editors of a newspaper or periodical shall be obliged to publish within three days of its receipt, or in the issue next published if no issue is published before the expiry of the said period of three days, the reply of any natural or juristic person harmed by reports, articles or editorial material published in the newspaper or periodical, under penalty of a fine which shall be imposed by the political governor of the department concerned, and which shall be of not less than 100 or more than 500 colones, depending on the extent of the harm sustained. If, notwithstanding the fine, the reply is not published within the three days of the notification of the imposition of the fine, the offender shall be liable to a further fine of double the amount of the previous fine, without prejudice to any other penalties or pecuniary damages to which the offending article may give rise. The reply shall be inserted free of charge and may be twice the length of the article to which it refers. The offender shall be obliged to insert the reply of the aggrieved party on the same page of the newspaper or periodical and in the same type as was used in the headings and body of the original report or articles.

The right of reply must be exercised within ten days of the publication of the offending article or of the date on which the complainant ceased to be prevented from replying through ignorance of the material published, serious illness, absence or similar

[1] Text published in *Diario Oficial* No. 169, of 10 September 1957. Translation by the United Nations Secretariat.

causes; the right of reply shall lapse two months after the date of publication.

Art. 6-B. The individual members of an official or private association shall possess the right of reply with respect to publications offensive to the body to which they belong. The right of reply may also be exercised by the spouse, parents, children, brothers and sisters, or legal representatives of the aggrieved party, if the latter is absent or legally incapacitated or has expressly authorized them to exercise the right and, where appropriate, by the heirs of a deceased person.

Art. 6-C. The reply shall be published in full and without explanatory notes of any kind, without prejudice to the right to freedom of expression in a separate article.

Art. 6-D. The foregoing articles also apply to broadcasting and television enterprises or enterprises using any other medium for the dissemination of ideas; such enterprises shall be obliged to broadcast the reply at the same time or on the same programme.

Art. 6-E. The final decision of the political governor of the department shall be subject to appeal to the executive power (Ministry of the Interior) within two days from the date of notification thereof; the fines referred to in article 6-A shall be paid into the joint fund of the municipality in which the publishing enterprise in question is established.

Art. 2. This decree shall enter into force eight days after its publication in the *Diario Oficial.*

ETHIOPIA

THE PENAL CODE OF 1957[1]

Part I. — GENERAL PART

Book I. — OFFENCES AND THE OFFENDER

Title I. — CRIMINAL LAW AND ITS SCOPE

Chapter I. — Scope of the Law

. . .

Art. 2. Principle of Legality

(1) Criminal law specifies the various offences which are liable to punishment and the penalties and measures applicable to offenders.

The court may not treat as a breach of the law and punish any act or omission which is not prohibited by law. It may not impose penalties or measures other than those prescribed by law.

The court may not create offences by analogy.

(2) Nothing in this article shall prevent interpretation of the law.

In case of doubt the court shall interpret the law according to its spirit, in accordance with the meaning intended by the legislature so as to achieve the purpose it has in view.

(3) Nobody shall be punished twice for the same act.

. . .

Art. 4. Equality before the Law

Criminal law applies to all alike without discrimination as regards persons, social conditions, race or religion.

No difference in treatment of offenders may be made except as provided by this code which are derived from immunities sanctioned by public international and constitutional law, or relate to the gravity of the offence or the degree of guilt, the age, circumstances or special personal characteristics of the offender, and the social danger which he represents.

Chapter II. — Scope of Application of the Law

Section I. — Conditions as to Time

Art. 5. Non-retrospective Effect of Criminal Law

(1) Whoever commits an offence after the coming into force of this code shall be tried under its provisions.

If the offence was committed under repealed legislation it shall be tried in accordance therewith.

(2) An act not declared to be an offence and committed prior to the coming into force of this code is not punishable. Nor may a punishment not prescribed at the time of the commission of the offence be imposed.

Art. 6. Exception: Application of the More Favourable Law

Where the offender is tried for an earlier offence after the coming into force of this code, its provisions shall apply if they are more favourable to him than those in force at the time of the commission of the offence.

The court shall decide in each case whether, having regard to all the relevant provisions, the new law is in fact more favourable.

. . .

Title II. — THE OFFENCE AND ITS COMMISSION

. . .

Chapter IV. — Participation in Offences Relative to Publications

Art. 41. Principle

(1) In the case of offences relating to publications and with a view to ensuring freedom of expression while preventing abuse, the exceptions to the ordinary principles regarding participation in an offence provided hereinafter shall apply.

(2) Offences relating to publications are those which are committed by means of printed material, posters or pictures, cinematography, wireless, television or telediffusion, or any other means.

They may be committed against the honour of other persons, public or private safety or any other legal object protected by criminal law and are committed only where publication is completed.

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[1] The Penal Code of 1957 is annexed to the Penal Code Proclamation of 1957, No. 158 of 1957, given on 23 July 1957 and promulgated in Amharic and English in *Negarit Gazeta*, extraordinary issue No. 1 of 1957, also of 23 July 1957. The proclamation provided that the code was to enter into force on 5 May 1958.

Concerning the code, and in particular its provisions concerning the treatment of offenders, see also *International Review of Criminal Policy*, No. 12, July 1957 (United Nations publication, Sales No.: 1958.IV.1), pp. 210–12.

Art. 42. Principal Liability

(1) The author of the text, notice, poster, picture or other publication, the publication or diffusion of which constitutes the offence, or anyone who adopts them as his own and forwards them for publication or diffusion with a criminal intent, shall be guilty of an offence.

(2) In such a case the rules governing participation whether as a principal or accomplice shall apply.

Art. 43. Subsidiary Liability in Press Matters

(1) If the person who committed the offence cannot be found, or if the publication was made without the author's knowledge or against his will or if he is not amenable to Ethiopian courts, the following persons shall be regarded as guilty and liable to punishment by the fact of the publication or diffusion:

(*a*) In the case of a printed periodical publication (newspaper or magazine), the manager or the responsible editor of the printed publication unless he prefers to name the author who shall then be directly answerable for the offence within the meaning of the foregoing provision;

(*b*) In the case of a non-periodical or occasional printed publication, the publisher or, failing such, the printer or, finally, failing such, the vendors or distributors of the publication.

(2) In any case, the offender's guilt shall be viewed in accordance with the relevant provisions of this code.

Art. 44. Guarantee of the Secrecy of Writings

In the case of offences committed by means of a newspaper or a periodical publication, if the manager or responsible editor refuses to name the author and invokes the secrecy of writings, the ordinary means of investigation or lawful coercion may not be resorted to in order to discover the author of the writing.

An exception is made, however, in the case of attacks against the safety of the State, the Emperor, its constitutional bodies or its military forces as defined in book III, title I of the special part of this code or in special laws relating thereto (arts. 248–272).

Art. 45. Subsidiary Liability in Respect of Other Forms of Diffusion

When the offence is committed by means of a film, poster, theatrical performance, wireless, television, or other means of diffusion, the author of the text or of the picture, then the producer or publisher and then the person who procured the diffusion in any manner shall be liable to punishment.

Art. 46. Exclusion of Double Liability

The punishment of one of the parties responsible in the order fixed by law shall exclude liability to punishment of the other parties for the same act.

Art. 47. Immunity in Respect of Certain Publications

The author, publisher or diffuser of a true record or representation, which is correct in form, of public debates or acts of a legislative, administrative or judicial authority the diffusion of which is not expressly prohibited by law or by a specific decision shall not be liable to punishment.

. . .

Part II. — SPECIAL PART

Book III. — OFFENCES AGAINST THE STATE OR AGAINST NATIONAL OR INTERNATIONAL INTERESTS

Title I. — OFFENCES AGAINST THE STATE

Chapter I. — Offences against the National State

Section I. — Offences against the Emperor, against the Constitutional Order or against the Internal Security of the State

. . .

Para. 2. — Injuries and Insults to the Emperor or the State

Art. 256. Injury to the Emperor or the Constitutional Authorities

(1) Whosoever insults, abuses, defames or slanders the Emperor or the Imperial Crown Prince is punishable with rigorous imprisonment not exceeding five years, or in less serious cases with a fine of not less than five hundred dollars.

(2) Where the offence is directed against the Government or one of the constituted legislative, executive, or judicial authorities, the punishment is simple imprisonment from three months to five years, or fine.

(3) The concepts of insult, abuse, defamation or slander are defined in the provisions relating to attacks on honour (arts. 580 and 583).

. . .

Section III. — Common Provisions

. . .

Art. 269. Provocation and Preparation

Whosoever, with the object of committing, permitting or supporting any of the acts provided for in the preceding section of this chapter:[1]

(*a*) Publicly provokes them by word of mouth, images or writings; or

. . .

(*e*) Launches or disseminates, systematically and with premeditation, by word of mouth, images or writings, inaccurate, hateful or subversive information or insinuations calculated to demoralize the public and to undermine its confidence or its will to resist, is punishable with simple imprisonment from one month to five years or, where the foreseeable

[1] Section II of this chapter deals with offences against the external security and defensive power of the State.

consequences of his activities are particularly grave, with rigorous imprisonment not exceeding ten years.

. . .

Chapter II. — Offences against Foreign States

Art. 273. Hostile Acts against a Foreign State

Whosoever, within the territory of the empire and at the risk of endangering peaceful relations with foreign countries:

(*a*) Attempts to disturb by subversive activities, by slander, by malicious propaganda or by violence the internal political order or security of a foreign State; . . .

is punishable with simple imprisonment for at least three months, or, in cases of exceptional gravity, with rigorous imprisonment not exceeding ten years.

. . .

Art. 276. Insults to Foreign States

(1) Whosoever in any way publicly abuses, insults, defames or slanders by word or by deed, a foreign State, either directly or in the person of its Head, of one of its constituted authorities, of one of its accredited diplomatic representatives or of one of its official representatives or delegates in the territory of the empire, is punishable with simple imprisonment or fine.

(2) In grave cases, especially in a case of slander, simple imprisonment shall be for not less than three months.

. . .

Art. 278. Insults to Interstate Institutions

Whosoever publicly insults the representatives or the official emblem of an interstate institution or organization of which Ethiopia is a member is liable to the same punishment.[1]

Art. 279. Reciprocity

The provisions relating to offences against foreign States laid down in this chapter shall apply only to States whose legislation grants reciprocal protective treatment to Ethiopia, to the sovereign of Ethiopia and to its relations with those States.

Nothing in this article shall affect the provisions granting protection to powers allied with Ethiopia (Art. 266).

. . .

Title II. — OFFENCES AGAINST THE LAW OF NATIONS

Chapter I. — Fundamental Offences

Art. 281. Genocide; Crimes against Humanity

Whosoever, with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, organizes, orders or engages in, be it in time of war or in time of peace:

(*a*) Killings, bodily harm or serious injury to the physical or mental health of members of the group, in any way whatsoever; or

(*b*) Measures to prevent the propagation or continued survival of its members or their progeny; or

(*c*) The compulsory movement or dispersion of peoples or children, or their placing under living conditions calculated to result in their death or disappearance,

is punishable with rigorous imprisonment from five years to life, or, in cases of exceptional gravity, with death.

[Articles 282–92 deal with war crimes].

. . .

Title III. — MILITARY OFFENCES AND OFFENCES AGAINST THE ARMED FORCES AND THE POLICE FORCES

. . .

Chapter II. — Offences against the Armed Forces and Members thereof

. . .

Section II. — Offences against the Armed Forces and their Auxiliary Services

. . .

Art. 346. False or Tendentious Information

Whosoever, when troops have been mobilized or are on active duty, puts forth or disseminates information which he knows to be inaccurate or tendentious, with intent to obstruct or to thwart measures ordered in the military interest, to impede or endanger movements or operations of the armed forces, to incite troops to indiscipline or insubordination, or to foment disorder and spread alarm among the population, is punishable with simple imprisonment or fine, and in the gravest cases, with rigorous imprisonment not exceeding three years.

. . .

Book IV. — OFFENCES AGAINST THE PUBLIC INTEREST OR THE COMMUNITY

. . .

Title II. — REQUIREMENTS OF SECRECY

[Articles 404–9 concern breaches of secrecy, including professional secrecy (article 407) and scientific, industrial and trade secrets (article 409). Article 408 secures the inviolability of the secrecy of religious confession.]

Title III. — OFFENCES AGAINST PUBLIC OFFICE

Chapter I. — Offences against Official Duties

. . .

Section I. — Breaches of the Obligations of Office

. . .

[1] Simple imprisonment or fine.

Art. 415. Abuse of the Right of Search or Seizure

Public servants, even when lawfully authorized to carry out searches or to effect seizure, who forcibly enter a person's house or premises or who execute acts of search, seizure or sequestration other than those authorized by law, or without due regard for the conditions and forms thereby prescribed, are punishable, where the act does not come under a specific provision prescribing a more severe penalty, with simple imprisonment for not less than one month, and fine.

Art. 416. Unlawful Arrest or Detention

Any public servant who arrests or detains another except in accordance with the law, or who disregards the forms and safeguards prescribed by law, is punishable with rigorous imprisonment not exceeding five years, and fine.

Art. 417. Use of Improper Methods

Any public servant charged with the arrest, custody, supervision, escort or interrogation of a person who is under suspicion, under arrest, summoned to appear before a court of justice, detained or interned, who, in the performance of his duties, treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity or with the dignity of his office, especially by the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end, is punishable with fine or simple imprisonment, except where his act may justify the application of more severe punitive provisions.

. . .

Title IV. — Offences against the Administration of Justice

Chapter I. — Offences against Judicial Proceedings

. . .

Art. 445. Publication of Inaccurate or Forbidden Reports of Proceedings

(1) Whosoever publishes information, a note, a precis or a report which is inaccurate or distorted concerning judicial proceedings which are pending, proceeding or concluded, is punishable with a fine not exceeding five hundred dollars, or, in more serious cases, especially those likely to perturb public opinion or to cause injury to another, with simple imprisonment not exceeding three months.

. . .

Title V. — Offences against Public Elections and Voting

. . .

[Article 461 concerns interference with the exercise of the right of election, by intimidation, coercion, abuse of powers, violence, fraud or other method. Article 467 concerns breach of secrecy of the ballot.]

. . .

Title VI. — Offences against Law and Order; Breaches of the Peace

Chapter I. — Offences against Law and Order

Section I. — Offences calculated or likely to provoke the Commission of a Crime

. . .

Art. 474. Public Provocation to or Defence of a Crime

Whosoever publicly, by word of mouth, writing, image, gesture or otherwise:

(*a*) Provokes others to commit acts of violence or grave offences against the community, individuals or property; or

(*b*) Defends or praises such offence or its perpetrator; or

(*c*) Launches an appeal or starts a collection for the payment of pecuniary punishments pronounced by due process of law, with the intention of making common cause with the convicted person or of upholding his deed or of showing disapproval of the authorities, or who knowingly takes part in such activities,

is punishable with simple imprisonment or fine.

. . .

Section II. — Offences calculated or likely to provoke Public Disturbances

. . .

Art. 479. Alarming the Public

(1) Whosoever spreads alarm among the public:

(*a*) By threat of danger to the community, or to the life, health or property of individuals, especially that of invasion, assassination, fire, devastation or pillage; or

(*b*) By deliberately spreading false rumours concerning such happenings or general disturbances, or imminent catastrophe or calamity,

is punishable with simple imprisonment or fine.

(2) In more serious cases likely to cause, or having caused, serious disturbances or disorder, the punishment shall be rigorous imprisonment not exceeding three years, subject to the application, as appropriate, of more severe specific provisions where there are criminal consequences.

Art. 480. False Rumours and Incitement to Breaches of the Peace

Whosoever, apart from offences against the security of the State (arts. 252, 269 (*e*) and 273 (*a*)):

(*a*) Starts or spreads false rumours, suspicions or false charges against the Government or the public authorities or their activities, thereby disturbing or inflaming public opinion, or creating a danger of public disturbances; or

(*b*) By whatever accusation or any other means foments dissension, arouses hatred, or stirs up acts of violence or political, racial or religious disturbances, is punishable with simple imprisonment or fine.

Art. 481. Seditious Demonstrations

Whosoever:

(*a*) Makes, utters, distributes or cries out seditious or threatening remarks, or displays images or drawings of a seditious or threatening nature in any public place or meeting; or

(*b*) Publicly incites or provokes others to disobey orders issued by a lawful central or local authority or to disobey laws or regulations duly promulgated,

is punishable with a fine not exceeding five hundred dollars, or with simple imprisonment not exceeding six months.

. . .

Chapter II. — Breaches of the Peace

Art. 484. Disturbances of Meetings or Assemblies

(1) Whosoever, by word of mouth, by threats, violence or force, or in any other way, unlawfully invades or disturbs, hinders or disperses a meeting or any assembly duly authorized by law, is punishable with simple imprisonment not exceeding six months, or with a fine not exceeding one thousand dollars.

. . .

Art. 486. Outrage on Religious Peace and Feeling

Whosoever publicly:

(*a*) Prevents the solemnization of, or disturbs or scoffs at, an authorized religious ceremony or office; or

(*b*) Profanes a place, image or object used for religious ceremonies,

is punishable with a fine not exceeding one thousand dollars, or with simple imprisonment not exceeding two years.

[Article 487 concerns outrage on the repose and dignity of the dead.]

. . .

Book V. — OFFENCES AGAINST INDIVIDUALS AND THE FAMILY

. . .

Title II. — OFFENCES AGAINST LIBERTY

Chapter I. — Offences against Personal Liberty

. . .

Art. 557. Illegal Restraint

(1) Whosoever, contrary to law or without lawful order, arrests, confines or detains or otherwise restrains the freedom of another, is punishable with simple imprisonment for not less than three months.

(2) Where the offender has detained or illegally restrained another, or has caused him to be detained or illegally restrained, on the false pretext of mental illness or dangerous condition, or where such illegal restraint persists for more than seven days, the punishment shall be rigorous imprisonment not exceeding three years.

(3) Where the offence is committed by a public servant, the special provision (Art. 416) shall apply.

. . .

Art. 565. Enslavement

(1) Whosoever:

(*a*) Enslaves another, sells, alienates, pledges or buys him, or trades or traffics in or exploits him; or

(*b*) Keeps or maintains another in a condition of slavery, even in a disguised form,

is punishable with rigorous imprisonment from five to twenty years, and a fine not exceeding twenty thousand dollars.

(2) Those who knowingly carry off, transport or conduct, whether by land, by sea or by air, persons thus enslaved, in order to deliver them at their place of destination, or who aid and abet such traffic, whether within the territory of the Empire or abroad, are liable to the same punishments.

. . .

Art. 567. Slave Trading: Bands or Associations

Where the injury to liberty, whether by intimidation, trickery, coercion, abduction, illegal restraint, enslavement, traffic or exploitation in one of the above forms, is the work of an association or band formed to engage in, or engaging in, the slave trade, no matter in what form, such band or association shall be punishable with a fine not exceeding fifty thousand dollars and its dissolution shall be ordered.

This penalty is without prejudice to the punishment applicable to the offender or offenders on the count of their personal criminal guilt.

Chapter 2. — Offences against Other Persons' Rights

Art. 568. Restraint of the Free Exercise of Civil Rights

(1) Whosoever, by intimidation, violence, fraud or any other unlawful means:

(*a*) Prevents a person from exercising his civil rights, especially his rights as a father or a guardian, his right to bring a legal action or to appear before the courts; or

(*b*) Compels him to exercise such rights in a particular way,

is punishable with simple imprisonment or fine.

(2) The restraint of the free exercise of political rights is punishable under the special provisions of this code (art. 461).

Art. 569. Violation of the Right of Freedom of Movement

(1) Whosoever, not being authorized by law so to do, prevents another from moving freely within the Empire, is punishable with simple imprisonment or fine.

(2) Where the offender is a public servant, he shall be punished under the relevant provision (art. 414).

Art. 570. Violation of the Right of Freedom to Work

(1) Whosoever, by intimidation, violence, fraud or any other unlawful means, whether alone or with others, compels another:

(*a*) To accept a particular employment or particular conditions of employment, or to refuse or withhold his labour, with the object of imposing on an employer by force the acceptance or modification of terms of employment; or

(*b*) To join a group or association having as its aim the objects mentioned in (*a*); or anyone who prevents another from freely leaving such a group or association,

is punishable, upon complaint, with simple imprisonment or fine.

(2) Where the person or persons causing intimidation or violence were carrying weapons or instruments, or where the prevention or coercion are the work of a large group, the court shall impose both simple imprisonment and fine.

Art. 571. Violation of Privacy of Domicile

(1) Whosoever, in contravention of the law:

(*a*) Forcibly enters, against the wishes of the lawful occupant, a house, premises, boat or any other place used for living in, or outbuildings, a compound, a courtyard or a garden abutting on a house or dwelling and forming part thereof; or

(*b*) Forcibly enters the premises, offices, storehouse or yards of an undertaking, company or body corporate, even though not inhabited; or

(*c*) Having entered premises, without opposition from or with the agreement of the lawful occupant, remains there when called upon by him to leave,

is punishable with simple imprisonment or fine.

(2) Where the violation is committed by a member of the police force who is not authorized to take such action, or who does so in violation of legal safeguards and formalities, the special provision (art. 415) shall apply.

[Article 572 increases the possible penalties where violation of privacy of domicile is committed under aggravating circumstances].

Art. 573. Violation of the Privacy, Interception or Appropriation of Correspondence or Consignments

(1) Whosoever, without lawful authority:

(*a*) Deliberately opens a closed letter or envelope, whether it be correspondence, telegrams, business papers or private communications, or a packet, parcel or consignment of any kind; or

(*b*) Having learned of certain facts by opening, even by mistake, inadvertence or negligence, such a closed envelope or parcel not addressed to him, divulges such facts or derives a gain therefrom,

is punishable, upon complaint, with a fine not exceeding one thousand dollars, or, according to the circumstances, with simple imprisonment not exceeding three months.

(2) Whosoever intentionally and unlawfully intercepts, retains or diverts from their true destination such correspondence or packages, is liable to the same punishments, where his act does not constitute a specific offence punishable more severely.

(3) Nothing in this article shall affect the stricter provisions relating to breach of secrecy, and to the unlawful disposal or appropriation of correspondence or packets, by public servants (arts. 405, 421 and 422).

Title III. — Offences against Honour

Chapter I. — General Provisions

Art. 574. Principle

(1) Offences against honour or reputation, committed in one of the forms specified in the following articles, are punishable no matter what the rank or social status of the offender or of the injured party.

They may be committed against individuals, or corporate bodies or institutions. In the case of individuals, they may be committed equally against living persons, against deceased persons or against persons declared missing.

(2) In determining the punishment for the different offences, the court shall take into account the gravity of the offence, the position of the injured party or institution and the extent of the publicity or circulation involved in the offence.

Art. 575. Means of Commission

Injury to honour, direct or indirect, is punishable whether committed by word of mouth or by sound, in writing, by image, drawing, sign or other means, by gesture or behaviour, or in any other way whatsoever.

Indirect means of offence or circulation by any process of recording reproduction, emission, communication or projection, graphical, visual or aural, rank with natural and direct means.

. . .

Art. 578. Immunity

Members of the legislature, the executive or the judges are not susceptible to legal proceedings on the ground of injury to honour done by information or statements, correct as to form, given or made by them in conformity with their duties and in the regular discharge of their duties.

Art. 579. Non-punishable Comment and Averments

The following are not punishable as injury to honour:

(*a*) Considered opinions and reasoned or well-founded criticism, couched in proper and moderate terms, concerning personal aptitudes or artistic, literary, scientific, professional or social activities, creations or productions; or

(*b*) Averments, statements or comments uttered or repeated by a public servant or by an advocate or attorney, by an expert or witness, by a journalist or by any other person acting in good faith in the discharge of his duties, especially by way of investigations, reports or depositions, in the defence before court or before the administrative authorities, or by way of authorized public information service, where the alleged facts are germane to and remain within the confines thereof and where they are not uttered with express intent to discredit.

Chapter 2. — Specific Provisions: Injury to Honour

Art. 580. Defamation and Calumny

(1) Whosoever, addressing a third party or parties, imputes to another an act, a fact or conduct such as to injure his honour or reputation, is punishable for defamation.

The offence is completed by direct imputation or charge or by spreading of defamatory allegations.

Statements concerning an offence or sentence duly served or pardoned are also punishable under this article.

The author of the defamation is punishable with simple imprisonment not exceeding six months, or fine.

(2) Where the defamatory imputations or allegations constituting the injury to honour or reputation are false and are uttered or spread with knowledge of their falsity, the offender is punishable for calumny with simple imprisonment for not less than one month and fine.

Where the offender has acted with deliberate intent to ruin the victim's reputation, simple imprisonment shall be for not less than three months.

. . .

Art. 581. Truthful Assertions and Safeguarding of Higher Interest excepted

(1) A person charged with defamation cannot in general plead in defence that he acted without intent to injure, or that he confined himself to repeating, even though not believing them, allegations emanating from another, or that it was a matter of common knowledge, or that he uttered suspicions or conjectures.

(2) However, he shall not be liable to punishment if he can prove:

(*a*) That the allegations deemed injurious to the honour or reputation of another accord with the truth, and that he had definite and sound grounds for believing them in good faith to be true; or

(*b*) That he acted in the public interest, or that he was actuated by a moral aim.

Proof of truth or good faith may be adduced by any evidential means admissible under the Code of Criminal Procedure.

(3) Where the offender is convicted of calumny he may in no case exculpate himself by invoking a lawful or higher interest.

Art. 582. Protection of Private Life

A person charged with defamation shall not be permitted to provide proof of the truth of his allegations or of the fact that he acted in good faith, and is accordingly punishable, where the allegations referred solely or mainly to the victim's private or family life and were not dictated by the need to safeguard a lawful higher interest, but were principally inspired with a mind to gain or scandal, by a desire to harm or to take revenge, or by any other similar feeling.

Art. 583. Insulting Behaviour and Outrage

Whosoever, directly addressing or referring to the victim, offends him in his honour by insult or injury, or outrages him by gesture or blows or in any other manner, is punishable with simple imprisonment not exceeding three months, or a fine not exceeding three hundred dollars, except where the act is of such little account as to justify the application of the relevant provision of the Code of Petty Offences (art. 798).

Art. 584. Provocation and Retaliation

(1) The court may impose no punishment where a person charged with insulting behaviour or outrage has been provoked or carried away by an attitude, conduct or acts, even towards a third party, which are manifestly so shocking, offensive or reprehensible as to make his act excusable.

(2) Where the injured party has at once replied to an insult or outrage, whether verbal or physical, in kind, the court may, according to the circumstances, exempt from punishment both offenders or the retaliator alone.

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[Article 586 (1) increases the possible penalties where defamation or calumny, insult or outrage, have been deliberately committed against a public servant in the discharge of his duties.]

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Title IV. — Offences against Morals and the Family

Chapter I. — Offences against Morals

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Section IV. — Offences tending to corrupt Morals

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Art. 609. Obscene or Indecent Publications

(1) Whosoever:

(*a*) Makes, imports or exports, transports, receives, possesses, displays in public, offers for sale or hire, distributes or circulates writings, images, posters, films or other objects which are obscene or grossly indecent, or in any other way traffics or trades in them; or

(*b*) Advertises, indicates or makes known, by any means, how or from whom such objects may be procured or circulated, either directly or indirectly, is punishable with simple imprisonment or fine, without prejudice to the forfeiture and destruction of the incriminating material.

(2) Simple imprisonment shall be for not less than one month, and the fine, according to the circumstances, shall not exceed ten thousand dollars, where the offender:

(*a*) Habitually engages in or carries on such traffic; or

(*b*) Knowingly exhibits, hands over or delivers such objects to an infant or young person for a consideration.

Art. 610. Obscene or Indecent Performances

The punishments specified in the preceding article are applicable to anyone who organizes or gives public auditions or performances, in a theatre or in a cinema, by projection or by broadcast, or in any other way, which are obscene or grossly indecent.

Art. 611. Lawful Works

Works or objects purely artistic, literary or scientific in character which are not calculated to inflame erotic feelings or lust, are not held to be obscene or indecent.

Art. 612. Indecent Publicity and Advertisements

Whosoever advertises, exposes to public view or sends to the homes of persons not having solicited them or having no professional interest in them, indecent or immoral objects, products or works, is punishable, upon complaint, with a fine not exceeding five hundred dollars.

Art. 613. Protection of Infants or Young Persons

Whosoever, for gain or to provoke:

(*a*) Publicly displays in a shop window, in a booth or in any other place visible from without, writings, images or objects such as to stimulate unduly, to pervert or to misdirect the sexual instinct, or to arouse or to stimulate unduly brutal or bloodthirsty instincts, or anti-social feelings or feelings which are inimical to the family spirit, in infants or young persons; or

(*b*) Knowingly offers, lends, gives or sells such objects, images or writings to an infant or young person,

is punishable with fine, or, in more serious cases, with simple imprisonment not exceeding three months, without prejudice to the forfeiture of the incriminating materials where appropriate.

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Book VI. — OFFENCES AGAINST PROPERTY

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Title II. — Economic and Commercial Offences

Chapter I. — Offences against Intangible Rights

Art. 671. Attack on Another's Credit

(1) Whosoever, maliciously or with intent to cause damage, seriously injures or compromises the credit of another by statements or imputations he knows to be false, is punishable, upon complaint, with simple imprisonment or fine.

(2) The provisions regarding calumny (art. 580 (2)) may not be applied concurrently with the provisions of this article.

Art. 672. Harmful False Information

Whosoever, being in a position to know the state of affairs of an undertaking, a commercial firm or a co-operative, whether as founder, member, manager, director, attorney, member of a board of directors or audit, or a liquidator, intentionally gives or causes to be given essential and untrue information, whether in notices to the public, or in proposals or reports to a general meeting, is punishable, upon complaint, with simple imprisonment or fine.

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Art. 674. Infringement of Marks, Declarations of Origin, Designs or Models

(1) Whosoever intentionally:

(*a*) Infringes, imitates or passes off, in such manner as to deceive the public, another's mark or distinctive signs or declarations of origin on any produce or goods or their packing, whether commercial, industrial or agricultural; or

(*b*) Sells or offers for sale, imports or exports, distributes or places on the market produce or goods under a mark which he knew to be infringed, imitated, passed off or improperly affixed; or

(*c*) Refuses to declare the origin of produce or goods in his possession under such marks,

is punishable, upon complaint, with simple imprisonment or fine.

(2) Whosoever unlawfully so acts with respect to industrial designs or models, or patented inventions or processes, duly registered and protected by existing orders or agreements, national or international, is liable to the same punishments.

Art. 675. Infringement of Literary or Artistic Copyright

Whosoever intentionally:

(*a*) Counterfeits or reproduces, even in part, by print, lithography, photography, engraving or photogravure or by other copying process, a literary,

musical, pictorial or plastic composition, or any other intellectual work protected by author's copyright; or

(*b*) Sells, offers for sale, imports or exports, distributes or places on the market infringements of such works,

is punishable, upon complaint, with simple imprisonment or fine.

Art. 676. Forbidden Performance or Execution

Whosoever intentionally causes to be shown or performed publicly literary, musical, cinematographic, radiophonic or other works, protected by copyright, without the permission of the holder of the copyright, is punishable under article 675.

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Part III. — CODE OF PETTT OFFENCES

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Book VIII. — SPECIAL PART

Title I. — PETTY OFFENCES AGAINST PUBLIC INTERESTS AND THE COMMUNITY

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Chapter III. — Offences against the Duties of a Public Office or a Public Authority

Section I. — Offences against the Duties of a Public Office

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Art. 752. Misuse of the Right of Constraint

Any public servant lawfully empowered to effect a house search, a seizure or a sequestration, the application or removal of seals, or to effect a personal search or inspection, an arrest, a detention or placing under supervision, an interrogatory or any other similar act who, apart from the cases punishable under the Penal Code (Arts. 415–417), misuses his authority, in particular by having recourse to vexatious, offensive, indiscreet or incorrect methods, is punishable with fine or arrest.

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Chapter IV. — Offences against Public Safety, Peace and Security

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Section II. — Offences against Public Peace, Tranquillity and Order

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Art. 768. Alarming Announcements, News or Publications

Whosoever, apart from the cases punishable under the Penal Code (arts. 479 and 480), announces, spreads, publishes or reports to the authorities false, exaggerated or biased news intended to or capable of perturbing public order or tranquillity, is punishable with fine or arrest.

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Art. 770. Disturbance of Work or Rest of Others

(1) Whosoever disturbs the work, rest or tranquillity of others, in particular by brawls and wrangles, shouts, songs, vociferations or uproars, signals, calls or the ringing of bells, or by the abuse of noisy instruments, apparatus, machines or other noise-producing articles, is punishable with fine not exceeding one hundred dollars.

(2) If the noise or disturbance is caused at night as defined in the police regulations or by custom, or is wilfully caused in the vicinity of hospitals, schools or similar institutions or, generally, if it is caused in a deliberately wicked or mischievous manner, the court may impose a fine or arrest not exceeding one month.

Art. 771. Blasphemous or Scandalous Utterances or Attitudes

Whosoever, apart from the cases punishable under the Penal Code (arts. 486 and 487), in a public place or in a place open to the public or that can be viewed by the public, by gestures or words scoffs at religion or expresses himself in a manner which is blasphemous, scandalous or grossly offensive to the feelings or convictions of others or towards the Divine Being or the religious symbols, rites or religious personages, is punishable with fine not exceeding one hundred dollars or arrest not exceeding eight days.

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FEDERATION OF MALAYA

CONSTITUTION OF THE FEDERATION OF MALAYA

Entered into force on 31 August 1957[1]

Part I

THE STATES, RELIGION AND LAW OF THE FEDERATION

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3. (1) Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.

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4. (1) This constitution is the supreme law of the Federation, and any law passed after Merdeka Day which is inconsistent with this constitution shall, to the extent of the inconsistency, be void.

(2) The validity of any law shall not be questioned on the ground that:

(*a*) It imposes restrictions on the right mentioned in article 9(2) but does not relate to the matters mentioned therein; or

(*b*) It imposes such restrictions as are mentioned in article 10(2), but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that article.

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Part II

FUNDAMENTAL LIBERTIES

5. (1) No person shall be deprived of his life or personal liberty save in accordance with law.

(2) Where complaint is made to the Supreme Court or any judge thereof that a person is being unlawfully detained, the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

(3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

(4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.

(5) Clauses 3 and 4 do not apply to an enemy alien.

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

(2) All forms of forced labour are prohibited, but Parliament may by law provide for compulsory service for national purposes.

(3) Work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labour within the meaning of this article.

7. (1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.

8. (1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favour of any person on the ground that he is a subject of the ruler of any State.

(4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.

(5) This article does not invalidate or prohibit:

(*a*) Any provision regulating personal law;

(*b*) Any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;

(*c*) Any provision for the protection, well-being

[1] Published in *Fifth Supplement to Federation of Malaya Government Gazette* of 28 November 1957. The Constitution has also appeared in the first schedule to the Federation of Malaya Agreement 1957, which is annexed to the Federation of Malaya Independence Order in Council 1957 (H.M.S.O., *Statutory Instruments 1957*, No. 1533).

or advancement of the aboriginal peoples of the Federation (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;

(*d*) Any provision prescribing residence in a state or part of a state as a qualification for election or appointment to any authority having jurisdiction only in that state or part, or for voting in such an election;

(*e*) Any provision of a constitution of a state, being or corresponding to a provision in force immediately before Merdeka Day;

(*f*) Any provision restricting enlistment in the Malay Regiment to Malays.

9. (1) No citizen shall be banished or excluded from the Federation.

(2) Subject to any restriction imposed by any law relating to the security of the Federation, public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof.

10. (1) Subject to clause 2,

(*a*) Every citizen has the right to freedom of speech and expression;

(*b*) All citizens have the right to assemble peaceably and without arms;

(*c*) All citizens have the right to form associations.

(2) Parliament may by law impose:

(*a*) On the rights conferred by paragraph (*a*) of clause 1, such restrictions as it deems necessary or expedient in the interest of the security of the Federation, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;

(*b*) On the right conferred by paragraph (*b*) of clause 1, such restrictions as it deems necessary or expedient in the interest of the security of the Federation or public order;

(*c*) On the right conferred by paragraph (*c*) of clause 1, such restrictions as it deems necessary or expedient in the interest of the security of the Federation, public order or morality.

11. (1) Every person has the right to profess and practise his religion and, subject to clause 4, to propagate it.

(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

(3) Every religious group has the right:

(*a*) To manage its own religious affairs;

(*b*) To establish and maintain institutions for religious or charitable purposes; and

(*c*) To acquire and own property and hold and administer it in accordance with law.

(4) State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion.

(5) This article does not authorize any act contrary to any general law relating to public order, public health or morality.

12. (1) Without prejudice to the generality of article 8, there shall be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth:

(*a*) In the administration of any educational institutional maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or

(*b*) In providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).

(2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but federal law may provide for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion.

(3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

(4) For the purposes of clause 3, the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

13. (1) No person shall be deprived of property, save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

Part III

CITIZENSHIP

Chapter 1. — Acquisition of Citizenship

14. (1) Subject to clause 2, the following persons are citizens by operation of law, that is to say:

(*a*) Every person who, immediately before Merdeka Day, was a citizen of the Federation by virtue of any of the provisions of the Federation of Malaya Agreement, 1948, whether by operation of law or otherwise;

(*b*) Every person born within the Federation on or after Merdeka Day;

(*c*) Every person born outside the Federation on or after Merdeka Day whose father is a citizen at the time of the birth and either was born within the

Federation or is at the time of the birth in service under the Government of the Federation or of a state;

(*d*) Every person born outside the Federation on or after Merdeka Day whose father is a citizen at the time of the birth, if the birth is registered at a Malayan consulate within one year of its occurrence, or within such longer period as the Federal Government may in any particular case allow.

(2) A person is not a citizen by virtue of paragraph (*b*) of clause 1 if, at the time of his birth, his father, not being a citizen of the Federation, possesses such immunity from suit and legal process as is accorded to an envoy of a sovereign power accredited to the Yang di-Pertuan Agong, or if his father is then an enemy alien, and the birth occurs in a place under occupation by the enemy.

15. (1) Subject to article 18, any woman who is married to a citizen is entitled, upon making application to the registration authority, to be registered as a citizen.

(2) Subject to article 18, any person under the age of twenty-one years whose father is a citizen or, if deceased, was a citizen at the time of his death, is entitled, upon application made to the registration authority by his parent or guardian, to be registered as a citizen if that authority is satisfied that he is ordinarily resident in the Federation and is of good character.

(3) The reference in this article to a woman who is married is a reference to a woman whose marriage has been registered in accordance with any written law in force in the Federation, including any such law in force before Merdeka Day.

16. Subject to article 18, any person of or over the age of eighteen years who was born in the Federation before Merdeka Day is entitled, upon making application to the registration authority, to be registered as a citizen if he satisfies that authority:

(*a*) That he has resided in the Federation, during the seven years immediately preceding the date of the application, for periods amounting in the aggregate to not less than five years;

(*b*) That he intends to reside permanently therein;

(*c*) That he is of good character; and

(*d*) Except where the application is made within one year after Merdeka Day, that he has an elementary knowledge of the Malay language.

17. Subject to article 18, any person of or over the age of eighteen years who was resident in the Federation on Merdeka Day is eligible, subject to the provisions of the second schedule, to be registered as a citizen upon making application to the registration authority if he satisfies that authority:

(*a*) That he has resided in the Federation, during the twelve years immediately preceding the date of the application, for periods amounting in the aggregate to not less than eight years;

(*b*) That he intends to reside permanently therein;

(*c*) That he is of good character; and

(*d*) Except where the application is made within one year after Merdeka Day and the applicant has attained the age of forty-five years at the date of the application, that he has an elementary knowledge of the Malay language.

18. (1) No person of or over the age of eighteen years shall be registered as a citizen under article 15, 16 or 17 until he has taken the oath set out in the first schedule.

(2) Except with the approval of the Federal Government, no person who has renounced or has been deprived of citizenship under this constitution, or who has renounced or has been deprived of federal citizenship or citizenship of the Federation before Merdeka Day under the Federation of Malaya Agreement, 1948, shall be registered as a citizen under any of the said articles.

(3) A person registered as a citizen under any of the said articles shall be a citizen by registration from the day on which he is so registered.

(4) For the purpose of any application for registration under any of the said articles, a person shall be deemed to be of good character unless, within the period of three years immediately preceding the date of the application:

(*a*) He has been convicted by a competent court in any country of a criminal offence for which he was sentenced to death; or

(*b*) He has been detained under a sentence of imprisonment of twelve months or more imposed on his conviction of a criminal offence (whether during or before the said period) by such a court,

and in either case has not received a free pardon in respect of the offence.

19. Subject to article 21, the Federal Government may, upon application made by any person of or over the age to twenty-one years, grant a certificate of naturalization to that person if satisfied:

(*a*) That he has resided in the Federation, during the twelve years preceding the date of the application, for periods amounting in the aggregate to not less than ten years;

(*b*) That he intends, if the certificate is granted, to reside permanently therein;

(*c*) That he is of good character; and

(*d*) That he has an adequate knowledge of the Malay language.

20. (1) Subject to article 21, the Federal Government shall, upon application made by any person in accordance with clause 2, grant a certificate of naturalization to that person if satisfied:

(*a*) That he has served satisfactorily for a period of not less than three years in full-time service, or for a period of not less than four years in part-time service, in such of the armed forces of the Federation

as may be prescribed by the Federal Government for the purposes of this article; and

(*b*) That he intends, if the certificate is granted, to reside permanently in the Federation.

(2) An application under this article may be made either while the applicant is serving in such service as aforesaid or within the period of five years, or such longer period as the Federal Government may in any particular case allow, after his discharge.

(3) References in this article to service in the armed forces of the Federation include references to service before Merdeka Day; and in calculating for the purposes of this article the period of full-time service in such forces of a person who has served both in full-time and in part-time service therein, any two months of part-time service shall be treated as one month of full-time service.

21. (1) A certification of naturalization shall not be granted to any person under article 19 or 20 until he has taken the oath set out in the first schedule.

(2) A person to whom a certificate of naturalization is granted under either of the said articles shall be a citizen by naturalization from the date on which the certificate is so granted.

22. If any new territory is admitted to the Federation in pursuance of article 2, Parliament may by law determine what persons are to be citizens by reason of their connexion with that territory and the date or dates from which such persons are to be citizens.

Chapter 2. — Termination of Citizenship

23. (1) Any citizen of or over the age of twenty-one years and of sound mind who is also a citizen of another country may renounce his citizenship of the Federation by declaration registered by the registration authority, and shall thereupon cease to be a citizen.

(2) A declaration made under this article during any war in which the Federation is engaged shall not be registered except with the approval of the Federal Government, but except as aforesaid the registration authority shall register any declaration duly made thereunder.

(3) This article applies to a woman under the age of twenty-one years who has been married as it applies to a person of or over that age.

24. (1) If the Federal Government is satisfied that any citizen has at any time after Merdeka Day acquired by registration, naturalization or other voluntary and formal act (other than marriage) the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship.

(2) If the Federal Government is satisfied that any citizen has at any time after Merdeka Day voluntarily claimed and exercised in a foreign country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Federal Government may by order deprive that person of his citizenship.

(3) Where provision is in force under the law of any Commonwealth country for conferring on citizens of that country rights not available to other Commonwealth citizens, clause 2 shall apply, in relation to those rights, as if that country were a foreign country.

(4) If the Federal Government is satisfied that any woman who is a citizen by registration under clause 1 of article 15 has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.

25. (1) Subject to clause 3, the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 17 or a citizen by naturalization if satisfied:

(*a*) That he has shown himself by act or speech to be disloyal or disaffected towards the Federation;

(*b*) That he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

(*c*) That he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.

(2) Subject to clause 3, the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under article 17 or a citizen by naturalization if satisfied that he has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither:

(*a*) Been at any time in the service of the Federation or of an international organization of which the Federal Government was a member; nor

(*b*) Registered annually at a Malayan consulate his intention to retain his citizenship.

(3) No person shall be deprived of citizenship under this article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under clause 1 if, as the result of the deprivation, he would not be a citizen of any country outside the Federation.

26. (1) Subject to clause 3, the Federal Government may by order deprive of his citizenship any citizen by registration or by naturalization if satisfied that the registration or certificate of naturalization:

(*a*) Was obtained by means of fraud, false representation or the concealment of any material fact; or

(*b*) Was effected or granted by mistake.

(2) Subject to clause 3, the Federal Government may by order deprive of her citizenship any woman who is a citizen by registration under clause 1 of article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.

(3) No person shall be deprived of citizenship under this article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under paragraph (*b*) of clause 1 unless the notice required by article 27 is given within the period of twelve months beginning with the date of the registration or of the grant of the certificate, as the case may be.

(4) Except as provided by this article, the registration of a person as a citizen or the grant of a certificate of naturalization to any person shall not be called in question on the ground of mistake.

27. (1) Before making an order under article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this article.

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that government for the purpose.

(3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that government; and the Federal Government shall have regard to the report in determining whether to make the order.

28. (1) For the purposes of the foregoing provisions of this chapter:

(*a*) Any person who before Merdeka Day became a federal citizen or a citizen of the Federation by registration as a citizen or in consequence of his registration as the subject of a ruler, or by the grant of a certificate of citizenship, under any provision of the Federation of Malaya Agreement, 1948, or of any state law shall be treated as a citizen by registration and, if he was not born within the Federation, as a citizen by registration under article 17;

(*b*) A woman who before that day became a federal citizen or a citizen of the Federation by registration as a citizen, or in consequence of her registration as the subject of a ruler, under any provision of the said agreement or of any state law authorizing the registration of women married to citizens of the Federation or to subjects of the ruler shall be treated as a citizen by registration under clause 1 of article 15;

(*c*) Any person who before that day was naturalized as a federal citizen or a citizen of the Federation under the said agreement or became a federal citizen or a citizen of the Federation in consequence of his naturalization as the subject of a ruler under any state law shall (subject to clause 2) be treated as a citizen by naturalization,

and references in those provisions to the registration or naturalization of a citizen shall be construed accordingly.

(2) No person born within the Federation shall be liable by virtue of this article to be deprived of citizenship under article 25.

Chapter 3. — Supplemental

29. (1) In accordance with the position of the Federation within the Commonwealth, every person who is a citizen of the Federation enjoys by virtue of that citizenship the status of a Commonwealth citizen in common with the citizens of other Commonwealth countries.

(2) Any existing law shall, except so far as Parliament otherwise provides, apply in relation to a citizen of the Republic of Ireland who is not also a Commonwealth citizen as it applies in relation to a Commonwealth citizen.

30. (1) The registration authority may, on the application of any person with respect to whose citizenship a doubt exists, whether of fact or of law, certify that that person is a citizen.

(2) A certificate issued under this article shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that the person to whom it relates was a citizen on the date of the certificate, but without prejudice to any evidence that he was a citizen at an earlier date.

31. Until Parliament otherwise provides, the supplementary provisions contained in the second schedule shall have effect for the purposes of this part.

Part IV

THE FEDERATION

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Chapter 4. — Federal Legislature

44. The legislative authority of the Federation shall be vested in a Parliament, which shall consist of the Yang di-Pertuan Agong [the Supreme Head of the Federation] and two Majlis (Houses of Parliament) to be known as the Dewan Negara (Senate) and the Dewan Ra'ayat (House of Representatives).

. . .

47. Every citizen resident in the Federation is qualified to be a member:

(*a*) Of the Senate, if he is not less than thirty years old,

(*b*) Of the House of Representatives, if he is not less than twenty-one years old,

unless he is disqualified for being a member by this constitution or by any law made in pursuance of article 48.

48. (1) Subject to the provisions of this article, a person is disqualified for being a member of either House of Parliament if:

(*a*) He is and has been found or declared to be of unsound mind; or

(*b*) He is an undischarged bankrupt; or

(*c*) He holds an office of profit; or

(*d*) Having been nominated for election to either House of Parliament, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or

(*e*) He has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than two years and has not received a free pardon; or

(*f*) He has voluntarily acquired citizenship of, or exercised rights of citizenship in, a foreign country or has made a declaration of allegiance to a foreign country.

(2) Federal law may impose, for such periods as may be specified thereby, disqualification for membership of either House of Parliament on persons committing offences in connexion with elections; and any person who has been convicted of such an offence or has in proceedings relating to an election been proved guilty of an act constituting such an offence, shall be disqualified accordingly for the period so specified.

(3) The disqualification of a person under paragraph (*d*) or paragraph (*e*) of clause 1 may be removed by the Yang di-Pertuan Agong and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in the said paragraph (*d*) was required to be lodged, or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (*e*) was released from custody; and a person shall not be disqualified under paragraph (*f*) of clause 1 by reason only of anything done by him before he became a citizen.

49. A person shall not at the same time be a member of both Houses of Parliament, nor be elected to the House of Representatives for more than one constituency or to the Senate for more than one state, nor be both an elected and an appointed member of the Senate.

. . .

51. A member of either House of Parliament may resign his membership by writing under his hand addressed, if he is a member of the Senate, to the President of the Senate, and if a member of the House of Representatives, to the Speaker of that House.

52. If a member of either House of Parliament is without the leave of the House absent from every sitting of the House for a period of six months, the House may declare his seat vacant.

53. If any question arises whether a member of a House of Parliament has become disqualified for membership, the decision of that House shall be taken and shall be final.

. . .

Part VIII

ELECTIONS

. . .

119. (1) Every citizen who has attained the age of twenty-one years on the qualifying date and has been resident in a constituency for at least six months immediately preceding the qualifying date is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly [of a state of the Federation] unless he is disqualified under clause 3, or under any law relating to offences committed in connexion with elections, but no person shall in the same election vote in more than one constituency.

(2) If a person is in a constituency by reason only of being a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or of being detained in custody he shall for the purposes of clause 1 be deemed not to be resident in that constituency.

(3) A person is disqualified for being an elector in any election to the House of Representatives or the Legislative Assembly if:

(*a*) On the qualifying date he is detained as a person of unsound mind or is serving a sentence of imprisonment; or

(*b*) Having before the qualifying date been convicted in any part of the Commonwealth of an offence and sentenced to death or imprisonment for a term exceeding twelve months, he remains liable on the qualifying date to suffer any punishment for that offence.

(4) In this article, "qualifying date" means the date by reference to which the electoral rolls are prepared or revised.

120. Where in accordance with article 45(4) provision is made by Parliament for the election of senators by the direct vote of electors:

. . .

(*c*) Articles 118 and 119 shall apply in relation to elections to the Senate as they apply in relation to elections to the House of Representatives.

Part IX

The Judiciary

. . .

123. A person is qualified for appointment as a judge of the Supreme Court if:

(*a*) He is a citizen; and

(*b*) He has been an advocate of the Supreme Court or a member of the judicial and legal service of the Federation for a period of not less than ten years, or has been the one for part and the other for the remainder of that period.

. . .

Part X

Public Services

. . .

136. All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.

. . .

Part XI

Special Powers against Subversion, and Emergency Powers

149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation, to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property, any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of article 5, 9, or 10, or would apart from this article be outside the legislative power of Parliament; and article 79[1] shall not apply to a Bill for such an Act or any amendment to such a Bill.

(2) A law containing such a recital as is mentioned in clause 1 shall, if not sooner repealed, cease to have effect on the expiration of a period of one year from the date on which it comes into operation, without prejudice to the power of Parliament to make a new law under this article.

150. (1) If the Yang di-Pertuan Agong is satisfied that a grave emergency exists whereby the security or economic life of the Federation or of any part thereof is threatened, whether by war or external aggression or internal disturbance, he may issue a proclamation of emergency.

(2) If a proclamation of emergency is issued when Parliament is not sitting, the Yang di-Pertuan Agong shall summon Parliament as soon as may be practicable, and may, until both Houses of Parliament are sitting, promulgate ordinances having the force of law, if satisfied that immediate action is required.

(3) A proclamation of emergency and any ordinance promulgated under clause 2 shall be laid before both Houses of Parliament and, if not sooner revoked, shall cease to be in force:

(*a*) A proclamation at the expiration of a period of two months beginning with the date on which it was issued; and

(*b*) An ordinance at the expiration of a period of fifteen days beginning with the date on which both Houses are first sitting,

unless, before the expiration of that period, it has been approved by a resolution of each House of Parliament.

(4) While a proclamation of emergency is in force the executive authority of the Federation shall, notwithstanding anything in this constitution, extend to any matter within the legislative authority of a state and to the giving of directions to the government of a state or to any officer or authority thereof.

(5) While a proclamation of emergency is in force Parliament may, notwithstanding anything in this constitution, make laws with respect to any matter enumerated in the State List (other than any matter of Muslim law or the custom of the Malays), extend the duration of Parliament or of a state legislature, suspend any election, and make any provision consequential upon or incidental to any provision made in pursuance of this clause.

(6) No provision of any law or ordinance made or promulgated in pursuance of this article shall be invalid on the ground of any inconsistency with the Provisions of part II, and article 79 shall not apply to any Bill for such a law or any amendment to such a Bill.

(7) At the expiration of a period of six months beginning with the date on which a proclamation of emergency ceases to be in force, any ordinance promulgated in pursuance of the proclamation and, to the extent that it could not have been validly made but for this article, any law made while the Proclamation was in force, shall cease to have effect, except as to things done or omitted to be done before the expiration of that period.

151. (1) Where any law or ordinance made or promulgated in pursuance of this part provides for preventive dentention:

(*a*) The authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to clause 3, the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;

(*b*) No citizen shall be detained under that law or ordinance for a period exceeding three months unless an advisory board constituted as mentioned in clause 2 has considered any representations made by him under paragraph (*a*) and has reported, before the expiration of that period, that there is in its opinion sufficient cause for the detention.

[1] Article 79 concerns the exercise of concurrent legislative powers by Parliament and the Legislative Assembly of a state.

(2) An advisory board constituted for the purposes of this article shall consist of a chairman, who shall be appointed by the Yang di-Pertuan Agong from among persons who are or have been judges of the Supreme Court or are qualified to be judges of the Supreme Court, and two other members, who shall be appointed by the Yang di-Pertuan Agong after consultation with the Chief Justice or, if at the time another judge of the Supreme Court is acting for the Chief Justice, after consultation with that judge.

(3) This article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

Part XII

General and Miscellaneous

152. (1) The national language shall be the Malay language, and shall be in such script as Parliament may by law provide:

Provided that:

(*a*) No person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and

(*b*) Nothing in this clause shall prejudice the right of the Federal Government or of any state government to preserve and sustain the use and study of the language of any other community in the Federation.

[Clauses 2–5 concern the continued use for a period of time of English for certain official purposes.]

153. (1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of this article.

(2) Notwithstanding anything in this constitution, but subject to the provisions of article 40[1] and of this article, the Yang di-Pertuan Agong shall exercise his functions under this constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and to ensure the reservation for Malays of such proportion as he may deem reasonable of positions in the public service (other than the public service of a state) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this article, of such permits and licences.

(3) The Yang di-Pertuan Agong may, in order to ensure in accordance with clause 2 the reservation to Malays of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any commission to which part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the commission or authority shall duly comply with the directions.

(4) In exercising his functions under this constitution and federal law in accordance with clauses 1 to 3, the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.

(5) This article does not derogate from the provisions of article 136.

(6) Where by existing federal law a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong may exercise his functions under that law in such manner, or give such general directions to any authority charged under that law with the grant of such permits or licences, as may be required to ensure the reservation of such proportion of such permits or licences for Malays as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.

(7) Nothing in this article shall operate to deprive or authorize the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorize a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events.

(8) Notwithstanding anything in this constitution, where by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays; but no such law shall for the purpose of ensuring such a reservation:

(*a*) Deprive or authorize the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him; or

(*b*) Authorize a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of any person any permit or licence when the renewal or grant might in accordance with the other provisions of the law reasonably be expected in the ordinary course of events, or prevent any person from transferring together with his business any transferable licence to operate that business; or

(*c*) Where no permit or licence was previously required for the operation of the trade or business, authorize a refusal to grant a permit or licence to any

[1] Article 40 concerns the extent to which the Yang di-Pertuan Agong is to act on the advice of the cabinet or ministers.

person for the operation of any trade or business which immediately before the coming into force of the law he had been *bona fide* carrying on, or authorize a refusal subsequently to renew to any such person any permit or licence, or a refusal to grant to the heirs, successors or assigns of any such person any such permit or licence when the renewal or grant might in accordance with the other provisions of that law reasonably be expected in the ordinary course of events.

(9) Nothing in this article shall empower Parliament to restrict business or trade solely for the purpose of reservations for Malays.

(10) The constitution of the state of any ruler may make provision corresponding (with the necessary modifications) to the provisions of this article.

. . .

160. . . .

(2) In this constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:

. . .

"Citizen" means a citizen of the Federation;

. . .

"Commonwealth country" means the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Ghana and any other country declared by Act of Parliament to be a Commonwealth country and "part of the Commonwealth" has the meaning assigned to it by article 155(2);

. . .

"Elector" means a person who is entitled to vote in an election to the House of Representatives or the Legislative Assembly of a state;

. . .

"Foreign country" does not include any part of the Commonwealth or the Republic of Ireland;

. . .

"Malay" means a person who professes the Muslim religion, habitually speaks the Malay language, conforms to Malay custom and:

(*a*) Was before Merdeka Day born in the Federation or born of parents one of whom was born in the Federation, or is on that day domiciled in the Federation; or

(*b*) Is the issue of such a person;

"Merdeka Day" means the thirty-first day of August, nineteen hundred and fifty-seven;

"Office of profit" means any whole-time office in any of the public services, and includes the office of Chief Justice or other judge of the Supreme Court, Auditor-General, Attorney-General, member of the Election Commission or of any commission to which part X applies, and any other office declared by Act of Parliament to be an office of profit;

. . .

(4) Where under this constitution a person is required to take and subscribe an oath he shall be permitted, if he so desires, to comply with that requirement by making and subscribing an affirmation.

. . .

Part XIII

TEMPORARY AND TRANSITIONAL PROVISIONS

. . .

170. (1) Subject to the provisions of this article, any person who, immediately before Merdeka Day, was qualified to make application for registration as a citizen of the Federation under clause 126 of the Federation of Malaya Agreement, 1948, shall be entitled, upon making application to the registration authority within the period of one year beginning with that day, to be registered as a citizen.

(2) A person who has absented himself from the Federation for a continuous period of five years within the ten years immediately preceding his application under this article shall not be entitled to be registered thereunder unless it is certified by the Federal Government that he has maintained substantial connexion with the Federation during that period.

(3) This article shall be construed as one with part III; and articles 18 and 26 shall apply in relation to registration under this article, and to persons registered as citizens thereunder, as they apply in relation to registration under article 16 and to persons registered under that article.

. . .

SCHEDULES

. . .

Second Schedule

SUPPLEMENTARY PROVISIONS RELATING TO CITIZENSHIP

. . .

Interpretation

17. In relation to a person who is illegitimate, articles 14 and 15 shall have effect as if for references to his father there were substituted references to his mother and as if section 19 of this schedule were omitted; and references in article 15 and this schedule to his parent shall be construed accordingly.

18. In relation to an adopted child whose adoption has been registered under any written law in force in the Federation, including any such law in force before Merdeka Day, article 15 shall have effect as if for the reference to his father there were substituted a reference to the adopter, and references in that article and this schedule to his parent shall be construed accordingly.

19. Any reference in part III to the status or description of the father of a person at the time of that

person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before and the birth occurs on or after Merdeka Day, the status or description which would have been applicable to the father had he died after Merdeka Day shall be deemed to be the status or description applicable to him at the time of his death.

20. In calculating for the purposes of part III a period of residence in the Federation:

(*a*) A period of absence from the Federation of less than six months;

(*b*) A period of absence from the Federation for the purposes of education of such kind, in such country and for such time, as may from time to time be either generally or specially approved by the Minister; and

(*c*) A period of absence from the Federation for reasons of health or any other cause prescribed generally or specially by the Minister,

shall be treated as residence in the Federation; and for the purposes of part III a person shall be deemed to be resident in the Federation on a particular day if he had been resident in the Federation before that day and that day is included in any such period of absence as aforesaid.

THE EDUCATION ORDINANCE, 1957
No. 2 of 1957, of 14 April 1957[1]

2. In this ordinance, unless the context otherwise requires,

. . .

"Assisted school" and "assisted educational institution" mean respectively a school and educational institution in receipt of grant-in-aid and such a school or educational institution is said to be "maintained";

. . .

"Parent" includes a guardian and any person who has the legal or actual control of a child;

. . .

Part I
Administration and General Purpose

3. The educational policy of the Federation is to establish a national system of education acceptable to the people as a whole which will satisfy their needs and promote their cultural, social, economic and political development as a nation, with the intention of making the Malay language the national language of the country whilst preserving and sustaining the growth of the language and culture of peoples other than Malays living in the country.

4. In the exercise and performance of all powers and duties conferred and imposed by this ordinance, regard shall be had to the general principle that, so far as is compatible with the educational policy of the Federation, the provision of efficient instruction and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.

Part II
Statutory Education System

. . .

Religious Instruction

49. Where in an assisted school there are fifteen or more pupils professing the Islamic religion such pupils shall be instructed by religious teachers approved by the state or settlement authority in the tenets of that religion for at least two hours each week within the hours of general instruction and the managers or governors of the school shall make such arrangements as may be necessary for this purpose:

Provided that the managers or governors of two or more schools may make arrangements for such instruction to be given to the pupils professing the Islamic religion in such schools jointly.

50. The managers or governors of an assisted school may provide otherwise than out of funds made available by the appropriate authority for the instruction of the pupils or any of them in such school in a religion other than the Islamic religion:

Provided that no pupil shall attend instruction in a religion other than instruction in the religion which he professes except with the written consent of his parent.

. . .

[1] Published in *Supplement to Federation of Malaya Government Gazette* of 23 April 1957. The ordinance entered into force on 15 June 1957.

FINLAND

NOTE[1]

I. LEGISLATION

1. According to ordinance No. 44 of 18 January 1957 on employment[2] (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK* (Official Gazette of Finland) No. 44/1957), attempts are to be made in the first instance to direct unemployed persons towards the free labour market. If there is no demand for his services in the free labour market, attempts are to be made to place an unemployed person in work which corresponds to his skill or craftsmanship or, if it is not possible, in work which is suitable to him and corresponds to his ability to work and secures him and his family a living.

In order to prevent unemployment among young people and persons without craftsmanship, the State is to arrange provisional trade course and suitable working places for youth. If this kind of course or working place is provided by a municipality or rural commune, it may be allocated a subsidy from the state funds.

If, instead of provisional work, permanent employment can be secured for an unemployed person in a locality other than his own or if the work secured is otherwise serving the purpose, he may be given, at his request, free transport to that locality at the cost of the State.

The administration of measures concerning the securing of employment is vested in the Ministry of Communications and Public Works. For local administration, there is an employment board in every municipality and commune, and, to facilitate their operation, the country is divided into labour districts.

2. The Folk School Act No. 247, of 1 July 1957 (*AsK* No. 247/1957).

Compulsory school attendance is relatively old in Finland. The Church Law of Sweden-Finland of 1686 prescribed that everyone should learn to read. Severe penalties were inflicted upon those who neglected school attendance. Literacy was made a condition for enjoying civic rights and an illiterate person was not even allowed to marry. As a result of compulsory school attendance maintained by the Church, the Finnish nation as a whole has been literate for centuries.

As early as a hundred years ago the primary school — or folk school, as it was called — was separated from the teaching activity of the Church and entrusted to the communes. However, compulsory school attendance in its modern sense is rather young in Finland. The Russia of the czars did not look favourably upon the high standard of folk education in Finland, and the emperor refused to ratify the School Attendance Act accepted by the Diet of Finland. Not until Finland had achieved independence was the first School Attendance Act promulgated, on 15 April 1921. This Act has now been replaced by the new Folk School Act mentioned above.

According to the new Act, the necessary elementary education of citizens takes place, as before, in the folk schools (primary schools). The folk school is to educate the pupils in morality and good manners, and give them the necessary knowledge and skills. In addition, the folk school is to support and help young people in their studies and cultural interests after leaving the school. In fulfilling its task the folk school is to endeavour to co-operate with homes in a close mutual understanding.

The folk school is divided into the ordinary folk school of six years, and the civil school of two years. If the circumstances so require, the civil school may last one year only when the ordinary folk school is of seven years' duration.

As a part of the folk school, there may be a middle school (secondary school) which corresponds to the state secondary school. There may also be attached to the folk school an auxiliary school for children who are incapable of following teaching in the ordinary folk school.

There are two hundred working days in a school year. The school work starts on the first weekday of September, and ends on the last weekday of May. In certain circumstances, there may be some exceptions.

In the ordinary folk school, instruction is given in religion, mother tongue, writing, mathematics, history, geography, natural sciences, hygiene and temperance, farming, household economy, drawing, handicraft, gymnastics, sport and singing. In addition, there may be two voluntary subjects.

In the civil school, instruction and practical training are given in subjects which are connected with the commercial and industrial life of the population, Instruction is also given in religion, history of religion. sociology, mother tongue, literature, household

[1] Note prepared by Mr. Voitto Saario, Judge of the Court of Appeal, Helsinki, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Adopted under the Employment Act No. 672, of 29 December 1956, summarized in *Yearbook on Human Rights for 1956*, p. 66.

economy, nursing of children and, according to the need, in other subjects.

Religion is taught in accordance with the creed of that religious denomination to which the majority of the pupils belong. According to the Religious Freedom Act of 10 November 1922, pupils who belong to a religious denomination other than that of the majority can be exempted from religious instruction at the request of their parents or guardians. If there are at least eight pupils belonging to the same religious denomination other than that of the majority, religious instruction in accordance with their creed is to be given to them at the request of their parents or guardians. If there are at least five pupils who are exempted from all religious instruction, they shall be given instruction in the history of religions and philosophy of morals.

Folk schools are established and maintained by the municipalities and communes and subsidized by the State. For this purpose the communes are divided into school districts so that the distance to the nearest folk school will not for anyone exceed five kilometres. Free transport and lodging of pupils living at a greater distance from the school is to be arranged by the commune. For the youngest pupils and for those who are in poor health, free transport to school is to be arranged even when the distance is less than five kilometres.

If in a sparsely populated commune there are at least sixteen pupils living at more than five kilometres' distance from the school, a free boarding-house is to be established for them.

The minimum number of pupils for establishing a separate folk school in a school district is twenty-seven and in sparsely populated regions twenty, and such a school can be suspended only if the number of pupils drops to less than fifteen in three consecutive years.

If there are Finnish and Swedish speaking people in the same commune and the number of pupils belonging to the minority is at least eighteen, the commune is to be divided into school districts separately for both of the language groups. A separate folk school in the district of the minority group shall be established if there are at least eighteen pupils, and it can be suspended only if the number of pupils drops to less than twelve in three consecutive years.

If the number of pupils in a school district is less than that required for establishing a separate folk school, the district can be combined with some neighbouring district.

The pupils of the folk school are provided with free books and other school apparatus, and they are to be given a free substantial meal on every working day. Children of the poor are to be assisted with clothes and shoes and by other means so that their school attendance will be secured.

According to the new Folk School Act, every Finnish citizen, as already was the case before, is subject to compulsory education. This means reaching the standard of knowledge and skills which can be obtained in the folk school.

Compulsory school attendance commences at the beginning of the autumn term of the year in which the child reaches seven years of age and lasts to the end of the spring term of the year in which he reaches the age of sixteen years.

The activity of each folk school is conducted by a folk school committee, of which six members, chiefly parents of the pupils, are elected by the communal council for a term of four years. In addition, there is to be one member representing the teachers.

For the common direction of the folk schools, there is to be a folk school board in each commune, the chairman and five members of which are elected by the communal council for a term of four years. This body is also to include a teachers' representative.

The general administration and supervision of folk school activity are in the province of the State and are vested in the Board of Education, assisted by the folk school inspectors.

3. Act No. 409, of 12 December 1957, on legitimate birth (*AsK* No. 409/1957), makes the following provisions:

A child born during a marriage is considered to be a legitimate child if it is not confirmed by the court that the husband is not the father of the child.

The legal position is the same if a child is born so soon after the dissolution of the marriage that it could have been begotten before it. If the mother has married again before the birth of the child, this is considered to be born in the latter marriage.

A child born out of wedlock becomes legitimate if its parents marry each other.

Termination of the marriage does not affect the legal status of the child.

In addition, the Act contains procedural provisions concerning actions to secure a court decision to the effect that a child born during a marriage is not legitimate.

II. Ratification of International Agreements

Act No. 169, of 12 April 1957, brings into force the Convention on Civil Procedure, signed at The Hague on 1 March 1954 (*AsK* No. 169/1957).

FRANCE

NOTE[1]

Developments in 1957 in regard to civil and individual rights included the enactment, after long study, of legislation on literary and artistic property and on penal procedure. Important measures concerning social relations and the protection of workers were also enacted. The provision of special measures required in the departments of Algeria are summarized in a separate section.

A list is also given of the most important international instruments ratified by France in 1957.

I. Legislation and Case Law

1. *Civil and Individual Rights*

Importance is attached in France to a clear *division of responsibility* between the courts of law and administrative tribunals as institutions designed to guarantee the protection of individual rights and freedoms. The higher courts remind inferior courts of this division of responsibility where necessary. For example, the Conseil d'Etat in a decision dated 9 October 1957 drew attention to the fact that an administrative tribunal (the commission for the distribution of Yugoslav indemnities) was not competent to settle a dispute regarding the *nationality* of a woman applicant, as this was a matter within the exclusive jurisdiction of the courts of law.[2]

The administrative tribunals are, however, responsible for passing on the legality of decrees *revoking naturalization*. It is their function, in particular, to evaluate the correctness and cogency of the grounds which the Administration regards as justifying the revocation of naturalization; under the Nationality Code, such action may be taken, *inter alia*, "where an alien has knowingly made a false declaration, submitted a document containing a false or mistaken statement, or used fraud to obtain naturalization. . . ." Where, for instance, an applicant's declaration regarding the absence of any convictions is found to be false, the revocation of naturalization is regarded as justified.[3] The Conseil d'Etat, however, declines to approve the revocation of naturalization where a false statement is not of sufficient gravity to blemish the moral character of the applicant[4] or where the incorrectness of tax declarations held against the applicant has not been established.[5]

It may seem strange that the protection of *literary and artistic property* should still have been governed, 150 years later, by the provisions of the decrees of 13–19 January 1791 concerning public entertainment, and the decree of 19–24 July 1793 concerning the reproduction of literary, musical and artistic works. In fact, however, the courts built up, on the basis of this legislation, a substantial body of case law sufficiently adapted to the media of expression of the twentieth century, including radio broadcasting and cinematography. Care was therefore taken in drafting the Act of 11 March 1957[6] to avoid any radical structural changes and to respect the general trend of the relevant case-law. The best definition of the aims and purposes of the Act is given in its article 1: "The author of an intellectual work possesses, by virtue of the sole fact of creation, an incorporeal right of ownership, which is exclusive and enforceable against all. This right includes rights of an intellectual and moral character and patrimonial rights which are prescribed by this Act. . . ."

The Act thus confirms the traditional French view that authors' rights, being related to the product of intellectual activity, are a special attribute of the individual. This is the idea expressed in the felicitous definition given by Le Chapelier, the rapporteur of the Act of 1791: "The most sacred and most personal of all forms of property is work which is the fruit of the writer's thought." It is not possible to summarize the provisions of such an important enactment as the Act of 11 March 1957.[7] Suffice it to say that it contains various provisions specifically designed to protect cinematographic works and works transmitted by radio or television.

The Act of 31 December 1957,[8] which also affects legislation dating back 150 years, is the long-awaited outcome of the work of the commission for the study of criminal law. It promulgates the first 230 articles of a new *Code of Penal Procedure* — i.e., provisions

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[1] Note prepared by Mr. E. Dufour, Maître des Requêtes in the Conseil d'Etat, Paris, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] *Conseil d'Etat*, Dame veuve Deltel case, 9 October 1957, *Recueil des décisions du Conseil d'Etat*, p. 512, Sirey.

[3] *Conseil d'Etat*, Schamash case, 18 December 1957, *Receuil des décisions du Conseil d'Etat*, p. 683, Sirey.

[4] *Conseil d'Etat*, Rabus case, 15 February 1957, *ibid.*, p. 107, Sirey.

[5] *Conseil d'Etat*, Levy case, 4 January 1957, *ibid.*, p. 9, Sirey.

[6] Act No. 57–298, *Journal officiel*, March 1957, p. 2723.

[7] See pp. 82–90.

[8] Act No. 57–1426, *Journal officiel*, January 1958, p. 258 and corrigendum, *ibid.*, January 1958, p. 738.

relating to the institution of public prosecutions, to the procedure for judicial inquiries and investigations, to remand in custody, etc. At the time of writing, the complete text of the new code, including the modifications made in the original version, has been the subject of an ordinance of 24 December 1958,[1] supplemented by executive decrees and orders; comments on the reform will therefore be more appropriately included in the report for 1958. It may, however, be stated that commentators on the reform note with satisfaction that it is designed to increase the control of judges over preliminary investigations by the police and to ensure respect for the person of defendants.

2. *Social Rights*

The acts of 26 July 1957[2] amended the provisions of the Labour Code relating to the status of *home workers*. The chief aim of the new provisions is to define home workers and principals, to ensure better protection for workers in the matter of remuneration and social welfare, to extend the amended rules to agriculture and to make them applicable in Algeria. In this connexion, the Act encourages the conclusion of collective agreements in preference to administrative regulation. It is interesting to note that the Act empowers trade unions, even without receiving specific authority to that effect, to bring any action on behalf of any of their members that arises under the provisions regulating the employment of home workers. This Act therefore provides very real protection for isolated workers. It also contains provisions regulating payment for work done in penal institutions and hospitals.

Accidents occurring during travel by an employee while engaged in his employer's business are regarded as coming within the category of *industrial accidents*. The Court of Cassation has ruled[3] that "a duly authorized employee who goes from his place of residence to the local social security office which he has been requested to visit in connexion with an official inquiry is still engaged in his employer's business"; in such circumstances, the employee is not in fact engaged in purely personal business unconnected with his employment.

An Act of 23 July 1957[4] gives a more detailed and broader definition, for the purpose of the application of the legislation on industrial accidents, of the "journey" which a worker has to make to and from his place of work. For this purpose, a journey is now deemed to include not only the direct route between the worker's residence and his place of work, but also the route to and from his place of work and any second residence which he habitually visits for family reasons, and any place (such as a restaurant or canteen) to which he habitually goes for his meals. These two extensions take full account of modern features of the worker's way of life: the frequent need to maintain a separate residence for some members of the family and the use of subsidized canteens, both of which result in longer and more frequent journeys.

An Act of 23 November 1957[5] regulates the *resettlement of handicapped workers*, this term being interpreted to mean persons who are handicapped in obtaining or keeping employment as a result of a physical or mental disability whatever its cause (congenital condition, accident or sickness, whether employment-connected or not, war injuries). The purpose of the Act is to give such persons a new chance in life on the same footing as healthy workers by placing them in normal productive employment. In addition to rehabilitation in the strict sense, the Act provides for the vocational re-training or training of handicapped workers. It stipulates that a quota of jobs for which handicapped workers are physically and occupationally qualified shall be reserved for such workers in a given area and occupational activity. Certain full-time and part-time jobs may also be reserved for particularly handicapped categories of workers in certain classes of activity and trades. Persons so employed should in principle receive the same wages as workers in normal health. Lastly, to take account of the reduced working capacity of certain persons suffering from physical or mental disorders, the Act provides for the institution both of half-time jobs and of workshops and home work distribution centres in order to give every handicapped person an opportunity to find employment suited to his physical condition from the standpoint of the speed of movement or physical effort required. It is expected that, as a result of all these provisions, it will be possible to bring nearly 400,000 persons back into the cycle of production.

The training of union leaders contributes to the removal of certain obstacles to the gradual emancipation of the working class. This is a matter to which the legislator has given some attention; under an Act of 23 July 1957,[6] unpaid leave of up to twelve days a year must be granted to certain workers or apprentices wishing to attend courses or meetings connected with either *workers' education* or *trade union training*. The Act specifies that more liberal conditions for the exercise of this right may be laid down in collective agreements than those laid down in the Act itself. Similar provisions have been embodied in civil service regulations.

Security of employment has again given rise to a number of judicial decisions. These have defined, *inter alia*, the circumstances in which a contract of

[1] Ordinance No. 58-1296, *Journal officiel*, December 1958, p. 11711.

[2] Act No. 57-834 of 26 July 1957, *Journal officiel*, July 1957, p. 7461.

[3] *Cass. Soc.*, 7 February 1957, *Revue Droit Social*, March 1957, p. 188.

[4] Act No. 57-819, *Journal officiel*, July 1957, p. 7299.

[5] Act No. 57-1223, *Journal officiel*, November 1957, p. 10858.

[6] Act No. 57-821, *Journal officiel*, July 1957, p. 7300.

service may be terminated in the event of either illness or of illegal participation in a strike. Absence on account of illness does not in itself terminate a contract of service but merely suspends it. An employer may not refuse to take back an employee after illness on the pretext that his job has been abolished,[1] but he retains the right to terminate, according to normal procedure, a contract of service concluded for an indefinite period, provided that he gives such notice and pays such compensation as are prescribed in the collective agreement in force.[2]

It is illegal for an employer to dismiss a worker for participation in an occupational strike, where the worker is not guilty of any personal misconduct;[3] this ruling does not, however, apply where the real causes of the strike are political; this is a matter for the court concerned to determine.[4] [5] Dismissal is also justified in the case of a bakery worker who, contrary to the regulations in force and to the provisions of his contract of services, goes on strike in order to avoid working on a public holiday.[6]

Dismissal is, however, illegal if its real purpose is to enable a business to be sold without employees.[7]

Special conditions are laid down for *the dismissal of workers' representatives* in order to safeguard the free exercise of their functions; the procedure includes consultation with the works committee and the labour inspector. Where the employee is guilty of serious misconduct, the employer has grounds for dismissal which automatically relieve him from the need to give notice of dismissal and to pay the usual allowances but not from the need to comply with the requirements of article 16 of the Act 16 April 1946.[8] [9]

Previous notes have referred to the progress made in methods of settling *collective labour disputes*[10] and to the initial success of a new mediation procedure. The Act of 26 July 1957[11] is the outcome of that experience. Under this Act, conciliation proceedings are mandatory in principle, although in fact no penalties are imposed for failure to comply with this requirement nor is a strike which begins before any attempt at conciliation is made declared illegal. Henceforward, collective agreements must provide for recourse to conciliation and must contain provisions concerning the contractual conciliation procedure. In the absence of such provisions, conciliation proceedings are instituted by a representative of the public authorities. The parties to the dispute are required to appear in person, and failure to do so is subject to severe penalties imposed by a criminal court. If conciliation proceedings are unsuccessful, two procedures for settlement remain open — arbitration, which involves prior acceptance of the award by the parties, and mediation, a more flexible procedure established in 1955, under which a mediator, appointed if possible by the parties to the dipute, attempts to bring about agreement between the parties and to propose a settlement.

The new Act extends the hitherto restricted scope of application of mediation by authorizing its use in disputes within undertakings (and no longer solely in inter-occupational disputes) and by making it applicable to all types of dispute (and no longer solely to wages disputes). The Act also reflects a trend towards giving the mediator broader powers of investigation and reinforcing them with penalties. While the mediator is still empowered to attempt to reconcile the parties as a first step, he is also empowered to propose terms for the settlement of a dispute. His recommendation must be published and the grounds for it may also be published.

In September 1957 two serious disputes occurred in the ship-building yards and the metallurgical industry of western France. Mediators were appointed. One of the disputes was not settled and resulted in a lockout in a large ship-yard. In the second dispute the mediator failed to bring about agreement between the parties, but indirectly achieved a settlement. On resuming work, the workers' trade unions agreed to give up calling "hit and run" strikes and the employers' associations agreed to the increase in hourly rates proposed by the mediator, which they had initially refused. This confirms the still restricted but far from negligible effectiveness of the new procedure.

An Act of 2 August 1957[12] extended the benefits of the supplementary allowance payable from the *National Solidarity Fund*[13] to persons in the following categories: disabled persons receiving pensions under the social security system, cripples, blind persons and severely disabled persons.

3. *Provisions particularly affecting Algeria*

The situation in Algeria made it necessary to grant the Government special powers in economic, social and administrative matters, authorizing it to *take all emergency measures for the restoration of order*. The special powers conferred by Parliament by the Act of 16 March 1956[14] for the life of each government had to

[1] *Cass. Soc.*, 28 March 1957, *Revue Droit Social*, July-August 1957, p. 426.

[2] *Cass. Soc.*, 15 March 1957, July-August 1957, p. 427.

[3] *Cass. Soc.*, 7 February 1957, *ibid.*, May 1957, p. 294.

[4] *Cass. Soc.*, 14 February 1957, *ibid.*, May 1957, p. 294.

[5] *Cass. Soc.*, 3 June 1957, *ibid.*, November 1957, p. 555.

[6] *Cass. Soc.*, 22 June 1957, *ibid.*, December 1957, p. 630.

[7] *Cass. Soc.*, 8 February 1957, *ibid.*, November 1957, p. 559.

[8] Act. No. 46–730, *Journal officiel*, April 1946, p. 3224.

[9] *Cass. Soc.*, 5 April 1957, *Revue Droit Social*, July-August 1957, p. 424.

[10] See *Yearbook on Human Rights for 1955*, pp. 70–1, and for 1956, p. 69.

[11] Act No. 57–833, *Journal officiel*, July 1957, p. 7459.

[12] Act No. 57–874, *Journal officiel*, August 1957, p. 7685.

[13] See *Yearbook on Human Rights for 1956*, p. 68.

[14] Act No. 56–258, *Journal officiel*, March 1956, p. 2591. See *Yearbook on Human Rights for 1956*, p. 69.

be renewed twice during 1957 by the Acts of 26 July 1957[1] and 15 November 1957.[2]

These Acts gave temporary authority for severe restrictions on personal rights and liberties; administrative tribunals, however, retained the power to pass on the legality of any measures taken under the Acts. It was thus legally possible, by a decree dated 19 January 1957,[3] to suspend the payment of any civil or military pension or any other sum due from the State or from public bodies to persons whose activities might endanger public order.[4]

The abovementioned Act of 26 July 1957 authorized, but also laid down rules for, *the assignment to forced residence*, even in metropolitan France, of any person convicted under certain instruments (membership of certain combat groups, the possession of arms, etc.).

It is, however, interesting to note that the administrative tribunal invariably invokes the liberal principles on which administration must be based in any but exceptional circumstances. It ruled that, under the Act of 20 September 1947[5] to provide for the Organic Act of Algeria, the provisions applicable in metropolitan France relating to the *secret ballot* in elections were *ipso jure* applicable in the southern territories. A military commander organizing the elections of Djemma chiefs could not depart from them.[6]

[1] Act No. 57-832, *Journal officiel*, July 1957, p. 7458.

[2] Act No. 57-10203, *ibid.*, November 1957, p. 10683.

[3] Decree No. 57-64, *ibid.*, January 1957, p. 1012.

[4] *Conseil d'Etat, Union général des Fédérations de Fonctionnaires*, 12 July 1957, *Recueil des décisions du Conseil d'Etat*, p. 469, Sirey.

[5] Act No. 47-1853, *Journal officiel*, September 1947, p. 9470.

An Act of 11 July 1957[7] modified the rules relating to proof of *Moslem marriage*. A second act of the same date provided for the amendment in Algeria of the rules governing *guardianship* and *absence* in Moslem law.[8]

II. International Instruments[9]

Parliament has authorized the ratification of a new Franco-Tunisian legal convention,[10] of the convention between France and the United Kingdom on social security concluded on 10 July 1956,[11] of the convention on establishment between France and Italy (Paris, 23 August 1951) granting most-favoured-nation treatment in matters relating to private rights, the right to engage in professions, access to the courts, taxation and associations and organizations,[12] and of the convention (Washington, 22 June 1956) between France and the United States of America relating to the avoidance of double taxation.[13]

[6] *Conseil d'Etat*, Elections of the Ouled Meklaredj, 11 December 1957, *Recueil des décisions du Conseil d'Etat*, p. 667, Sirey.

[7] Act No. 57-777, *Journal officiel*, July 1957, p. 6922.

[8] Act No. 57-778, *ibid.*, July 1957, p. 6923.

[9] See also p. 311.

[10] Act No. 57-760 of 10 July 1957, *Journal officiel*, July 1957, 6818.

[11] Act No. 57-1419 of 31 December 1957, *ibid.*, January 1958, p. 194.

[12] Act No. 57-499 of 17 April 1957, *ibid.*, April 1957, p. 4101.

[13] Act No. 57-300 of 13 March 1957, *ibid.*, March 1957, p. 2731.

ACT No. 57-298 OF 11 MARCH 1957 CONCERNING LITERARY AND ARTISTIC COPYRIGHT[1]

Part I

Authors' Rights

Art. 1. The author of an intellectual work possesses, by virtue of the sole fact of its creation, an incorporeal right of ownership, which is exclusive and enforceable against all.

This right includes rights of an intellectual and moral character and patrimonial rights which are prescribed by this Act.

The existence or the conclusion of a contract for the hire of works or services by the author of an intellectual work entails no derogation of the right recognized in the first paragraph.

Art. 2. This Act protects the rights of authors over all intellectual works, of any kind whatsoever, whatever their form of expression, artistic quality or purpose.

Art. 3. For the purposes of this Act the following, in particular, shall be considered to be intellectual works: books, pamphlets, and other literary, artistic and scientific writings; lectures, addresses, sermons, counsels' statements, and other works of a similar nature; dramatic and operatic works; choreographic and pantomimic works, the presentation of which is noted in writing or other form; musical works with or without words; cinematographic works and works produced by a process analogous to cinematography; works in the form of drawing, painting, architecture, sculpture, engraving, lithography; works of artistic or documentary photography, and others of a similar character produced by a process analogous to photography; works in applied arts; illustrations,

[1] The text of this Act was published in the *Journal officiel de la République française* No. 62, of 14 March 1957. Translation by the United Nations Secretariat.

geographical maps; plans, sketches and plastic works relative to geography, topography, architecture, or other sciences.

Art. 4. The author of translations, adaptations, transformations or arrangements of intellectual works shall enjoy the protection established by this Act without prejudice to the rights of the author of the original work. Such protection shall also be enjoyed by authors of anthologies, or collections of miscellaneous works which, so far as the choice and arrangement of the material are concerned, constitute intellectual creations.

Art. 5. The title of an intellectual work, always provided that it is original, enjoys the same protection as the work itself.

No person may take the title of a work, even if that work is no longer protected under articles 21 and 22, to designate a work of the same type if the use of such title could give rise to confusion.

Art. 6. The author has the right to respect for his name, his status and his works.

This right is vested in his person.

It is perpetual, inalienable and indefeasible.

On the author's death it can be transmitted to his heirs.

The exercise of this right can be transferred to a third person by testamentary disposition.

Art. 7. A work is deemed to have been created, independent of its publication, from the sole fact of the embodiment of the author's idea, even if the work is incomplete.

Art. 8. In the absence of proof to the contrary, the person or persons under whose name the work is published shall be regarded as the author or authors thereof.

Art. 9. A work in which several physical persons have collaborated shall be known as a work of collaboration.

A new work in which work already existing has been incorporated without collaboration by the author of the earlier work shall be known as a composite work.

A work created on the initiative of a physical or legal person who edits, publishes and distributes it under his direction and his name, and in which the personal contribution of the various authors participating in its preparation is merged in the whole for the purpose of which it was conceived, so that it is not possible to attribute to each author a separate right in the entire work created, shall be known as a collective work.

Art. 10. A work of collaboration is the joint property of the authors.

The joint authors shall exercise their rights by common agreement.

In the event of disagreement, the case shall be settled by the civil courts.

If the contribution of each of the joint authors is of a different type, each may, in the absence of agreement to the contrary, utilize his personal contribution separately, but without prejudice to the utilization of the joint work.

Art. 11. The authors of pseudonymous and anonymous works enjoy in respect of such works the rights recognized in article 1.

They shall be represented in the exercise of such rights by the original editor or publisher, until they have revealed their identity and proved their status.

The statement required under the preceding paragraph may be made in a will; however, any rights which may have been acquired previously by third persons shall be retained by those persons.

The provisions of the second and third paragraphs above shall not apply if the pseudonym chosen by the author leaves no doubt concerning his identity.

Art. 12. A composite work is the property of the author who has produced it, subject to respect for the rights of the author of the earlier work.

Art. 13. A collective work, in the absence of proof to the contrary, is the property of the physical or legal person under whose name it is distributed.

The author's rights vest in such person.

Art. 14. The physical persons who accomplish the intellectual creation of a cinematographic work have the status of authors of that work.

In the absence of proof to the contrary, the authors of a cinematographic work produced in collaboration shall be deemed to be:

1. The script-writer;
2. The author of the adaptation;
3. The author of the spoken text;
4. The author of musical compositions, with or without words, specially composed for the work;
5. The director.

When a cinematographic work is based on an earlier work or script which is still protected, the authors of the original work shall have the same standing as the authors of the new work.

Art. 15. If one of the authors refuses to complete his contribution to a cinematographic work or is unable to do so for reasons of *force majeure*, he cannot oppose the use, for the purpose of completing the work, of that part of his contribution which has already been completed. In respect of that part he shall have the status of author and shall enjoy the consequent rights.

In the absence of an agreement to the contrary, each of the authors of a cinematographic work may freely dispose of that part of the work which is his personal contribution for use in a different medium and within the limitations set forth in article 10.

Art. 16. A cinematographic work shall be deemed to be completed when the first "master copy" has been produced by joint agreement between the direc-

tor and the producer or, where appropriate, between the joint authors and the producer.

The rights of authors as defined in article 6 can be exercised by them only over the completed cinematographic work, except in application of article 1382 of the Civil Code, in respect of persons through whose fault the film was not completed.

Art. 17. The producer of the cinematographic work is the physical or legal person on whose initiative and responsibility the work is created.

The producer may be the author or one of the joint authors of the work if he comes under the definition contained in article 14.

The authors of a cinematographic work other than the author of musical compositions, with or without words, are bound to the producer by a contract which, in the absence of any clause to the contrary, shall imply the transfer to him of the exclusive right of cinematographic utilization, without prejudice to the rights vested in the author by the provisions of part II, in particular articles 26 and 35.

Art. 18. The physical persons responsible for the intellectual creation of a television or radio broadcast are deemed to be the authors of such work.

The provisions or article 14, last paragraph, and article 15 apply to radio and television broadcasts.

Art. 19. The author alone has the right to publish his work. Subject, in the case of cinematographic work, to the provisions of article 17, he decides on the manner and conditions of publication.

After his death the right of publication of his posthumous work shall be exercised during their lifetime by the executor or executors appointed by the author. In the absence of executors or after their decease, and if the author has not disposed otherwise, that right shall be exercised in the following order: by the descendants, by the spouse against whom there is no order of legal separation having the force of *res judicata* and who has not contracted a further marriage, by the heirs, other than the descendants who inherit all or part of the estate, and by the universal legatees or donees of the entire estate to come.

This right can be exercised even after expiration of the exclusive right of utilization established in article 21.

Art. 20. In the case of flagrant abuse in the use of, or failure to use, the right of publication, by the representatives of the deceased author mentioned in the preceding article, appropriate action may be ordered by a civil court. The same shall apply if there is a dispute between the said representatives, if there is no known person entitled to the right, or if there are no claimants or heirs.

The matter may be brought before the court, *inter alia*, by the Minister responsible for arts and letters.

Art. 21. During his lifetime the author enjoys the exclusive right to utilize his work in any form whatever and to drawn financial benefit from it.

Upon the death of the author, this right continues to the benefit of the persons entitled during the civil year in progress and for the fifty years following.

In the case of works of collaboration, the civil year taken into consideration is that of the death of the last surviving joint author.

Art. 22. In the case of pseudonymous or collective works, the duration of the exclusive rights shall be fifty years from 1 January of the civil year following the year of publication. The date of publication shall be determined by any and all means of evidence permissible in ordinary law, and in particular by legal deposit.

In the case of publication of a collective work in instalments, the period shall run from 1 January of the civil year following the publication of each instalment. However, if publication is completed within a period of twenty years from the date of the first instalment, the period of the exclusive right over the work as a whole shall come to an end only on expiration of the fiftieth year following that of publication of the last instalment.

With regard to anonymous and pseudonymous works, if the author or authors have revealed their identity, the duration of the right of utilization shall be that appropriate to the category of the work in question and the period of legal protection shall start as prescribed in article 21.

Art. 23. In the case of posthumous works, the duration of the exclusive right shall be fifty years from the date of publication of the work.

The right of utilization of posthumous works vests in the beneficiaries of the author if the work is published during the period specified in article 21.

If publication takes place on the expiration of that period, the proprietors of the work through inheritance or under other title who publish the work or cause it to be published shall have this right.

Posthumous works shall be published separately, unless they constitute only a fragment of a previously published work. They cannot be attached to the previously published works of the same author unless the beneficiaries of the author's estate still enjoy the right of utilization of those works.

Art. 24. During the period provided for in article 21 the surviving spouse, against whom there is no legal separation order with force of *res judicata*, benefits, whatever the matrimonial regime, and independent of the rights of usufruct under article 767 of the Civil Code over other property in the estate, by the usufruct of the right of utilization of which the author has not disposed. However, if the author leaves heirs legally entitled to a share of the estate, this usufruct is reduced to the benefit of the heirs, in the proportions and with the distinctions established in articles 913 and 915 of the Civil Code.

The right expires in the event of re-marriage of the spouse.

Art. 25. Under all matrimonial regimes, notwithstanding all clauses to the contrary in the marriage contract, the right of publishing the work, establishing conditions for its utilization and defending its integrity, remains vested in the spouse who was the author of the work or the spouse to whom the right has been transferred. This right can neither form part of a dowry nor be acquired as common property or acquired jointly by the spouses.

Financial profits arising from the utilization of an intellectual work or from the assignment of all or part of the right of utilization are governed by the rules applying to movable property, according to the matrimonial regime adopted, but only when they have been acquired during the marriage; the same applies to savings from such income.

The provisions of the preceding paragraph shall not apply when the marriage was celebrated prior to the entry into force of this Act.

The legislative provisions relating to the contribution of the spouses to household expenses and to the property reserved to the wife are applicable to the financial gains to which the second paragraph of this article refers.

Part II

Utilization of the Author's Patrimonial Rights

Art. 26. The right of utilization vested in the author includes: the right of performance; the right of reproduction.

Art. 27. Performance consists in direct communication of the work to the public, in particular by: public recitation; operatic execution; dramatic performance; public presentation; diffusion, by any procedure whatsoever, of the words, sounds or images; public showing; transmission of a broadcast work by means of a loudspeaker or of a television screen situated in a public place.

Art. 28. Reproduction consists in the recording of the work by any processes making it possible to communicate it to the public indirectly.

It may be carried out, in particular, by printing, drawing, engraving, photography, moulding and any other process of the graphic and plastic arts and mechanical, cinematographic or tape recording.

In the case of works of architecture, reproduction shall also include repeated execution of an original plan or draft.

Art. 29. The incorporeal ownership defined in article 1 is independent of the ownership of the physical object.

The purchaser of that object does not by the fact of the purchase acquire any of the rights enunciated in this Act, except in the cases to which the second and third paragraphs of article 23 apply.

These rights vest in the person of the author or his beneficiaries who, however, cannot require the owner of the physical object to place that object at their disposal for the exercise of such rights. Nevertheless, in the case of flagrant abuse by the owner in preventing the exercise of the right of diffusion, a civil court may take any appropriate measure in conformity with the provisions of article 20.

Art. 30. The right of performance and the right of reproduction may be transferred free of charge or against remuneration.

The transfer of the right of performance does not include that of the right of reproduction.

The transfer of the right of reproduction does not include that of the right of representation.

When a contract provides for the transfer in full of one of the two rights to which this article refers, the scope of such assignment shall be confined to the forms of utilization specified in the contract.

Art. 31. Contracts concerning performance and publication defined in part III of this Act shall be recorded in writing. The same applies to free authorizations for performance.

In all other cases, the provisions of articles 1341 to 1348 of the Civil Code apply.

Transfer of author's rights is subject to the condition that each of the rights transferred shall be mentioned specifically in the deed of assignment and that the domain in which the assigned rights are to be utilized is defined in scope and purpose, place and duration.

When special circumstances so require, the contract may be validly concluded by an exchange of telegrams, on the condition that the form of utilization of the rights transferred is defined in conformity with the terms of the third paragraph of this article.

Art. 32. Notwithstanding the transfer of his right of utilization, the author, even after the publication of his work, has the right to revoke his decision or to withdraw the privilege from the transferee. He cannot, however, exercise that right without previously compensating the transferee for any prejudice which this revocation or withdrawal may cause him.

When, subsequent to the exercise of the right of revocation or withdrawal, the author decides to have his work published, he is required to make the first offer of the rights of utilization to the transferee whom he had originally chosen and under the conditions originally established.

Art. 33. The transfer in full of future works shall be invalid.

Art. 34. With regard to publication, a stipulation whereby the author shall grant a preferential right to a given publisher for the publication of his future works of an expressly determined character is allowable.

The right is limited, in connexion with each type of work, to five new works, appearing on or after the

date of signature of the publishing contract in respect of the first work, or to works produced by the author within the period of five years from the same date.

The publisher shall exercise the right accorded to him by informing the author of his decision in writing within a period of three months from the date of submission by the author of each manuscript in its final form.

When a publisher having a preferential right has successively refused two new works submitted by the author, such works being of the type prescribed in the contract, the author may immediately and without prior authorization regain his freedom in respect to any future works of that type which he may produce. However, he must previously repay any advances which he may have received from the first publisher in respect of his future work.

Art. 35. An author may transfer rights over his works in full or in part. Such transfer shall include participation by the author in a share of the receipts from the scale or utilization of the work.

Payment to the author may, however, be estimated in the form of a lump sum in the following cases:

1. It is not practicable to establish a basis for calculating the share due to the author;

2. There are no means of verifying whether the full amount of the share is being paid;

3. The cost of the operations of calculation and verification would be out of proportion to the expected results;

4. The nature or conditions of utilization make it impossible to apply the rule of proportionate remuneration, either because the author's contribution is not an essential element in the intellectual creation of the work, or because the utilization of the work is no more than accessory to the object utilized.

At the request of the author the royalties from contracts in force may be converted into annual lump sum payments over a period to be determined between the parties.

Art. 36. With regard to published books, the author's remuneration may also take the form of a lump sum for the first edition, subject to his formal agreement, in the cases of:

Scientific and technical works;

Anthologies and encyclopaedias;

Prefaces, annotations, forwords, introductions;

Illustrations of a work;

Limited de luxe editions;

Books of prayers;

Translations, if the translator so requests;

Cheap popular editions;

Cheap children's books.

Transfers of rights to or by a person or undertaking established abroad may also be made against the payment of a lump sum.

With regard to intellectual works published in newspapers and periodicals of all kinds and by press agencies, the remuneration of the author, when he is bound by a contract for the hire of works or services to the news agency, may also take the form of a lump sum. In respect of all works so published in a newspaper or periodical, the auther retains, in the absence of any stipulation to the contrary, the right of reproduction and of utilization in any form, provided that such reproduction or utilization does not constitute competition with the newspaper or periodical concerned.

The author alone has the right to compile a collection of his articles or commentaries and to publish them or authorize their publication in such form.

Art. 37. In the case of transfer of the right of utilization, when the author has suffered prejudice equal to more than seven-twelfths due to a burdensome contract or to underestimation of the receipts derived from the work, he may apply for the revision of the conditions of payment in the contract.

Such application can be made only if the work has been transferred against the payment of a lump sum.

The damages suffered will be estimated taking into account the full extent of the utilization by the transferee of the works of the author claiming such damages.

Art. 38. Any clause in a deed of transfer conferring the right of utilizing the work in a form not foreseeable or not foreseen at the date of the contract must state so expressly and must prescribe royalties in proportion to the receipts from such utilization.

Art. 39. In the case of a part transfer, the beneficiary takes the place of the author in the exercise of the rights transferred, in the circumstances, within the limitations and for the period prescribed in the contract, and on condition that he accounts therefor.

Art. 40. Any performance or reproduction in full or in part given or made without the consent of the author or his beneficiaries or assigns is illegal.

The same applies to translation, adaptation or transformation, arrangement and reproduction by any art or process whatsoever.

Art. 41. When a work has been made public, the author may not prohibit:

1. Private performance free of charge given exclusively within a family circle;

2. Copies or reproductions strictly reserved for the private use of the copyist and not intended for collective use, with the exception of copies of works of art to be used for purposes identical with those for which the original work was created;

3. The following, always provided that the name of the author and the origin are clearly indicated:

Summaries and brief quotations justified by critical, polemical, educational, scientific or information purposes of the work in which they are incorporated;

Press reviews;

The diffusion, even in entirety, through the press or radio broadcasts, as constituting news of statements directed to the public made before political, administrative, judicial or academic gatherings, at public political meetings and at official ceremonies;

4. Parody, pastiche and caricature, taking into account the applicable laws.

Art. 42. Authors of graphic and plastic works have, notwithstanding any transfer of the original, an inalienable right to a share of the proceeds from all sales of such works by public auction or through a dealer.

After the decease of the author, this right continues to the benefit of his heirs and, in respect of the usufruct mentioned in article 24, of his spouse, to the exclusion of all legatees and assigns, during the civil year in progress and for fifty years following.

The rate for the royalty is set at 3 per cent applicable only on selling prices of 10,000 francs and over.

This royalty is applicable in respect of the sale price of each work and of the full price without any deduction.

The circumstances in which authors may, in connexion with the sales mentioned in the first paragraph, exercise the rights recognized to them under this article shall be specified in an administrative regulation.

Part III

PERFORMING CONTRACT AND PUBLISHING CONTRACT

Chapter I. — Performing Contract

Art. 43. The performing contract is the contract whereby the author of an intellectual work and his beneficiaries authorize a physical or legal person to perform the said work subject to conditions prescribed by them.

The contract whereby a professional authors' association confers on a producer of entertainments the right to perform, for the duration of the contract, existing or future works comprising the repertoire of the said association subject to conditions prescribed by the author or his beneficiaries is known as a general performing contract.

In the cases to which the preceding paragraph refers, the provisions of article 33 shall not apply.

Art. 44. The performing contract is concluded for a limited period of time or for a specified number of public performances.

If there is no express stipulation concerning exclusive rights, no monopoly is conferred on the producer.

The exclusive rights granted by the author of a dramatic work shall be valid for not more than five years; interruption of performances for two consecutive years shall legally terminate these rights.

A producer cannot transfer the profits from his contract without formal consent in writing from the author or his representative.

Art. 45. Unless otherwise stipulated, authorization to broadcast the work by radio or to communicate it to the public by any other means of wireless diffusion, of signs, sounds or images, applies to all communications made by the body which has received the authorization.

In conformity with the provisions of article 30, authorization to broadcast by radio does not imply authorization to record the broadcast work by instruments recordings sound or images.

In exceptional cases, however, by reason of the national interest which they may represent or their documentary character, some recordings may be authorized. The appropriate procedure for this and for the use of the recorded matter shall be established by the parties, or in the absence of agreement, by a decision signed jointly by the Minister responsible for fine arts and the Minister responsible for information. Such recordings may be preserved in the official archives.

Authorization to broadcast by radio does not imply authorization to communicate the broadcast work by loudspeaker or by any other similar instrument transmitting signs, sounds or images.

Art. 46. The producer is required to inform the author or his representatives of the exact programme for the performance of the work before the public and to furnish a statement of receipts. Within the prescribed period of time he shall make over to the author or his representatives the amount of royalties stipulated.

Such royalties may, however, be reduced to the benefit of the *communes*, organizing local public festivities, and of associations for popular education approved by the Minister of National Education, in respect of meetings organized by them in connexion with their activities.

Art. 47. The producer shall ensure that public performances take place under such technical conditions as will guarantee respect for the intellectual and moral rights of the author.

Chapter II. — The Publishing Contract

Art. 48. The publishing contract is a contract whereby the author of an intellectual work or his beneficiaries transfer, subject to certain conditions, to a person known as the publisher the right to manufacture or to cause to be manufactured a number of copies of the work, on the understanding that he shall arrange for its publication and distribution.

Art. 49. A contract of publication at the author's risk does not constitute a publishing contract within the meaning of article 48.

Under such a contract, the author or his beneficiaries pay the publisher an agreed sum on the understanding that the publisher shall manufacture a

number of copies of the work, in the form and according to the mode of expression specified in the contract, and arrange for their publication and distribution.

Such a contract is a contract for the hire of the work and is governed by custom and usage and the provisions of articles 1787 *et seq.* of the Civil Code.

Art. 50. The form of contract known as a joint venture contract does not constitute a publishing contract within the meaning of article 48.

Under such contract, the author or his beneficiaries appoint a publisher to manufacture, at his own expense, a number of copies of the work, in the form and according to the mode of expression specified in the contract, and to arrange for its publication and distribution subject to a mutual contractual undertaking to share the profits and the losses of utilization in a predetermined proportion.

Such a contract constitutes a partnership within the meaning of articles 42 *et seq.* of the Commercial Code; it is governed by custom and usage.

Art. 51. The publishing contract must indicate the minimum number of copies for the first edition. This obligation, however, does not apply to contracts whereby the publisher guarantees a minimum of royalties to the author.

Art. 52. The contract may provide either for remuneration in proportion to the proceeds of utilization or, in the cases specified in articles 35 and 36, the payment of a lump sum.

The publisher is required to manufacture copies of the work or cause them to be manufactured under the conditions, in the form, and according to the mode of expression specified in the contract.

Art. 53. The author's personal consent in writing must be obtained.

Without prejudice to the provisions governing contracts entered into by minors and persons incapable of concluding a contract, consent is required even where the author is legally incapable, unless he is physically incapacitated from giving his consent.

The provisions of the preceding paragraph shall not apply when the publishing contract is signed by the author's beneficiaries.

Art. 54. The author must guarantee to the publisher the peaceful and, unless agreed otherwise, the exclusive exercise of the right transferred.

He is required to enforce respect for this right and to defend it against attempted infringement.

Art. 55. The author shall place the publisher in a position to manufacture and distribute copies of the work.

He shall transmit to the publisher, within the period specified in the contract, the article to be published in a form making regular manufacture possible.

Unless otherwise agreed or unless this is impossible for technical reasons, the article to be published provided by the author shall remain his property. The publisher shall be responsible for it for a period of one year after completion of the manufacture.

Art. 56. The publisher shall manufacture the edition in the agreed form.

He may not make any change in the work without written authorization from the author.

Unless agreed otherwise, he shall cause the name, pseudonym or mark of the author to be inscribed on each copy.

In the absence of a special agreement, the publisher shall produce the edition within the period which is customary in the profession.

In the case of a contract for a specified period of time, the rights of the transferee expire on the expiration of that period and notification is not required.

The publisher may, however, for three years after such date of expiration sell off at the regular price copies remaining in stock, unless the author prefers to buy up such copies at a price to be fixed by expert evaluation if amicable agreement is not reached. This right of the original publisher shall not prohibit the author from having a new edition published within a period of thirty months.

Art. 57. The publisher is required to ensure that the work is continuously and systematically utilized and is distributed to the trade in conformity with the usages of the profession.

Art. 58. For the purposes of the payment of royalties due to them for the last three years in respect of the transfer or utilization of their works as defined in article 3 of this Act, authors, composers and artists shall benefit from the privilege provided for in article 2101, paragraph 4, and article 2104 of the Civil Code.

Art. 59. The publisher is required to render an account of his operations.

The author may, if no special procedures are specified in the contract, require the publisher to produce, at least once a year, a statement indicating the number of copies manufactured during the fiscal year and giving the date and size of the editions and the number of copies in stock.

If there is no usage or provision to the contrary, the statement shall also indicate the number of copies sold by the publisher, the number of copies unfit for use or destroyed by accident or owing to *force majeure*, and the amount of royalties due or paid to the author.

Art. 60. The publisher is required to provide the author with any supplementary information necessary to prove the accuracy of his accounts.

In the event of failure by the publisher to supply the necessary evidence, he shall be required to do so by the courts in accordance with article 15 of the Commercial Code.

Art. 61. Neither bankruptcy nor judicial liquidation of the publishing house shall entail dissolution of the contract.

If the official receiver continues to operate the undertaking under the conditions specified in articles 61

et seq. of decree No. 55-583, of 20 May 1955, he shall be bound by all the obligations incumbent upon the publisher.

In the event of the sale of the business, within the meaning of article 62 of decree No. 55-583, of 20 May 1955, the purchaser shall in the same manner assume the obligations of the seller.

When the official receiver does not continue to operate the undertaking and no transfer of the said undertaking has been made within a period of one year from the declaration of bankruptcy, the publishing contract may be terminated at the request of the author.

The official receiver cannot sell manufactured copies at reduced prices nor dispose of them as prescribed in articles 61 and 62 of decree No. 55-583, of 20 May 1955, until he has given fifteen days' notice of his intention to the author by registered letter with a request for acknowledgement.

The author has a right of preemption on all or part of the copies. In the absence of agreement, the price of re-purchase shall be fixed by expert evaluation.

Art. 62. The publisher cannot transmit, either *gratis* or against remuneration, or in the form of capital contributed to a company, profits from the publishing contract to third persons, independent of his working business, without prior authorization from the author.

In the event of alienation of the business, where such alienation is likely gravely to prejudice the moral or material interests of the author, the author is entitled to reparation, which may include cancellation of the contract.

When the publishing business has been operated as a company or was jointly owned, assignment of the business to one of the former members or one of the joint owners as a consequence of liquidation or partition shall not in any case be regarded as a transfer.

Art. 63. The publishing contract is terminated independent of the cases provided for by ordinary law or by foregoing articles, if the publisher destroys all copies of the work.

A contract is automatically cancelled if, on formal notification by the author specifying a reasonable time-limit, the publisher has not published the work or if the first edition has been sold out, reprinted it.

An edition is held to be sold out when two orders to the publisher for copies have not been filled within three months.

In the event of the death of the author, if the work is not completed, the contract is terminated with regard to that part of the work which has not been completed, unless there is an agreement between the publisher and the author's beneficiaries.

Part IV

PROCEDURE AND PENALTIES

Chapter I. — Procedure

Art. 64. All actions relating to the application of the provisions of this Act which are within the competence of the judiciary shall be brought before the competent courts, without prejudice to the right of the injured party to institute proceedings before the criminal courts in accordance with ordinary law.

. . .

Chapter II. — Penalties

Art. 70. Article 425 of the Penal Code is completed as follows:

"Infringement of copyright in French territory, of works published in France or abroad, is punishable by a fine of 36,000 to 1,200,000 francs.

"The sale, export and import of offending works shall be subject to the same penalty."

Art. 71. Article 426 of the Penal Code is amended as follows:

"Any reproduction, performance or diffusion by any means whatsoever of an intellectual work in contravention of the rights of the author as defined and regulated by the law shall also constitute infringement of copyright."

. . .

Art. 73. Article 428 of the Penal Code is amended as follows:

"In all cases covered in articles 425, 426 and 427, the offenders shall in addition be sentenced to confiscation of sums equal to the amount of the shares in the proceeds of the illicit reproduction, performance or diffusion, and the confiscation of all equipment installed expressly for the purpose of such illicit reproduction and of all the copies and objects counterfeited."

. . .

Art. 74. Article 429 of the Penal Code is amended as follows:

"In the cases covered in articles 425, 426, 427 and 428, the equipment and the counterfeited copies, and the proceeds or shares of proceeds confiscated shall be made over to the author or to his beneficiaries to an amount sufficient to compensate them for such prejudice as they have suffered; the remainder due to them in compensation or the entire compensation if there has been no confiscation of equipment, counterfeited objects or proceeds, shall be settled by the customary procedure."

. . .

Part V

MISCELLANEOUS

. . .

Art. 79. The provisions of this Act shall come into force one year after the date of promulgation.

. . .

Art. 80. This Act shall be applied in Algeria, subject, if the author has retained his personal status, to the following conditions:

The right of communication to the public shall be exercised after the author's death by the executors appointed by him; in the absence of such executors or after their death and in the absence of any express wish of the author to the contrary, by his heirs in the order of succession determined by the personal status of the author.

The provisions of articles 24 and 25 shall not apply in that case.

Art. 81. This Act shall be applied in the Overseas Territories and the Cameroons on expiration of the period specified in the first paragraph of article 79.

. . .

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1957[1]

A SURVEY OF FEDERAL AND LAND LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS

CONTENTS

INTRODUCTION

During the year covered by this survey, as in the past, it was the aim of every department of the State to ensure the realization and practical implementation of human rights, which in the Federal Republic of Germany almost without exception enjoy constitutional sanction as fundamental rights. The main feature to be noted in this connexion is the particular care taken to protect the freedom of the citizen from the State and from state pressure. On the other hand, the war and its aftermath, and in particular the continuing division of Germany, have necessitated increasing government intervention in the social sphere with a view to coping with the most pressing social problems — a trend which has to no small extent been due to pressure from the general public. This contradiction between the citizen's unmistakable desire for freedom from the State and his simultaneous demand for government regulation and protection confronts all branches of the Government

[1] Report, prepared by Dr. Klaus J. Unverzagt, received through the courtesy of the office of the Permanent Government Councillor, Observer of the Federal Republic of Germany to the United Nations. Translation by the United Nations Secretariat.

ABBREVIATIONS

BGBl — *Bundesgesetzblatt* (official gazette of the Federal Republic)

GVBl. — *Gesetz-u. Verordnungsblätter der Länder* (journal of legislative provisions, regulations etc. of *Länder*) (B = Bremen, Bay = Bavaria, Bln = Berlin, BW = Baden-Württenberg, H = Hamburg, Hess = Hesse, N = Lower Saxony, NW = North Rhine-Westphalia, RP = Rhineland Palatinate, S = the Saar, SchH = Schleswig-Holstein)

GG — *Grundgesetz* (Basic law)

BGHZ — *Entscheidungen des Bundesgerichtshofes in Zivilsachen* (decisions of the Federal Court of Justice in civil actions)

BGHSt. — *Entscheidungen des Bundesgerichtshofes in Strafsachen* (decisions of the Federal Court of Justice in criminal cases)

BVerfGE — *Entscheidungen des Bundesverfassurgsgerichtes* (decisions of the Federal Constitutional Court)

BVerwGE — *Entscheidungen des Bundesverwaltungsgerichtes* (decisions of the Federal Administrative Court)

ESVGH — *Verwaltungsrechtsprechung in Deutschland* (ed. G. Ziegler) (decisions concerning administrative law in Germany)

DÖV — *Die Öffentliche Verwaltung* (public administration)

DVBl. — *Deutsches Verwaltungsblatt* (German Journal of Administration)

NJW — *Neue Juristische Wochenschrift*

In quotations, the figure before the stroke (/) indicates the year or the number of the volume; that after the stroke indicates the page. In quotations from the *Bundesgesetzblatt*, the figure I refers to part I and II to part II. Unless otherwise stated, references are to the 1957 series.

with a special problem, and one for which it is often very hard in practice to find a solution.

1. Protection of Human Dignity

In a fundamental decision dated 2 April 1957 (*BGHZ* 24/72), the Federal Court of Justice held that the general rights of the individual guaranteed by articles 1 and 2 of the Basic Law[1] applied not only as between the State and individuals but also in civil law — i.e., with respect to relations between individuals. In the particular case before it, the court ruled that the preservation of an individual's privacy by maintaining the secrecy of medical certificates relating to his state of health was one manifestation of the general rights of the individual.

In a decision dated 29 August 1957 (*ESVGH* 10/277), the Federal Administrative Court ruled that article 3 of the Act concerning change of name, under which a person's right freely to change his name is made subject to certain restrictions did not infringe the fundamental right to the free development of the personality guaranteed by the Basic Law. It based this decision on the legitimate interest of the State in continuity of family names from the standpoint of the determination of identity. The same court also ruled (16 May 1957, *BVerwGE* 5/79), in the case of a father whose divorced wife had instituted proceedings to change the name of their child (who had been placed in the mother's care), that while, by virtue of the equality of rights existing as between men and women, the father's consent was not necessary, he was nevertheless entitled on the basis of his general rights as an individual to the opportunity to state his views. This followed from the historical and sociological position of the father within the family.

In the light of the general principle of the protection of human dignity, the Federal Labour Court ruled (5 December 1957, *NJW* 1958/516) that an applicant for a job could be asked on employment for particulars of previous convictions only if and in so far as the nature of the job rendered this necessary. The Bavarian Constitutional Court held (3 October 1957, *ESVGH* 10/270) that no violation of the right of respect for human dignity was involved where a person sentenced to imprisonment was committed to a prison which also housed prisoners sentenced to hard labour.

The Federal Court of Justice ruled (23 October 1957, *NJW* 1958/800) that corporal punishment of a schoolboy by his teacher did not constitute a violation of the fundamental right to respect for general human dignity, since according to the prevailing public opinion in Germany such punishment was not dishonourable or degrading. A contrary interpretation, the court held, would necessarily affect the right of parents to punish their children, which, however, was undoubtedly justified in the light of current moral ideas.

Persons in public life need not in general submit to being photographed for publication, without their knowledge and against their will, in their home surroundings. The Federal Court of Justice made this ruling (10 July 1957, *BGHZ* 24/208) on the basis of the general rights of the individual, which protect all persons against any invasion of their privacy provided that no higher interests are involved. The fact that the general public is interested in pictures of prominent persons is not itself sufficient to justify the clandestine taking of photographs, intended for publication, in the private surroundings of the person concerned.

2. Protection against Discriminatory Treatment

(a) *Equal Treatment in General*

The Federal Constitutional Court ruled (12 December 1957, *BVerfGE* 7/194) that no person could demand the adjustment of a tax assessment which had become final before 21 February 1957 on the ground of the principle of equality (on 21 February 1957 the court had declared the joint assessment of married couples, which up to then had been legal and customary, to be unconstitutional). It was held that this involved no violation of the Basic Law, since the certainty of the law and justice were equally essential features of the rule of law, and the legislator was at liberty to decide to which of these two principles he wished to give preference; inequality thereby created did not offend against the principle of equality. The question whether the existence of different laws on a given matter within the same Land was an infringement of the principle of equality was decided by the Federal Administrative Court in the negative (13 June 1957, *DVBl* 1957/752). The Land legislator was free either to allow the existing law to stand or to unify it. Differences between the provisions applicable in the various parts of the Land, provided that there were logical and objective reasons for them, implied no infringement of the principle of equality.

The Federal Constitutional Court held (3 September 1957, *BVerfGE* 7/99) that there had been a violation of article 3 of the Basic Law where a publicly owned radio station had granted broadcasting time to some political parties for election propaganda but denied it to other parties, even though the Land electoral lists of the latter parties had been authorized. This followed from the principle of equal conditions of competition, which, however, did not imply that all parties were entitled to the same broadcasting time. On the same grounds, the court decided (21 February 1957, *BVerfGE* 6/273) that it was not permissible to treat as tax deductible the expenses only of parties which had gained a seat in the Bundestag or a Landtag (Diet), or of parties representing national minorities.

[1] Extracts from the Constitution (Basic Law) of the Federal Republic appear in the *Yearbook on Human Rights for 1949*, pp. 79–84.

The Federal Administrative Court held (14 November 1957, *BVerwGE* 5/531) that the building authorities were not bound by the principle of equality to take identical and immediate action in all cases of building abuses. In another decision (29 August 1957, *NJW* 1957/1647), the court ruled that the principle of equality did not justify the refusal, out of fear of appeal, of a permit for a building project which in itself did not create an unlawful situation. The intention of the principle of equality was not to deny the individual his rights but to prevent the arbitrary application of the law.

The Federal Constitutional Court ruled (21 March 1957, *BVerfGE* 6/290) that the principle of equality was not infringed by differences in the application of the equalization of burdens provisions to assets in Germany (under the Equalization of Burdens Act) and assets held by Germans in Switzerland (under the agreements of 7 March 1953 (*BGBl* II/15) and 26 August 1952 (*BGBl* 1953 II/17) between the Federal Republic and Switzerland). Property held abroad always involved both greater opportunities and greater risks; accordingly, differential treatment was within certain limits permissible.

(b) *Equal Treatment of the Sexes*

The year under review saw the enactment by the federal legislature of the fundamental Act relating to the equality of spouses in civil law (18 June 1957, *BGBl* I/609). Under article 117 of the Basic Law, any legislation conflicting with the equality of spouses had in any event ceased to have effect from 1 May 1953; however, there were no clear statutory provisions on the subject, and before the adoption of the Act the gap could be filled only by judicial decisions. The new measure did away with the privileged position of men under civil law. This necessarily entailed considerable changes in family and marriage law. Women were granted the right — hitherto denied to them as a matter of fundamental law — to participate in the administration of their property and the organization of their married life and their children's education. In such matters a wife now has fundamentally the same rights as her husband. Provision is made for resort in some cases to the Guardianship Court as the court of final instance. As regards property law, the Act gives the wife the right, on dissolution of a marriage, to one-half of the value of the property acquired during the marriage. A further principle now established is the joint obligation of marriage partners to support each other; under the relevant statutory provisions a wife is, in general, regarded as fulfilling her obligation in this respect by the performance of her household duties.

Before the entry into force of the Act a number of important rulings were given on the basis of article 3 (2) of the Basic Law (equal rights of men and women), some of them on matters not dealt with by the Act. Thus, the Land High Court of Bavaria held (12 December 1957, *NJW* 1958/260) that the former statutory right of the father to act as sole representative of his legitimate children was not inconsistent with the principle of quality, since in the practical application of the principle of equal rights, differences in natural circumstances and practical needs had to be taken into account. Any other arrangement, such as joint representation, or representation by each independently, failed to allow for these facts. There is explicit statutory provision to the effect that a child adopted by a wife alone retains the name borne by the adoptive mother before her marriage. Both the Federal Court of Justice (13 July 1957, *BGHZ* 25/163) and the Land High Court at Bremen (14 January 1957, *NJW* 1957/677) saw no conflict between this rule and the Basic Law; the child acquired a quasi-family relationship to the adoptive parent alone.

In a taxation case, the Federal Constitutional Court (17 January 1957, *BVerfGE* 6/55) laid it down as a general rule that the principle of the equal rights of married women implied that they must enjoy equal opportunities under the law of earning an income in the employment market. In the field of labour law, the Federal Labour Court held (23 March 1957, *NJW* 1957/1376) that the principle of equality embraced the principle of equal pay for men and women, and that this must be borne in mind by parties to wage agreements in fixing wage-rates. The Federal Finance Court (3 December 1957, *NJW* 1958/359) departed from its previous ruling that employment relationships between husband and wife could not on principle be recognized for taxation purposes and decided that each case will now be settled on its own merits. The Federal Social Court held (14 March 1957, *NJW* 1957/1251) that a provision in the Federal Pensions Act under which a widow is entitled to a pension in all cases, whereas a widower is granted a pension only in the event of want resulting from his inability to earn a livelihood was not in a similar category, and was accordingly not subject to the principle of equality.

In a decision of fundamental importance, the Federal Constitutional Court ruled (10 May 1957, *BVerfGE* 6/389) that the laws under which homosexuality between males is a criminal offence, although lesbianism is not an offence, did not violate the principle of equality, since in view of the physiological differences between the sexes the cases were not comparable. The Higher Administrative Court at Münster (26 February 1957, *DÖV* 1957/343) ruled on the basis of the principle of equality that article 6 of the Act concerning German Nationality, under which a non-German woman obtained German nationality through marriage with a German, had ceased to have effect. The Court held that this special provision benefited only the woman and was thus inconsistent with the principle of equal rights.

3. Protection of the Individual

(a) *Arbitrary Deprivation of Liberty*

The federal legislature enacted two major criminal statutes: the Military Penal Act of 30 March 1957 (*BGBl* I/298), which is limited to laying down rules and fixing punishment for criminal offences of a specifically military character not covered by the Penal Code, and provides that the principal offender — although not necessarily his accomplices, if any a must be a soldier; and the Fourth Criminal Law Amendment Act of 11 June 1957 (*BGBl* I/597), which contains provisions, together with the necessary procedural rules, relating, for example, to self-mutilation and to sabotage of, or treasonable activity against, military installations and property, designed to safeguard the national defence.

The Land High Court at Neustadt, considering the question of the permissible duration of custody pending deportation, decided (17 July 1957, *DVBl* 1957/690), in the absence of any statutory regulations in the matter, that a three-month period of custody was permissible, since the necessary international arrangements took some time and the judge would be nullifying the provisions of the police ordinance concerning aliens if he fixed too short a period. The Federal Administrative Court ruled (7 February 1957, *NJW* 1957/922) that the judicial proceedings provided for in article 104, paragraph 2, of the Basic Law in cases of deprivation of liberty were not rendered superfluous if the administrative authority revoked its previous order (in the given instance, for committal to an institution) while the judicial proceedings were in progress. It was clear from the constitutional provision in question that the administrative authority could not evade submitting the case to judicial decision, particularly since such a decision was of vital importance to the future of the individual concerned.

(b) *Physical Integrity*

The Stuttgart Administrative Court ruled (19 September 1957, *DÖV* 1957/159) that vaccination pursuant to the Vaccination Act of 8 April 1874 did not violate the fundamental right to physical integrity, since the Basic Law sanctioned statutorily authorized cases of interference with that right and the medical reservation did not infringe its essential content.

The Bavarian Constitutional Court held (19 December 1957, *ESVGH* 10/391) that the right to physical integrity was protected under the constitution, even though the Bavarian Constitution contained no express provision to that effect, wherever interference with it might constitute an infringement of the expressly protected rights of human dignity, freedom of action and personal freedom. These rights were also enjoyed by mentally infirm persons. Their essential content was not infringed by the provisions for compulsory treatment included in the Custody Act, since such treatment was justified in the public interest and that of the patient.

The Federal Court of Justice ruled (23 October 1957, *NJW* 1958/800) that the corporal punishment of a pupil by his teacher was not a violation of the right to physical integrity, since that fundamental right could be invoked only in cases of grave infringement.

(c) *Private Life, Family, Honour, Reputation*

The Bremen Land Social Court ruled (2 May 1957, *NJW* 1958/278) that the constitutionally guaranteed principle of the dignity of man and the fundamental right to the free development of the personality protected the individual against unauthorized interference with his privacy by others. In the view of the court, the right to privacy extended to facts whose disclosure could objectively be judged to be against the interest of the person concerned as damaging to his honour, reputation and social standing.

Among the laws enacted to protect the family was the Women Civil Servants Indemnification Act of 5 March 1957 (*GVBl* 1957/18), which deals with settlement claims by women civil servants on or before marriage; the Act of 27 July 1957 Amending and Supplementing the Provisions of the Family Allowances Acts (*BGBl* I/1061); and the Order of 14 March 1957 Implementing the Suplementary Family Allowances Act (*BGBl* I/268). The Act of 27 July 1957 Amending the Act for the Protection of Youth in Public Places (*BGBl* I/1058) provided additional protection for young people.

In a decision of fundamental importance, the Federal Constitutional Court ruled (17 January 1957, *BVerfGE* 6/55) that the purpose of the guarantee of marriage and the family embodied in the Basic Law was not only to protect those particular spheres of life, both in themselves and as social institutions; it went further, setting up a fundamental rule — i.e., a binding statement of values applicable to the entire body of private and public law relating to marriage and the family, and requiring the legislator to eschew intrusive state intervention of any kind in the sphere of marriage and the family (cf. also, in this connexion, the same court's decision of 7 May 1957, *BVerfGE* 6/386). In the area of labour law, the Federal Labour Court ruled (10 May 1957, *NJW* 1957/1689) that "celibacy clauses" in labour contracts (i.e., clauses terminating employment if the employee married) were void, since the fundamental rights applied equally to private law relationships and such clauses were at variance with article 6 of the Basic Law, which provided for the protection of marriage. The Federal Administrative Court held (28 June 1957, *BVerwGE* 5/148) that the legal position taken by the Federal Equalization Office that a building loan might not be granted to a married applicant whose spouse had already received one was untenable in the light of the principle of the protection of marriage.

Defamatory statements have always been punishable under the Penal Code. The Land Court at Giessen ruled (12 June 1957, *NJW* 1957/1804) that, if in the course of a political dispute, a municipal party group publishes a statement in the press, a citizen who has been defamed there by may bring civil suit for retraction against any member of the group regardless of what part he played in drafting the statement, unless he has publicly repudiated it.

(d) *Freedom of Religion*

The Ratification Act of 26 July 1957 concerning Spiritual Ministration to Members of the Armed Forces (*BGBl* II/701) regulates the status and the system of organization of Protestant clergymen in the Bundeswehr. The agreement ratified by this Act guarantees soldiers the right to take part in church activities. At the Land level, various agreements were concluded between the State and the Protestant and Catholic Churches regulating relations between Church and State, and dealing to some extent with organizational matters (see the Act of 23 May 1957 Ratifying the Agreement between Land Schleswig-Holstein and the Land Protestant Church of Schleswig-Holstein, which entered into force on 29 June 1957; the Act of 26 September 1957 Ratifying the Agreement between Land North Rhine-Westphalia and the Protestant Churches of the Rhineland and Westphalia, *GVBl NW* 1957/249; the Act of 12 February 1957 Ratifying an Agreement between Land North Rhine-Westphalia and the Holy See, *GVBl NW* 1957/19). In Hamburg, the Order for the Protection of Holidays was amended and re-drafted (15 February 1957, *GVBl H* 1957/51).

4. Due Process

(a) *Before Civil and Administrative Courts*

Under the Judicial Assistants Act of 8 February 1957 (*BGBl* I/18), certain duties involving judicial administration and judicial formalities of a non-litigatious nature were transferred to specially trained senior officials in order to reduce the work-load of members of the judiciary. All decisions of judicial assistants are subject to appeal to the judge.

The Federal Constitutional Court ruled (21 March 1957, *ESVGH* 9/521) that legislation ratifying international treaties was subject to appeal on constitutional grounds, since ratification altered the character of a treaty and could impose obligations upon the individual citizen and even infringe his fundamental rights. The Higher Administrative Court at Münster held (14 March 1957, *DÖV* 1957/727) that cases involving ecclesiastical law could not be decided by civil action, since ecclesiastical law was part of public law. Nor, however, in view of the autonomous status of the churches, could internal church affairs be settled by administrative proceedings, the latter being available only in connexion with legal relationships which the State had established for the purpose of regulating areas of law affecting both Church and State.

The Federal Social Court held (20 February 1957, *NJW* 1957/1007) that, in erroneously denying the right of appeal in a case of fundamental importance, a social court had not removed the party concerned from the jurisdiction of his lawful judge, the action having not been taken arbitrarily. The Land High Court at Hamm ruled (5 April 1957, *NJW* 1957/1121) that an assistant lay assessor could not be generally excused in advance, for business reasons, from performing his office, subject to being available for court sessions on certain days of the week. The Land High Court at Karlsruhe held (3 April 1957, *NJW* 1957/1367) that a court consisting of two auxiliary judges (i.e., judges not appointed for life) was improperly constituted, since the court's composition afforded no guarantee of impartial, independent and equal justice. The Federal Court of Justice took a more lenient view, holding (12 July 1957, *NJW* 1957/1762) that the participation of two auxiliary judges in the deliberations of a collegial court did not in itself cause the court to be improperly constituted, provided that the president of the court presided at its sessions. The Federal Administrative Court, on the other hand, considered that an administrative court was improperly constituted even if a person attached to it as a scientific assistant took part in the Court's deliberations immediately preceding its decision (17 May 1957, *BVerwGE* 5/85).

The granting of a legal hearing is regarded by the courts as an essential requirement in judicial proceedings. The Federal Constitutional Court ruled (18 June 1957, *BVerfGE* 7/53) that a hearing must also be given in inquiry proceedings; a breach of article 103 of the Basic Law was committed where, in proceedings to challenge a child's legitimacy, the court, having exercised its *ex officio* powers of investigation in such cases, denied the child the benefit of poor persons' legal assistance facilities on the ground that the proceedings were frivolous. The court applied the same principle to the general field of civil procedure (24 July 1957, *BVerfGE* 7/95), holding that if, in complaint proceedings, a decision was to be altered to the disadvantage of the complainant, he must first be granted a hearing even if no express provision to that effect existed. Similarly, the Higher Administrative Court at Münster ruled (18 January 1957, *ESVGH* 9/943) that failure to grant a legal hearing in disciplinary proceedings constituted a serious procedural error. The Land High Court at Düsseldorf held (9 December 1957, *NJW* 1958/464) that denial of the right to sue *in forma pauperis* did not constitute denial of a legal hearing if the individual concerned had no prospect of winning his case. A party had a valid right to a hearing only if he was in a position to submit legally material argument. Special steps must be taken to determine whether the parties have an adequate command of the German

language, if there is reason to believe that they do not. If one of the parties is an alien of foreign tongue it cannot be assumed automatically that he has command of German (Federal Social Court, 7 March 1957, *NJW* 1957/1087). The Federal Court of Justice ruled (27 June 1957, *BGHZ* 25/60) that a decision in a case settled in written proceedings need not be published; no infringement of article 6, paragraph 1, second sentence, of the Convention for the Protection of Human Rights of 4 November 1950 (*BGBl* 1952, II/688) was involved since the Code of Civil Procedure guaranteed the fair conduct of such proceedings.

The Federal Administrative Court ruled (15 May 1957, *DÖV* 1957/889) that there was no breach of the rule against *reformatio in peius* where an administrative court, in upholding the legality of an administrative measure, adduced arguments previously rejected by the authority which had considered the objection or complaint, provided that the defendant had had the opportunity during the proceedings to state his views on them. The same court also held (10 September 1957, *ESVGH* 10/118) that the authority hearing the objection (Einspruch) had the right to alter the contested decision to the disadvantage of the defendant notwithstanding the rule against *reformatio in peius*, since it also had administrative authority in the matter and had the power to alter the decision independently of the objection proceedings.

It was held that failure to instruct a party concerning the legal remedies available to him could serve to prevent the normal expiration of a time-limit only if such instruction was required by statute, since no requirement of this kind existed under customary law (Federal Administrative Court, 29 August 1957, *ESVGH* 10/116). Where a person who has not received the requisite instruction concerning legal remedies lodges a complaint after two years have elapsed since notification of an order, he is normally to be regarded as having forfeited the right to take such action (Federal Administrative Court, 28 May 1957, *NJW* 1957/1292).

Two decisions of the Federal Administrative Court amplified and consolidated existing legal doctrine relating to the revocation of administrative orders favourable to the petitioner. The court held (28 June 1957 and 24 October 1957, *DÖV* 1957/911, *DVBl* 1957/285) that such orders were revocable in cases where the facts had been improperly judged as a result of incorrect or incomplete statements by the petitioner and an illegal administrative order had resulted. Whether or not the revocation should be retroactive, the court said, was to be decided in each instance in accordance with the legal content of the order and the grounds and purpose of the revocation. In some cases, however, where the administrative authority concerned had itself been grossly remiss in failing to ascertain the facts, the order could be irrevocable. It was at all times essential to determine which was the paramount interest: that of the party in the maintenance of the favourable order or that of the public in its revocation.

The Federal Constitutional Court ruled (21 July 1957, *DVBl* 1957/735), in keeping with prevailing doctrine, that recourse to the ultimate legal remedy of an appeal on constitutional grounds is justified only by direct encroachments on the part of the public authority, and not by internal administrative actions. The Federal Administrative Court confirmed another established principle in stating (11 February 1957, *DVBl* 1957/352) that the essential condition for an appeal was the existence of a grievance. That was the case only where the application had been rejected; the mere fact that the decision was based on argument other than that advanced in the application constituted no grievance.

(b) *Before Criminal Courts*

In the area of criminal law, the legislator had to deal with various problems connected with the establishment of the Bundeswehr. On 15 March 1957, the Code of Military Discipline (*BGBl* I/189) was enacted; this applies to military offences which are not covered by any criminal statute or for which the offender is tried in a criminal court but escapes punishment. Disciplinary punishments range from reprimands and fines to penalties affecting the offender's military career. They are imposed by the soldier's superior officer, whose decisions are subject to complaint and, if necessary, further complaint (weitere Beschwerde) before the High Military Court (Truppendienstgericht), which consists of a professional judge and two military assessors (cf. in this connexion the order of 29 April 1957, *BGBl* I/401). A further enactment, dated 30 March 1957, was the Introductory Act to the Military Penal Act (*BGBl* I/306), which makes certain procedural changes and adjustments in the Juvenile Courts Act, providing that the juvenile courts retain jurisdiction in cases involving soldiers under legal age. A Land code of discipline was enacted in the Rhineland-Palatinate on 14 January 1957 (*GVBl RP* 1957/3), and a code of discipline enacted in Hamburg on 18 October 1957 (*GVBl H* 1957/497).

On 8 June 1957, a German-Mexican agreement (concluded on 4 October and 18 December 1956) was published, providing for legal assistance between the two countries in all criminal cases, on a basis of reciprocity.

The principle of the rule of law (Rechtsstaatlichkeit) was further developed in a number of opinions. The Federal Court of Justice ruled (26 February 1957, *BGHSt* 10/137) that a criminal prosecution must be dropped if the offence is not defined with sufficient clarity in the committal for trial in conjunction with the indictment; the principle of the rule of law, the court held, is of greater importance than the punishment of a guilty person. The same court ruled (6 December 1957, *BGHSt* 11/88) that a court, in rendering judgement, could not unexpectedly con-

front the defendant with a fact for which he had not been adequately prepared either by the indictment and committal for trial or by the course of the trial itself. The Court of Appeal (Kammergericht) confirmed a generally recognized principle by ruling (1 April 1957, *NJW* 1957/921) that, in suits for damages just as in criminal proceedings, neither the obligation nor the onus of making a statement rested on the defendant; all incriminating circumstances and the defendant's guilt must be proven against him.

The principle that an act may be punished only if the law defined it as punishable before it was committed is laid down in the Basic Law (article 104, paragraph 2). The Land High Court at Celle held (7 January 1957, *NJW* 1957/642) that failure to carry out an obligation within the time-limit set by an administrative agency could not be regarded as a punishable administrative offence unless the agency could cite express legislative provision or other statutory authority to that effect. In view of the principle laid down in the Basic Law, neither customary law nor administrative practice could give rise to any contrary rule.

The right to a hearing was also held by the Federal Constitutional Court to apply in criminal cases; the right is infringed, the court ruled (1 October 1957, *BVerfGE* 7/109), if the respondent in complaint proceedings under the Code of Criminal Procedure is not granted a hearing before a decision adverse to him is rendered. Dealing with the same question, the Bavarian Constitutional Court held (25 January 1957, *EVSGH* 9/789) that, in conformity with this principle, the court is required to base its decision exclusively on facts and evidence on which the parties have had the opportunity to state their views, whether or not the Code of Criminal Procedure makes provision to this effect in the given case. In an interesting decision, the Federal Court of Justice ruled (22 November 1957, *BGHSt* 11/74) that the right to a legal hearing was not impaired where the judge in a court of first instance (Amtsgericht) started to draft his decision while the parties were still making their final statements, since the judge was still in a position to hear the statements. The mere fact that he conveyed the impression of inattentiveness was not enough; such an impression might be created at any time.

The principle of the lawful judge, also, was particularly stressed by the criminal courts. The Federal Court of Justice ruled (10 January 1957, *BGHSt* 10/74) that where a case had been tried by a juvenile court instead of by the competent jury court, the decision of the juvenile court was to be set aside even if the appeal did not call attention to the error, since it was a matter of higher legal interest that the superior court should decide. The same court also held (4 April 1957, *BGHSt* 10/179) that the president of a court could not assign a judge to a panel for predetermined sessions at which criminal cases were to be tried, or for particular cases. In another decision (5 November 1957, *BGHSt* 11/54), the Federal Court of Justice ruled that only sessions held in addition to regular sessions, not sessions held in place of them, could be regarded as extraordinary sessions (at which the law calls for the participation of lay assessors other than those who serve at the regular sessions). Finally, the Bremen Land High Court held (28 October 1957, *NJW* 1958/432) that any breach of the regulations relating to the lawful judge constituted absolute ground for appeal.

The Schleswig Land High Court found (5 September 1957, *NJW* 1958/112) that in pursuance of article 7 of the Transition Act, decisions by occupation courts, as also war crimes sentences, in general, had the same legal force and effect as decisions of German courts. The question of the date of limitation of prosecution must therefore be decided in accordance with German law. Under a provision of the Juvenile Courts Act, the public prosecutor may refrain from proceeding against a juvenile offender provided that the judge, at his suggestion, imposes certain conditions on the juvenile. The Federal Court of Justice ruled in this connexion (15 January 1957, *BGHSt* 10/104) that this did not imply any limitation of prosecution; only a final judicial decision could have that effect.

The Federal Court of Justice held (8 February 1957, *BGHSt* 10/202) that a defence counsel might refuse on principle to permit a tape recording of his final statement to be made for broadcasting purposes. Rejection by the court of his motion to that effect was prejudicial to the defence and constituted ground for appeal. If, however, the defence counsel nevertheless made his statement and lodged a procedural complaint, the latter could be upheld only if the court's error had demonstrably been responsible for the decision rendered — i.e., if as a result of it the exhaustiveness and pertinence of the statement had suffered. The Federal Court of Justice also ruled, in a decision of 9 October 1957 (*NJW* 1958/31), that a defendant could not be deemed to have waived his right to be assigned counsel if he made no objection to the court's failure to act on his application to that effect and did not renew the application during the trial. The Land High Court at Hamm ruled (3 September 1957, *NJW* 1958/34) that a procedural error constituting ground for appeal had been committed where the person responsible for the upbringing of a juvenile defendant and legally entitled to represent him had not, although present at the trial, been permitted to make a statement after the evidence had been taken; the person referred to, as well as the defendant, had the right to make a final statement.

Dealing with a case against a mixed group of juvenile and adult defendants which the court had tried *in camera* without considering whether this was necessary in the interest of the juveniles' moral development, the Federal Court of Justice ruled (23 January 1957, *BGHSt* 10/119) that no appeal could lie on the basis of this procedural error unless

there was also a substantive grievance. The court also held (3 April 1957, *BGHSt* 10/198) that where a juvenile defendant has lodged an admissible appeal against a decision of the juvenile court imposing disciplinary or educational measures, the appellate court may alter the measures if it upholds the verdict, but must comply with the rule against *reformatio in peius*.

5. Protection of Nationality, of Freedom of Movement and of the Right of Asylum

(a) *Nationality*

On 19 August 1957 (*BGBl* I/1251) the third federal Act concerning the settlement of questions of nationality was promulgated. Under this Act the alien wife of a German national is entitled to German naturalization. This also applies retroactively to cases pending since 1 April 1953. The Act also grants entitlement to German naturalization to victims of political persecution and their descendants who formerly possessed German nationality.

In a fundamental ruling of 27 February 1957 (*ESVGH* 9/766), the Federal Administrative Court held that a decision, pursuant to article 8 of the Reich and State Nationality Act, rejecting an application for naturalization was an administrative act which could be tested by administrative proceedings. The court thereby rejected the view held by some that the granting of naturalization is an act of grace not subject to the jurisdiction of the courts. It conceded that the powers granted to the administrative authority were very far-reaching and justified the latter's coming to its decision on the basis solely of the State's interest in the naturalization. However, the authority must determine the relevant facts correctly, and must not be influenced by unobjective considerations. Under article 116 of the Basic Law, German nationality extends to persons accepted in the territory of the German Reich, as it existed on 31 December 1937, as refugees or expellees of German ethnic stock, or as the spouses or descendants of such persons. The Administrative Court at Bebenhausen ruled (29 January 1955, *DÖV* 1957/379) in this connexion that the idea of "acceptance" necessitated some action by a German or other authority authorizing the person concerned, as an expellee or refugee, to settle permanently in Germany. In addition, the person's status as an expellee must have been terminated by such acceptance.

(b) *Freedom of Movement; Freedom to leave the Country; the Law relating to Passports*

Under the Basic Law (article 11), all Germans enjoy the fundamental right of freedom of movement. The Federal Administrative Court ruled (13 Februgry 1957, *DÖV* 1958/431) that article 1 of the Emeraency Admission Act, which limits this right, is to be interpreted in a very restricted sense; accordingly, the special residence permit required under the Act is not necessary where the person concerned has made only a short temporary stay in the Soviet zone of occupation. In a decision of 3 April 1957 (*BVerwGE* 5/31) the same court held that an immigrant from the Soviet zone of occupation has no right to the review of his application for emergency admission on political grounds if he is granted a residence permit on other grounds (e.g., in accordance with the right of freedom of movement guaranteed by article 11 of the Basic Law). In the event of a dispute, the administrative authority must prove the existence of the sole ground on which the right of freedom of movement may be restricted — the absence of an adequate basis of existence. An adequate basis of existence cannot be said to be absent if the immigrant is merely in temporary need of assistance within the meaning of the social welfare legislation. In particular, lack of lodging offers no conclusive evidence of the absence of an adequate basis of existence. The Federal Constitutional Court ruled (16 January 1957, *BVerfGE* 6/32) that the right to freedom of movement set forth in the Basic Law did not include the right to leave the federal territory. The right to leave the country was merely a derivative of the right of general freedom of action guaranteed by article 2 of the Basic Law subject to the constitutional order. The constitutional order was the general body of rules formally and materially consistent with the Constitution. The legislative provision under which a passport might be denied was not at variance with the Basic Law. The Federal Administrative Court held (1 March 1957, *BVerwGE* 4/309) that foreign refugees entitled, pursuant to the Asylum Order of 6 January 1953 (*BGBl* I/3), to recognition as refugees within the meaning of the Convention relating to the Status of Refugees of 28 July 1951 have a legal right, enforceable in the administrative courts, to be furnished with the requisite international travel documents.

(c) *The Right of Asylum; Extradition*

The Federal Administrative Court (17 January 1957, *BVerwGE* 4/235) ruled that a person entitled to asylum under article 16 of the Basic Law as a victim of political persecution may be expelled from the country on the same conditions and subject to the same limitations as a political refugee under articles 32 and 33 of the Convention relating to the Status of Refugees. This results from the fact that there is no universally recognized body of rules with regard to the right of asylum, but only tentative steps in that direction, as in the Convention. The Convention provides that grounds of national security or public order may justify a person's expulsion or return to a territory in which he will not be persecuted on account of his race, religion or political opinions. The benefit of article 16 of the Basic Law may be claimed only on that basis. In another decision (2 September 1957, *DÖV* 57/349), the same court ruled that a stateless alien lost his legal status as such if he placed himself under the protection of his State of origin. This followed from the spirit and pur-

pose of the Act concerning the legal status of stateless aliens of 25 April 1951 (*BGBl* I/269)[1], in conjunction with the Convention relating to the Status of Refugees of 28 July 1951 (*BGBl* II/559). The Federal Administrative Court further held (17 January 1957, *BVerwGE* 4/238) that while a person could be regarded as a victim of political persecution within the meaning of article 16 of the Basic Law if, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion he was outside the country of his nationality, not every form of persecution on account of political opinions bestowed a right to asylum, as for instance where the conduct abroad of the person concerned had imperilled the free democratic order, and criminal proceedings had been instituted against him on that ground.

6. Protection of Property

(a) *General*

Under the Act of 22 October 1957 concerning the insertion of article 135a in the Basic Law (*BGBl* I/1745), the legislator was authorized to provide by statute for the non-settlement, or the settlement only in part, of certain claims against the German Reich, Prussia and extinct legal entities, and against municipalities and Länder which had acted before 1 August 1945 under the instructions of the occupying power. Further rules dealing with the effects of the war on property were enacted in the Act of 5 November 1957 concerning the general settlement of damages caused by the war and the collapse of the German Reich (*BGBl* I/1747). The purpose of this Act is to dispose finally of claims against the German Reich, Prussia and the Autobahn enterprise. All claims not specifically referred to in the Act are declared to be extinct. On the other hand, no conclusive rule is laid down with regard to war damages, and, in particular, it is specifically provided that the Act does not cover, for example, restitution cases and damages sustained by individuals in connexion with reparation and restitution measures.

Under article 14 of the Basic Law and various similar provisions in the constitutions of the Länder, property is protected by constitutional safeguards in the Federal Republic and may be expropriated only against compensation, the nature and extent of which must be regulated by law. So far as concerns the explicit fixing of the amount of compensation, a different situation applies only in cases covered by rules antedating the Basic Law, no constitutional provision of the kind described having then existed (cf. decision of the Federal Administrative Court of 13 March 1957, *BVerwGE* 4/332). The courts had occasion in a large number of cases to go into the definition of expropriation, which has an extremely broad meaning and does not merely imply the complete withdrawal of an asset. The Federal Administrative Court ruled (16 April 1957, *DÖV* 1957/667) that, in reviewing a partial expropriation, an administrative court must consider its effects on the rest of the owner's property, in order to be able to judge the seriousness of the action taken. The Federal Court of Justice held (28 October 1957, *BGHZ* 26/10) that a municipality was liable for compensation as having benefited by an expropriation if it had taken action equivalent to expropriation in its capacity as building authority and if no other party had derived any special benefit from the action.

(b) *Real Property*

The difficulties of interpretation involved in drawing a line between compensable expropriation and the non-compensable imposition of social restraints on property are always great; and this is particularly so in the sphere of building and real property law. The Federal Administrative Court ruled (27 June 1957, *BVerwGE* 5/143) that the declassification of former building land with a view to the preservation of the landscape may constitute an act of expropriation. The Federal Court of Justice held (10 December 1957, *DÖV* 1958/311) that a re-zoning order under which land formerly available for both business and residential building was re-classified as land for residential building only, with the result that an owner was prevented from restoring war-damaged installations to their original form, might constitute an act of compensable expropriation. On the other hand, the same court ruled (4 February 1957, *BGHZ* 23/235) that a property-owner was not, in general, entitled to the continuance of advantages derived from a specific location with respect to communication facilities and residential property under a particular building development plan. In support of this view it stated that the only person who had any claim was the one against whose property the administrative action had been taken and who had thus been required to make a special sacrifice. A person who was affected only in an indirect way by administrative action taken against another had no such claim. The Federal Court of Justice held (9 December 1957, *ESVGH* 10/470) that the denial of a building permit for reasons connected with urban or rural preservation did not, in general, constitute expropriation, provided that the existing use of the land in question was not affected. The application for a building permit merely caused the social obligations to which the property was subject to be brought out in concrete form.

Because of the serious shortage of land, special importance attaches in building and property law to redevelopment measures making new areas of land available for building. The Federal Administrative Court ruled (19 December 1957, *BVerwGE* 6/79) that the replotting of land for town-planning purposes under the North-Rhine-Westphalia Reconstruction Act did not in itself constitute expropriation, since the latter presupposed a conflict of interests between

[1] See *Yearbook on Human Rights for 1951*, pp. 107–109.

the community and the individual. Replotting did not involve any such conflict, for only through such measures could the individual himself be assured of being able to put his property to economic use. Even where replotting entailed the acquisition of land without compensation it did not on that account constitute expropriation, since the cost of acquiring necessary land can in any event be recovered by levying special assessments on the street abutters, and such assessments are certainly not expropriatory. Even if, under certain circumstances, replotting might imply measures of expropriation (a question which the court left undecided), no such measure of expropriation could possibly be said to exist where a person affected was fundamentally in agreement with the replotting plan but merely wished for a higher cash settlement; if the owner wished to claim the benefit of the constitutional safeguards of property he must reject the replotting plan in its entirety. The Higher Administrative Court at Münster ruled (23 January 1957, *DÖV* 1957/667) that a replotting order was expropriatory if the owners were compensated for their land in cash only. The Land High Court at Frankfurt declared constitutional (14 March 1957, *DVBl* 1957/543) a clause in a redevelopment act which provided that where land was opened up for building, and development was permitted free of any special assessment (on the abutting owners), the public authority was entitled, by way of return for this benefit, to acquire unincumbered and free of cost, for public roads and squares, an area up to 10 per cent of the total area of the land opened up; the case was merely one of exacting benefit for benefit.

The Federal Court of Justice gave a general ruling (15 April 1957, *DÖV* 1957/674) that the date on the basis of which compensation for expropriation should be assessed was to be deduced from the purpose of such compensation: to enable the person concerned to acquire new property in place of the expropriated property under the same price conditions. In a decision dated 27 February 1957 (*DÖV* 1957/675), the Federal Administrative Court expressed considerable doubts with regard to a statute of one of the Länder under which compensation for expropriation was to be assessed on the basis of a date twenty years past: this was hardly an objective yardstick for assessing the interests to be considered under article 14 of the Basic Law. In another decision (23 September 1957, *BGHZ* 25/225), the Federal Court of Justice held that where, from an objective point of view, the administrative authorities had fixed the amount of compensation too low, the date to be applied for purposes of assessment should be that on which the case had last been heard in court; this, at any rate, held good if some considerable time, during which prices had fluctuated, had passed since the statutory date (in this case the date of application).

(c) *Other Property Rights*

Another protected property right in respect of which competition must be paid if it is impaired in consequence of state action is health. Turning its back on decisions of the Reich Court, the Federal Court of Justice awarded compensation to a person who had sustained injury as the result of compulsory smallpox vaccination. Following on this decision, a number of far-reaching rulings were made. The Federal Court of Justice decided (6 May 1957, *ESVGH* 9/558) that a "sacrifice" claim for injuries suffered through vaccination was admissible in respect of a vaccination undergone in 1940. While such claims were subject, in general, to a period of limitation of three years, the limitation did not apply to the present case, since the statutory period did not begin to run until the date on which the aggrieved person was in a position to submit his claim. He had not been in a position to do so because, in view of the unfavourable interpretation of the law then prevailing, he had been justified in assuming that he would have no success in pressing the claim. In a further decision (18 March 1957, *BGHZ* 24/45), the same court ruled that a "sacrifice" claim was also admissible in respect of vaccination injuries which had not been sustained as a result of compulsory vaccination prescribed by statute. Even if, as in the case under review, the legislator had sought to bring about general protective vaccination not by statutory compulsion but by circulating pamphlets to influence the will and conscience of the public, the State remained liable in the event of injuries, since the freedom of choice open to the persons concerned had been purely formal. The same idea underlies another decision (26 September 1957, *BGHZ* 25/239), in which the Federal Court of Justice ruled that a "sacrifice" claim could be made on account of injuries caused by salvarsan during treatment for syphilis whether the treatment had been voluntary or compulsory. In support of that decision, the court invoked the concept of the rule of law and social justice, from which it followed that if a state injunction, while normally involving no danger, resulted in injury to an individual complying with it, he was entitled to compensation.

The concept of expropriation was also frequently tested in connexion with action involving encroachment in the sphere of business enterprise. The Federal Court of Justice held (30 September 1957, *BGHZ* 25/266) that an association (the Technical Inspection Society) which had been assigned certain statutory powers, subject to revocation, was entitled when these powers were withdrawn to claim compensation on the ground of interference in its business organization, since the performance of the duties assigned to it had entailed considerable expenditure which had no purpose if the powers in question were withdrawn. The Federal Social Court, too, ruled (19 March 1957, *DVBl* 1958/321) that a physician's licence to carry on a panel practice was protected by the constitutional safeguards under article 14 of the Basic Law. In principle, of course, rights under public law were not covered by the constitutional property safeguards. However, the situation must

differ to some extent where such rights involved significant elements of private law and where the profit derived from them depended decisively on the initiative and skill of the person concerned. In a case which came before the Federal Administrative Court, the right of the widow of a pharmacist under the Bavarian Pharmacies Act to continue her husband's business for one year after his death was challenged as an unconstitutional measure of expropriation. The court ruled (13 June 1957, *DVBl* 1957/752) that the provisions in question were not unconstitutional. Where, for reasons connected with public health, the rights and powers of the members of a particular profession were defined and limited, in general terms, by a statute, this did not constitute expropriation, and in the present case the widow had acquired only a right limited in time.

(d) *Property held Abroad and Measures taken by Foreign Powers*

Departing from a decision rendered by the Federal Administrative Court on 20 June 1956 (*DVBl* 1957/27), the Berlin Administrative Court ruled (23 February 1957, *DVBl* 1957/760) that a person affected by a requisition carried out by the occupying Power cannot make a "sacrifice" claim for suitable compensation against the German State, since the condition for such a claim is that the offending action was taken by the aggrieved party's own State. In a similar case, the Hamburg High Administrative Court came to the same conclusion in its ruling of 7 May 1957 (*DVBl* 1957/758). In further support of its decision it pointed out that the State could not be held responsible for acts of God, wars or revolutions. The issue was one connected with the equalization of burdens, and needed specific regulation by statute.

The Federal Court of Justice ruled (10 April 1957, *NJW* 1957/1070) that the transfer of the entire assets of a state bank situated in the Soviet occupation zone to the Land (which was the sole owner of the bank's original capital) was expropriatory since it had been effected without any proper liquidation safeguarding the rights of the creditors, the Land having taken over only the assets. In another decision (11 July 1957, *BGHZ* 25/134), the Federal Court of Justice ruled that the confiscation of German property in Czechoslovakia by an act of state sovereignty claimed to have extraterritorial effect was invalid in respect of property not actually seized. Accordingly, a Sudeten German corporation with assets in the Federal Republic continued to exist. Thus the expropriation of the former rights of members of the corporation was also invalid so far as concerned this portion of the assets, and the removal of members of the board of directors was, to that extent, inoperative in the territory of the Federal Republic. The Federal Constitutional Court ruled (21 March 1957, *BVerfGE* 6/291) on the constitutionality of agreements concluded between the Federal Republic and Switzerland (3 July 1953, *BGBl* II/15; 26 August 1952, *BGBl* 1953 II/17) concerning German assets in Switzerland, Swiss claims against the former German Reich, and matters relating to the Equalization of Burdens Act, with a view to carrying out the liquidation of German assets in Switzerland in accordance with the Washington agreement, declaring them constitutional from the point of view both of the principle of equality and of the constitutional safeguards of property. The court pointed out that it might be asked in the first place whether the liquidation should not be regarded as a measure of unavoidable necessity, rather than as one of expropriation. Even if it were regarded as expropriatory, it must be considered admissible, since it had been necessary in the general interest, particularly so far as concerned the clauses in the agreements providing for the release of small assets and for various clearing privileges. Moreover, the proceeds for the liquidation provided fair compensation, since the agreements contained protective clauses against under-valuation. In so far as the proceeds of the liquidation were subject to the substitute capital levy, the matter came under the Equalization of Burdens Act, which could not be challenged by invoking the constitutional safeguards of property. Nor did the waiver of diplomatic protection guaranteed by the Federal Republic under the agreements make the case one of expropriation, since there was no element of arbitrary action involved.

7. Political Activities and Freedom of Association

(a) *Free Expression of Opinion; the Right of Petition*

The Land High Court of Bavaria ruled (3 July 1957, *NJW* 1957/1607) that a statement or representation obviously intended as satirical was not libellous if the expression of opinion remaining after removal of the satirical wording was not, in substance, of a contemptuous nature and if the satirical representation did not, in its style and manner, express any disparagement of the person concerned. In determining the essential thought behind a satirical representation all circumstances affecting its interpretation must be taken into account.

A statement of opinion which is not objectively disparaging does not become criminally libelous as a result of misinterpretation even if the person expressing the opinion considered and countenanced the possibility of misunderstanding. The Land High Court at Celle held (7 November 1957, *NJW* 1958/72) that the Code of Criminal Procedure does not secure to the press an absolute right of professional secrecy similar to that accorded to ministers of religion, lawyers, doctors and deputies, or grant journalists an unqualified right to refuse to disclose communications made to them in confidence. The statutory right of refusal to testify concerning the identity of an informant, which may be invoked only where the responsible editor has been or may be convicted of an offence, does not (the court held) constitute

an inadmissible limitation of the fundamental right of freedom of speech established, subject to the provisions of the law, in article 5 of the Basic Law, since it does not infringe the essential content of that fundamental right. The Land High Court at Braunschweig ruled (31 January 1957, *NJW* 1957/759) that the imposition of a condition limiting the political activity of a person granted a conditional discharge (a ban on speaking or writing on political matters) is not inconsistent either with the fundamental right to the free development of personality or with the fundamental right to freedom of speech. Even during a period of conditional discharge an offender is in a special relationship based on compulsion, which bars him from the full enjoyment of fundamental rights. A condition imposed during the period of conditional discharge may not, of course, involve a greater limitation of fundamental rights than the deprivation of freedom inherent in conditional discharge. The court held that no such claim could be made in the case before it; (the court held) it was also necessary to bear in mind that the person concerned was being prevented from committing a further offence. The Land High Court at Hamm held, in a case (16 April 1957, *NJW* 1957/1081) in which a newspaper editor threatened to publish information about the operation of a mining enterprise unless it continued to advertise in his newspaper, that the threat of publishing true information also constituted serious injury within the meaning of the provisions of the penal code concerning intimidation.

The Constitutional Court of Bavaria held (15 May 1957, *DÖV* 1957/719) that the right of petition implies a personal right under public law to receive a reply, though not a statement of the reasons for the decision. The court also considered it compatible with the Land Constitution for a decision to be taken on a petition by a petitions committee and not by the Legislature as a whole.

(b) *Freedom of Assembly and Association*

Freedom of assembly and association is laid down as a fundamental right in the Basic Law. Only associations whose activities conflict with the criminal laws or are directed against the constitutional order or the concept of international understanding are prohibited. Political parties which seek to impair or destroy the free fundamental democratic order may be prohibited by the Federal Constitutional Court. By a judgement dated 17 August 1956, this court dissolved the Communist Party.[1] When the Saar territory was incorporated in the Federal Republic on 1 January 1957, it became necessary to decide whether the judgement was applicable to the Communist Party in the Saar. The Federal Constitutional Court ruled (21 March 1957, *DÖV* 1957, p. 479) that it was, on the ground that its judgement dissolving the party applied to the territory under the sovereignty of the Federal Republic, and that the Communist Party in the Saar was to be regarded as a substitute organization for the dissolved party, a substitute organization being defined as one which pursues the same objectives as the dissolved party. In an interesting decision (28 November 1957, *DÖV* 1958/85), the Administrative Court at Stuttgart considered the question whether a local association of voters which, after the dissolution of the Communist Party, consistently nominated Communist candidates was a substitute organization for a prohibited party and therefore unconstitutional. The court ruled in the negative, and held that the question whether an organization is pursuing illegal objectives must be decided separately in each individual case. A preponderance of former members of the German Communist Party among the candidates nominated by an organization does not constitute conclusive proof in this respect, and the organization must be given the benefit of any remaining doubt.

Under the Federal Constitutional Court Act, any person whose basic rights have been infringed may lodge a complaint on constitutional grounds after the exhaustion of other legal remedies. The Federal Constitutional Court took the view (14 May 1957, *DÖV* 1957/481) that the question whether the prohibition of a representative's party entailed the loss of his seat was a matter of the representative's constitutional status and not of his fundamental rights, so that he was not entitled to lodge a complaint on constitutional grounds.

8. Suffrage and the Right of Self-Determination

On 16 May 1957, the federal legislature passed the Federal Elections Ordinance (*BGBl* I/441), containing detailed provisions concerning electoral bodies, electoral districts and electoral procedure. In Bavaria, the Land Elections Amendment Act, the District Elections Act and the Municipal Elections Act of 15 July 1957 (*GVBl* Bay. 1957/160) provided that members of a party declared unconstitutional by the Federal Constitutional Court should lose their seats in Land, district and municipal bodies.

In a ruling of 5 January 1957 (*NJW* 1957/666), the Bremen State Court held that the Federal Constitutional Court's decision of 17 August 1956 concerning the German Communist Party has no binding force with regard to the forfeiture by Communist representatives of their seats in the Bremen Land Diet (Landesbürgerschaft). However, the decisions of the Federal Constitutional Court, by virtue of being federal law, have the effect of supplementing article 80 of the Bremen Constitution, under which a deputy may lose his seat as a result either of resignation or disqualification; the extinction of a deputy's mandate under the terms of the Bremen Elections Act is not, therefore, unconstitutional. The opposite point of view was expressed in a minority opinion attached to the ruling. The Federal Administrative Court at

[1] See *Yearbook on Human Rights for 1956*, p. 84.

Stuttgart ruled (28 November 1957, *DÖV* 1958/85) that refusal to admit a candidature always constitutes an infringement of essential provisions governing election preparations, the non-observance of which justifies the institution of invalidation proceedings. Such an infringement occurs where rules indispensable to orderly elections or rules the non-observance of which must be regarded as liable to vitiate the election results are not complied with.

The Federal Administrative Court ruled (3 July 1957, *BVerfGE* 7/63) that the system of fixed lists provided for in the Federal Elections Act of 7 May 1956[1] does not conflict with the principle of free, direct and equal suffrage. The provision of the Federal Elections Act under which a person who has subsequently left the party in question may not be considered as a substitute for an elected representative whose seat has become vacant is not, the court held, a violation of the principle of direct suffrage. Direct suffrage is ensured by a system under which a vote may be cast for candidates who either have been or may be specified and under which there is no intermediate electoral body which selects the deputy at its discretion. The principle of free suffrage means only that voting shall not be subject to external compulsion, not that the voter is free to make substitutions in an electoral list. The principle of equal suffrage merely implies that each vote cast shall have the same weight and that everyone may cast a vote. On the other hand, the court held (9 July 1957, *BVerfGE* 7/77) that the provision of the Schleswig-Holstein Municipal and District Elections Act whereby the order of precedence in which substitutes are taken from an established list to fill the vacant seat of an elected representative may be arbitrarily determined by the party concerned conflicts with the principle of direct suffrage and is therefore invalid. Under the Federal Elections Act of 1956, each voter has two votes, the first of which may be cast for the locally nominated candidates and the second for the Land lists submitted by the parties. Article 6 of the Act provides that representation on the basis of the Land lists shall be restricted to those parties which have received at least five per cent of the second-ballot votes or at least three of whose candidates have been elected by direct vote. This restriction does not apply to ethnic minorities. The Federal Constitutional Court ruled (23 January 1957, *BVerfGE* 6/84) that this provision does not infringe article 3 of the Basic Law and the other constitutional guarantees of equal suffrage. It is permissible to make appropriate distinctions, since it is a legitimate objective of the legislator to create a legislature which is able to operate effectively and is unhampered by splinter parties. The five per cent clause is therefore unobjectionable. On the other hand, although the provision concerning three directly elected representatives admittedly represents a form of discrimination, it is justified by the unimpugnable principle of direct suffrage. Similarly, the provision concerning ethnic minorities must be regarded as justified on the basis of international law and the interests of foreign States. The federal legislator, as a unitary body, is not required to apply federal principles in framing legislation concerning elections to the Bundestag in order to ensure that the Land parties are represented. In a decision of 23 January 1957 (*BVerfGE* 6/99), the Federal Constitutional Court took the same position with respect to a five per cent clause in a Municipal Elections Act.

The Federal Administrative Court held (20 December 1957, *DÖV* 1958/298) that the question whether an association is to be considered a political party must be decided by reference to its permanence, programme and articles of association and to the type and scale of its organization. In order to obtain recognition, an association must be organized on a permanent basis and have as its purpose the election, in accordance with democratic principles, of representatives to elective bodies, who will engage in political activities on the basis of a specific programme.

9. Protection of the Right to the Free Choice and Exercise of a Profession or Occupation

The Federal Administrative Court ruled (24 January 1957, *BVerwGE* 4/250) that, in principle, the practice of medicine is free and the only condition which may be placed on admission to the profession of health practitioner is possession of the necessary personal qualification. The court held that the provision of the Health Practitioners Act of 17 February 1939 under which it is, in theory, possible to refuse admission to new entrants, is unconstitutional and a violation of article 12 of the Basic Law. The Higher Administrative Court at Münster took the position (23 January 1957, *DVBl* 57/472) that the practice of medicine without a licence is contrary to public policy and may therefore be prohibited.

Under the Basic Law (article 7) the educational system is under the supervision of the State and private schools require state approval. In the opinion of the Constitutional Court of Bavaria (28 February 1957, *ESVGH* 9/629) this provision does not apply to vocational training establishments, which should rather be considered as falling within the scope of article 12 of the Basic Law (free choice and exercise of an occupation or profession). The court held that the distinguishing features of a school are the possession of disciplinary powers by the teaching staff, a longer course of instruction, the provision of education directed towards the all-round development of the student's personality and the utilization of the student's full working capacity.

The Federal Administrative Court held (21 November 1957, *BVerwGE* 6/13) that the provisions of an ordinance concerning legal training which established an age-limit for entry into the judicial preparatory service (Vorbereitungsdienst) and stipulated that

[1] See *Yearbook on Human Rights for 1956*, p. 85.

the first state legal examination must be taken in the Land concerned encroached upon the right to the free choice of a profession. On the other hand, the Higher Administrative Court at Coblenz held (20 July 1957, *DVBl* 58/106) that the dismissal of a junior attorney (Referendar) from the preparatory service for misconduct is not a violation of this principle. Despite the state monopoly of education, both admission to and retention in the service may be made dependent on personal qualifications.

In principle, fundamental rights cannot be claimed where public interests protected by law would thereby be jeopardized. According to a ruling given by the Federal Court of Justice (4 July 1957, *DVBl* 1957/802), it is not a violation of article 12 of the Basic Law for the legislator to require a person establishing or assuming the operation of a food shop to furnish proof of the necessary competence. Such a requirement does not conflict with the essential content of the fundamental right, since it is justified by the need to protect the general public. On the other hand, the Federal Administrative Court ruled, in two judgements (24 October 1957, *BVerwGE* 5/283 and 286), that it is unconstitutional to make admission to the occupations of dealer in base metals or pawnbroker conditional upon the existence of a need for additional entrants to these occupations. The question of need is not, the court said, a valid or necessary ground on which to invoke the power to restrict the right of free choice and exercise of an occupation which is inherent in the duty to protect the public.

In another ruling (29 May 1957, *BVerwGE* 5/95), the same court held that there is no statutory right to public appointment as an expert, since such appointment does not constitute admission to a profession but merely recognition of special qualifications.

Under the Penal Code, a person committing an offence in the exercise of his occupation or profession may, as a supplementary penalty, be prohibited from the exercise of that occupation or profession. The Supreme Land Court of Bavaria decided that an employer's breach of his obligation to pay employees' contributions into a health insurance fund does not justify such a prohibition, since the provision is solely intended to prevent misuse of a specific occupation or profession, whereas in the case in question the offender had merely failed to comply with general social insurance obligations not prescribed by law. In a decision of 29 June 1957 (*ESVG* 9/999), the Higher Administrative Court of Rheinland-Pfalz upheld the admissibility of the provision of article 35 of the Industrial Code under which permission to exercise the occupation of estate agent may be denied on the grounds of personal unreliability. An unreliable person is defined as one who offers no assurance of conducting his business in an orderly manner. Other factors to be considered in this connexion are whether the business experience of the person in question qualifies him to exercise the occupation and whether he is fitted to do so by character and personality.

10. Protection of Rights in Labour Legislation

The revised text of the Labour Exchange and Unemployment Insurance Act, which had become obscure as a result of much amendment and the changes of the postwar period, was promulgated on 3 April 1957 (*BGBl* I/322)[1]. The introduction of compulsory military service necessitated the Act of 30 March 1957 concerning the protection of employment during military service (*BGBl* I/293), which provides that the worker's contract of service is suspended during his military service and prohibits dismissal for a period before and after as well as during such service. The worker's social insurance must also be continued. The Illicit Work Act of 30 March 1957 (*BGBl* I/315) makes failure to report employment a punishable offence.

The Seamen's Act of 26 July 1957 (*BGBl* II/713)[2] regulates the rations, wages, leave and other conditions of employment of seamen on ships flying the German flag. It also contains penal provisions concerning offences specifically connected with seafaring (absence without leave, insubordination, breaches of the outfitting regulations, withholding of rations, etc.).

Announcement was made in the *Bundesgesetzblatt* of the entry into force of a series of International Labour Organisation conventions (Convention No. 10 concerning the Age for Admission of Children to Employment in Agriculture of 16 November 1921, *BGBl* II/1229; Convention No. 29 concerning Forced or Compulsory Labour, *BGBl* II/1694; Convention No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, *BGBl* II/1231; Convention No. 100 of 29 June 1951 concerning Equal Remuneration of Men and Women for Work of Equal Value, *BGBl* II/1232).

The Federal Public Service Act was passed on 18 September 1957 (*BGBl* I/1337) and the Bremen Public Service Act on 16 July 1957 (*GVBl* B 1957/91). A series of Wages and Salaries Acts were passed which effected a general improvement in the remuneration of public officials (Federal Wages and Salaries Act of 27 July 1957, *BGBl* I/993; Hamburg Wages and Salaries Act of 1 March 1957, *GVBl* H 57/73; Rheinland-Pfalz Wages and Salaries Act of 22 July 1957, *GVBl* RP 57/121; Bremen Wages and Salaries Act of 16 July 1957, *GVBl* B 57/115). A number of Länder also enacted legislation regarding staff representation in public enterprises and corporate bodies subject to state supervision.

The Federal Labour Court ruled (8 February 1957, *NJW* 1957/647) that the contractural obligation not

[1] See International Labour Office: *Legislative Series* 1957 — Ger.F.R.3.

[2] See International Labour Office: *Legislative Series* 1957 — Ger.F.R.4.

to strike precludes the organization of a struggle to secure the premature termination of a collective agreement with a view to the conclusion of a better works agreement or individual agreements. A trade union which causes a strike in this way cannot rely on the argument that the strike would have occurred regardless of its action. In another judgement, the same court held (27 September 1957, *NJW* 1958/39) that an employee elected to the board of directors of an undertaking (under the Co-determination Act) has the same independent legal status as any other member of the board and is not the representative of the labour force. His employer may not therefore attempt to influence his activities on the board of directors.

The Act to provide Protection against Unwarranted Dismissal applies only to employees over twenty years of age. The Federal Labour Court ruled that the judge is bound by this age-limit. However, the dismissal of an employee shortly before his twentieth birthday may in certain circumstances constitute a breach of equity and good faith and the case may therefore be treated as if the employee were protected under the Act. Under the Works Organization Act, an employer must grant a hearing to the works council before dismissing an employee. The Federal Labour Court, in a judgement given on 20 September 1957 (*NJW* 1958/37), upheld its previous ruling that a dismissal is not legally invalidated by a failure to observe this provision. The employer may be penalized only for infringement of the Works Organization Act. In considering the provision that workers with long service may be dismissed only for urgent reasons, the same court held (8 October 1957, *NJW* 1958/316) that there is no rule of law which requires that these reasons must be of an impersonal nature. Nor, on the other hand, does the complete cessation of operations by the enterprise always constitute an urgent reason for dismissal. Each case must be decided on its merits in the light of all the circumstances.

Under the Disabled Persons Act, an official serving under a probationary appointment may be dismissed from the public service only after the Central Welfare Office has been granted a hearing on the matter. The Federal Administrative Court held (31 January 1957, *BVerwGE* 5/18) that this requirement is satisfied if the Central Welfare Office has been informed of the decision to dismiss the employee and of the grounds on which it is based, and has been given an opportunity to express its views on the matter. A written opinion or statement of consent is not necessary. The Federal Labour Court ruled (3 January 1957, *NJW* 1957/648) that the approval of the Central Welfare Office is required for dismissal during the period of protection laid down under the Disabled Persons Act, even if the period of notice expires after the period of protection. It is immaterial whether the employer knew that the employee was a disabled person.

In a decision of fundamental importance, the Federal Constitutional Court had already laid down the principle (*BVerfGE* 3/58) that all contractual obligations in respect of public officials were extinguished as from the date of surrender (8 May 1945). This principle was upheld in a recent decision (19 February 1957, *BVerfGE* 6/132).

11. Protection of the Right to Social Security and Welfare

A large number of measures were enacted to deal with the conditions created by the war and its aftermath, the most important being the new provisions relating to retirement pensions for wage earners, salaried employees and mine-workers — the Wage Earners' Pension Insurance (Reorganization) Act of 23 February 1957, *BGBl* I/45[1], the Salaried Employees' Pension Insurance (Reorganization) Act of 23 February 1957, *BGBl* I/88[1], and the Mine-Workers' Pension Insurance (Reorganization) Act of 23 February 1957, *BGBl* I/533. These measures resulted in a considerable improvement in social insurance benefits. The rate of benefit varies according to the previous earnings of the insured person and is also related to the current income of all insured persons so that pensioners share in any general rise in the standard of living. A further measure, the Act of 26 June 1957 to improve the economic protection of wage earners in the event of sickness (*BGBl* I/649)[2], provides for an increase in the cash sickness benefits payable during periods of sickness and for the payment of such benefits from the first day of incapacity (provided that the period of incapacity is at least two weeks). Reference should also be made to the Act of 27 July 1957 provisionally revising the cash benefits payable under the statutory workmen's compensation scheme (*BGBl* I/1071), and the Act of 27 July 1957 concerning the Provision of Old-age Pensions for Farmers (*BGBl* I/1063). The latter measure is based on the principle of compulsory insurability and provides for a system of uniform contributions and fixed benefits. The text of Act No. 273 concerning Family Allowances which came into force in the Saar territory on 1 April 1957 (*GVBl* S 1957/230) is modelled on the French system; under this Act, a compulsorily insurable wage earner receives tax-free allowances in respect of his wife and children, the entire cost of which is borne by the employer. International Labour Convention No. 102 concerning minimum standards of social security of 28 June 1952 was ratified on 18 September 1957 (*BGBl* II/1321).

A Social Assistance Act was passed in Hesse on 18 March 1957 (*GVBl* Hess. 1957/31) which, in addition to defining spheres of responsibility and adjusting social assistance benefits to current conditions, grants persons in need an enforceable right to assistance benefits in conformity with the decisions of the courts. In the Act of 27 February 1957 (*BGBl* I/147) concerning Assistance for Persons who are

[1] See International Labour Office: *Legislative Series* 1957 — Ger.F.R.1.

[2] See International Labour Office: *Legislative Series* 1957 — Ger.F.R.2.

or are liable to become Physically Handicapped, the legislator took account of the needs of persons with congenital disabilities and provided for various measures of prevention, rehabilitation and relief. The Public Officials (Prisoners of War) Emoluments Act was passed in Baden-Württemberg on 5 March 1957 (*GVBl* BW 1957/19). The sixth Act of 1 July 1957 amending and supplementing the Federal Welfare Act (*BGBl* I/661) and the Act of 26 July 1957 *BGBl* I/785) concerning assistance to ex-servicemen and their survivors provided for increased aid to beneficiaries.

It would take too long to enumerate the many laws and ordinances in which the legislator has sought to improve and extend arrangements for the indemnification of the victims of national socialist persecution (Reference is made also to the Federal Act of 19 July 1957 concerning the settlement of the financial obligations of the German Reich and other legal entities of similar status under the laws relating to restitution *BGBl* I/734).

The Act of 26 July 1957 to provide for the maintenance of the dependants of persons called up for compulsory military service (*BGBl* I/1046), which was necessitated by the introduction of compulsory military service, authorizes the payment of benefits based on the previous level of earnings from employment and the number of persons entitled to maintenance.

A large number of enactments were promulgated in connexion with the equalization of burdens all of which strengthened the rights of expellees and persons who suffered material losses as a result of the war. (Special reference is made to the eighth Act of 26 July 1957 amending the Equalization of Burdens Act, *BGBl* I/809, the second Act of 14 May 1957 amending the Refugee Relief Act, *BGBl* I/498, and the second Act of 27 July 1957 amending and supplementing the Federal Expellees Act, *BGBl* I/1207). The first Act of 13 March 1957 amending and supplementing the Act concerning Persons Imprisoned for Political Reasons in Areas outside the Federal Republic of Germany and Berlin (*BGBl* I/165) and the first Act of 3 October 1957 amending and supplementing the Federal Evacuees Act (*BGBl* I/1683) have improved conditions for the categories of persons concerned.

The Federal Court of Justice held (26 September 1957, *DÖV* 1957/868) that, in a State whose social system is based on the rule of law, civil servants responsible for the care of the socially under-privileged groups in the population are required, as part of their official duties, to do everything possible to assist such groups in securing and maintaining the rights and advantages to which they are entitled under the law. In an important decision the Bremen Land Social Court ruled (20 February 1957, *DVBl* 1957/876) that, in the particular circumstances of the case before it, considerations of social justice and equity precluded the Social Assistance Administration from rescinding a pension decision, although it was unquestionably wrong both in law and in fact.

In a decision of fundamental importance (24 June 1954, *DÖV* 1954/620), the Federal Administrative Court established the principle that a needy person has a legally enforceable right to social assistance. Basing itself on this ruling, the same court (3 April 1957, *BVerwGE* 5/27) took the view that a needy person entitled to maintenance has a claim to the retrospective payment of social assistance benefits with effect from the date of his application, even if it should subsequently not prove possible to make maintenance payments. The Higher Administrative Court at Berlin ruled (28 January 1957, *NJW* 1957/1046) that a husband or wife living in a common matrimonial household is not entitled to social assistance if the other spouse has an income in excess of the statutory limit for the rent subsidy. The same also applies to persons living in a relationship akin to marriage. The only circumstances in which that rule would not apply (the court held) would be where the needy person was not actually receiving any support.

The Repatriates Act provides for the payment of maintenance grants and compensation to persons detained by the victor powers for some time after the end of the war. The courts had to give many rulings on whether particular individuals were to be regarded as repatriates. The Federal Administrative Court held (8 July 1957, *DVBl* 1958/28) that a person who had been arrested and convicted in a court of law by the occupying power in 1949 for alleged offence committed before the end of the war had no claim under the Act. In another ruling (8 July 1957, *DVBl* 1958/29), the court decided that a person did not lose his legal status as a prisoner of war if the detaining power transferred him to a third power, which sentenced him in respect of an act committed before he was taken prisoner. The Federal Administrative Court ruled (15 May 1957, *BVerwGE* 5/64; 28 September 1957, *BVerwGE* 5/255) that Germans who fled or were evacuated to Denmark during the Second World War and were detained in camps there after the capitulation and persons affected by the so-called "specialist operation" (Spezialistenaktion) who were removed to the USSR for labour service towards the end of 1946 are not entitled to compensation as prisoners of war.

12. The Right to Education

Under the Basic Law, the final responsibility for cultural matters rests with the Länder. The Law merely establishes the general principle that the entire educational system is under the supervision of the State (article 7), while the rights of parents are set out in article 6.

In Hamburg, Bremen and Schleswig-Holstein new school laws have been enacted at various times on organizational questions, compulsory school atten-

dance and the educational programme. The general rule is twelve years' compulsory school attendance, nine years at a primary school and three at a vocational school, with the possibility of transfer to a secondary school after four or six years (for further details, reference should be made to the Act of 29 March 1957 amending and supplementing the Education Act of the Free Hanseatic City of Bremen, *GVBl* B 1957/35; the Act of 29 March 1957 amending the Education Act of the City of Hamburg, the Act of 29 March 1957 regulating the legal status of private educational establishments in Hamburg, *GVBl* 1957/207; and the Schleswig-Holstein School Maintenance and Administration Act of 28 March 1957, *GVBl* SchH 1957/47). Lower Saxony promulgated the Private School Act of 12 July 1957 (*GVBl* N 1957/81), under which private schools offering educational programmes similar to those of state schools must obtain official approval. Such approval must be granted if their standards are equal to those of state schools and they may then receive state subsidies. Other private schools are merely required to register. The Secondary School Regulations enacted in Bavaria on 17 May 1957 (*GVBl* Bay. 1957/105) contain, *inter alia*, a classification of schools, and lay down the requirements for entrance, promotion and admission to the matriculation examination (Reifeprüfung). In the Saar territory, Act No. 573 (University Act), which regulates the status and organization of the University and the legal position of the academic staff and the student body (self-administration), was promulgated on 26 March 1957 (*GVBl* S 1957/291). An order giving effect to the Retarded Children Education Act and regulating the conditions for admission to and placement in special schools for such children was published in the *Gesetz- und Verordnungsblatt* of Baden-Württemberg on 5 January 1957 (*GVBl* BW 1957/1). The legislation enacted in Baden-Württemberg also included the School Building Act of 29 April 1957 (*GVBl* BW 1957/39) and the School Film, Film-strip and Recording Equipment Act of 1 July 1957 (*GVBl* BW 1957/73).

In a fundamental decision, the Federal Constitutional Court ruled (26 March 1957, *BVerfGE* 6/309) that the Concordat made by the Reich in 1933 was legally valid and remained in force. The Federation was now a party to it in place of the Reich. As, however, the Länder were not subject to federal control on cultural matters, they were not bound to observe the terms of the concordat relating to education. The Federal Administrative Court ruled (in two judgements dated 29 June 1957, *BVerwGE* 5/153 and 164) that a decision on the admission of a child to a secondary school is an administrative act which may be contested in a suit brought before the administrative court. Although the rights of parents include the right to choose the kind of education that should be given to their children, the establishment of conditions of entry is nevertheless permissible. A rule providing for non-admission where a child is likely to impede the progress of his schoolfellows does not violate the rights of parents guaranteed in the Basic Law. On the other hand, the fundamental right to the free development of personality does not impose on the State any obligation to establish schools for children who are particularly gifted in a given sphere. The Higher Administrative Court at Lüneburg held (19 January 1957, *DVBl* 1958/105) that a child required to attend a primary school (Volksschule) has a right to be admitted to such a school. Similarly, a backward child has a right to be admitted to a special school for backward children. A child of more limited ability has, however, no claim to the establishment of a suitable special school or to the provision of special instruction. The Higher Administrative Court at Münster ruled (12 February 1957, *ESVGH* 9/891) that a decision to expel a child from a public secondary school as a disciplinary measure may be taken at the discretion of the teacher's conference as a whole. The child and those responsible for his education are entitled to institute legal proceedings against such a decision.

In an interesting decision, the Administrative Court at Frankfurt ruled (17 May 1957, *NJW* 1958/356) that, provided all other statutory requirements were met, a person who had obtained a bachelor's degree in commerce (Diplomkaufmann) had a personal right, under public law, to continued exemption from the payment of tuition fees for a subsequent course of study of industrial management with a view to obtaining a doctor's degree. This ruling was based on the Hesse Constitution, which establishes free education as a fundamental right. In the court's view, the doctorate represents the final stage in the educational process and a means of attaining an improved economic status.

The Higher Land Court at Koblenz held (8 November 1957, *NJW* 1958/951) that an action by persons exercising parental power to obtain an injunction against a third party associating with their child against their wishes is sustainable, if at all, only where there are compelling and substantial reasons for their opposition. If the minor daughter is determined to marry the respondent when she comes of age, a temporary injunction obtained against him serves no useful purpose in any case. The grounds given by the court for this departure from previous judicial decisions, which gave special protection to those responsible for the upbringing of minors, were that it is necessary to presuppose a larger measure of personal responsibility on the part of minors and that no one can be completely subject to parental control until he attains his majority.

13. Protection of Industrial Rights and Copyright

The Employees Inventions Act, promulgated on 25 July 1957 (*BGBl* I/756), establishes the principle that inventions made in the course of employment

are the property of the employer, who must reward the inventor. What are termed "free" inventions are the property of the employee, but the employer must be given an opportunity of acquiring them.

The Federal Court of Justice ruled (2 April 1957, *NJW* 1957/951) that the financial statement to be submitted by a person who has infringed a patent must include particulars of the turnover in the articles covered by the patent for examination by the owner of the patent. If it is necessary in this connexion to disclose the recipients of deliveries, the person who has infringed the patent may, in certain circumstances, in view of the state of business competition, apply for permission to furnish such information, at his own expense, to a third party, who must, however, be permitted to verify it. In another judgement, the Federal Court of Justice held (29 March 1957, *BGBHZ* 24/55) that the lay-out of a group of buildings in relation to each other and to their immediate environment may, in special cases, be considered capable of protection as a work of art within the meaning of the Copyright Act. The right to authorize the use of the work under the copyright laws cannot therefore be assigned except with the express consent of the parties to the agreement.

The instigation of a boycott against a business constitutes an infringement of the right to an organized and operating enterprise. It can be justified only in exceptional circumstances by the presence of legitimate interests and the principle of the maximum consideration for the rights of third parties must be observed. That principle also applies to cases in which the press calls for a boycott on social and ethical grounds (*BGH*, 10 May 1957; *NJW* 1957/1315).

In a decision dated 24 July 1957 (*NJW* 1958/17) concerning the use of the firm-name of an enterprise which had been expropriated without compensation in the Soviet Occupation Zone, the Federal Court of Justice held that the new legal entity which had been granted the old firm-name by public act was debarred, for reasons of public policy, from operating under the name in the Federal Republic so long as the former owner of the firm continued to operate the enterprise in the Federal Republic under his old firm-name.

14. International Agreements for the Protection of Human Rights

The Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952 came into force in the Federal Republic on 13 February 1957 (*BGBl* II/226). The International Sanitary Regulations of 25 May 1951 became effective in the Federal Republic on 17 April 1956 (*BGBl*II/10).

Of especial importance to Europe as a whole and hence to the Federal Republic of Germany are the treaties establishing the European Economic Community and the European Atomic Energy Community (between the Benelux countries, France, Italy and the Federal Republic), which were ratified by Parliament on 27 July 1957 (*BGBl* II/753). The European Common Market Treaty, with its protocols and special statutes, not only deals with purely economic questions relating to trade and agriculture such as the establishment of a customs union and the elimination of quantitative restrictions, but also provides for the gradual achievement of free movement of workers, the introduction of freedom of establishment of nationals of one State in the territory of another and the abolition of restrictions on the movements of capital. In addition to committing its signatories to a common commercial policy and to common economic planning, the Treaty is designed to improve workers' living and working conditions by appropriate measures with respect to labour legislation, vocational training, social security, accident prevention, health protection and freedom of association. The purpose of the European Social Fund, which was established at the same time, is to promote the geographical and occupational mobility of workers. The Treaty establishing the European Atomic Energy Community provides not only for the development of research and the dissemination of information but also for measures to protect the health of workers and of the general public. The Community is the sole proprietor of special fissionable materials, including materials coming from outside the Community. The rights of third parties are limited to the use and consumption of such materials.

GHANA

THE GHANA (CONSTITUTION) ORDER IN COUNCIL, 1957
of 22 February 1957[1]

Part I

PRELIMINARY

1. (1) In this order, unless the context otherwise requires:

. . .

"Citizen of Ghana" means any person who, by the law of Ghana, has the status of a citizen of Ghana and, pending the enactment of such a law, means a British subject or a British protected person;

. . .

"Meeting" means any sitting or sittings of the Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned *sine die* or at the conclusion of a session;

. . .

Part IV

PARLIAMENT

Parliament

20. (1) There shall be a Parliament in and for Ghana which shall consist of Her Majesty the Queen and the National Assembly.

. . .

Qualifications for Membership

24. Subject to the provisions of section 25 of this order, any person who

(*a*) Is a citizen of Ghana; and

(*b*) Is of the age of twenty-five years or upwards; and

(*c*) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly;

shall be qualified to be elected as a Member of Parliament, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Assembly.

Disqualifications for Members

25. No person shall be qualified to be elected as a Member of Parliament who

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

(*b*) Holds, or is acting in, any public office:

Provided that for the purposes of this paragraph the office of Minister or Parliamentary Secretary shall not be deemed to be a public office; or

(*c*) Holds the office of Speaker; or

(*d*) Is a party to, or is a partner in a firm which is a party to, any contract with the Government of Ghana for or on account of the public service, and has not, within one month before the day of election, published in the English language in the *Gazette* a notice setting out the nature of such contract, and his interest, or the interest of any such firm therein; or

(*e*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in Ghana; or

(*f*) Being a person possessed of professional qualifications, is disqualified (otherwise than at his own request) in Ghana, from practising his profession by order of any competent authority made in respect of him personally:

Provided that if five years or more have elapsed since the disqualification referred to in this paragraph, the person shall not be disqualified for membership of the Assembly by reason only of the provisions of this paragraph; or

(*g*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Ghana; or

(*h*) Has, in Ghana, been sentenced to death or to imprisonment (by whatever name called) for a term exceeding twelve months, or has been convicted of any offence involving dishonesty, and has not been granted a free pardon:

Provided that if five years or more have elapsed since the termination of the imprisonment or, in the case of conviction of an offence involving dishonesty in respect of which no sentence of imprisonment

[1] Text published as *Statutory Instruments*, 1957, No. 277, H.M.S.O., London. The order was made and laid before Parliament on 22 February 1957. All the provisions here quoted came into operation on the appointed day for the purposes of the Ghana Independence Act, 1957 — namely, 6 March 1957. Among the provisions revoked by section 3 of the order are those provisions of parts II, IV and V of the Gold Coast (Constitution) Order in Council, 1954, as amended, which appeared in *Yearbook on Human Rights for 1954*, pp. 352–4, and *for 1955, pp.* 306–7.

has been passed, since the conviction, the person shall not be disqualified from membership of the Assembly by reason only of such sentence or conviction; or

(*i*) Is not qualified to be registered as an elector under the provisions of any law for the time being in force in Ghana; or

(*j*) Is disqualified for election by any law for the time being in force in Ghana by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register; or

(*k*) Is disqualified for membership of the Assembly by any law for the time being in force in Ghana relating to offences connected with elections.

Tenure of Office of Members

26. (1) Every Member of Parliament shall in any case cease to be a Mmeber at the next dissolution of the Assembly after he has been elected or previously thereto if his seat shall become vacant under the provisions of this order.

(2) The seat of a Member of Parliament shall become vacant

(*a*) Upon his death; or

(*b*) If he shall be absent from two consecutive meetings of the Assembly, without having obtained from the Speaker, before the termination of either of such meetings, permission to be or to remain absent therefrom; or

(*c*) If he shall cease to be a citizen of Ghana; or shall take any oath, or make any declaration or acknowledgment, of allegiance, obedience or adherence to any foreign power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign power or State; or

(*d*) If he shall be appointed to, or to act in, any public office:

Provided that for the purposes of this paragraph the office of Minister or Parliamentary Secretary shall not be deemed to be a public office; or

(*e*) If he shall be elected to be Speaker; or

(*f*) If he shall become a party to any contract with the Government of Ghana for or on account of the public service, or if any firm in which he is a partner shall become a party to any such contract, or if he shall become a partner in a firm which is a party to any such contract:

Provided that, if in the circumstances it shall appear to them to be just so to do, the Assembly may by Act of Parliament exempt any Member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming interested in such contract as partner in a firm, disclose to the Speaker the nature of such contract and his interest or the interest of any such firm therein; or

(*g*) If he shall be adjudged or otherwise declared bankrupt under any law for the time being in force in Ghana; or

(*h*) If he shall, in Ghana, be sentenced by a court to death or to imprisonment (by whatever name called) for a term exceeding twelve months, or be convicted of any offence involving dishonesty; or

(*i*) If he shall become subject to any of the disqualifications specified in paragraphs (*f*), (*g*), (*i*), (*j*) or (*k*) of section 25 of this order.

(3) A Member of Parliament may, by writing under his hand addressed to the Speaker, resign his seat in the Assembly, and upon receipt of such resignation by the Speaker or Deputy Speaker, the seat of such Member shall become vacant.

(4) Any person whose seat in the Assembly has become vacant may, if qualified, again be elected as a Member of Parliament from time to time.

. . .

Part V

LEGISLATION AND PROCEDURE IN THE ASSEMBLY

Power to make Laws

31. (1) Subject to the provisions of this order, it shall be lawful for Parliament to make laws for the peace, order and good government of Ghana.

(2) No law shall make persons of any racial community liable to disabilities to which persons of other such communities are not made liable.

(3) Subject to such restrictions as may be imposed for the purposes of preserving public order, morality or health, no law shall deprive any person of his freedom of conscience or the right freely to profess, practise or propagate any religion.

(4) Any laws in contravention of subsection 2 or 3 of this section or section 34 of this order shall to the extent of such contravention, but not otherwise, be void.

(5) The Supreme Court shall have original jurisdiction in all proceedings in which the validity of any law is called in question and if any such question arises in any lower court, the proceedings in that court shall be stayed and the issue transferred to the Supreme Court for decision.

. . .

Compulsory Acquisition of Property

34. (1) No property, movable or immovable, shall be taken possession of or acquired compulsorily except by or under the provisions of a law which, of itself or when read with any other law in force in Ghana

(*a*) Requires the payment of adequate compensation therefor;

(*b*) Gives to any person claiming such compensation a right of access, for the determination of his

rights (if any), including the amount of compensation, to the Supreme Court of Ghana.

(*c*) Gives to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that court sitting as a court of original jurisdiction.

(2) (*a*) Nothing in this section shall affect the operation of any existing law.

(*b*) In this subsection the expression "existing law" means a law in force in Ghana prior to the date of commencement of this section, and includes a law made after that date which amends or replaces any such law as aforesaid (or such a law as from time to time amended or replaced in the manner described in this paragraph) and which does not:

(i) Add to the kinds of property which may be taken possession of or acquired; or

(ii) Add to the purposes for which or circumstances in which such property may be taken possession of or acquired; or

(iii) Make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person owning or interested in the property; or

(iv) Deprive any person of any right such as is mentioned in paragraph (*b*) or paragraph (*c*) or subsection 1 of this section.

(3) It is hereby declared that nothing in this section shall be construed as affecting any general law

(*a*) For the imposition or enforcement of any tax, rate or due; or

(*b*) For the imposition of penalties or forfeitures for breach of the law whether under civil process of after conviction of an offence; or

(*c*) Relating to leases, tenancies, mortgages. charges, bills of sale or any other rights or obligations arising out of contracts; or

(*d*) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of persons of unsound mind, of deceased persons, and of companies, other corporate bodies and unincorporated societies in the course of being wound up; or

(*e*) Relating to execution of judgements or orders of courts; or

(*f*) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals; or

(*g*) Relating to enemy property; or

(*h*) Relating to trusts and trustees; or

(*i*) Relating to the limitation of actions; or

(*j*) Relating to property vested in statutory corporations; or

(*k*) Relating to the temporary taking of possession of property for the purposes of any examination, investigation or inquiry; or

(*l*) Providing for the carrying out of work on land for the purpose of soil conservation.

(4) The provisions of this section shall apply to the compulsory taking of possession or acquisition of property, movable or immovable, by or on behalf of the Crown.

. . .

Part X

ELECTIONS AND THE DELIMITATION OF ELECTORAL DISTRICTS

Voting at Elections for Members of Parliament

69. (1) Voting for the election of Members of Parliament shall be by secret ballot on the basis of adult suffrage.

(2) Every citizen of Ghana, without distinction of religion, race or sex, who

(*a*) Is not less than twenty-one years of age; and

(*b*) Is subject to no legal incapacity as defined by Act of Parliament on the grounds of non-residence, unsoundness of mind, crime, or corrupt or illegal practices or non-payment of rates or taxes; and

(*c*) Either owns immovable property within, or has, for a period of not less than six months out of the twelve months preceding the date of an application to be registered, resided within, the electoral district in respect of which application is made,

shall be entitled to be registered as an elector for the election of Members of Parliament.

. . .

THE AVOIDANCE OF DISCRIMINATION ACT, 1957

No. 38 of 1957, assented to on 30 December 1957[1]

2. (1) In this Act, unless the context otherwise requires,

"Community" includes any body or group of persons, having a common tribal or racial origin or because of their birth or upbringing in any region, locality or place whether in Ghana or any other country, associating together in Ghana;

"Election" with its grammatical variations means any election under the provisions of the Electoral Provisions Ordinance, 1953, and includes the appointment of any member of a local government council as defined in that ordinance, and any referendum held under the provisions of the Ghana (Constitution) Order in Council, 1957;[2]

"Minister" means the minister responsible for local government;

"Organization" includes any club, institution, political party, or other association of persons by whatever name called, and where there is a local or affiliated branch or section of an organization that local or affiliated branch or section shall be regarded as a separate and distinct organization;

"Symbol" includes slogan.

. . .

3. (1) It shall be an offence against this Act for any organization whose membership is substantially restricted to any one community or religious faith to have as one of its objects the exposure of any other organization however constituted or of any part of the community, to hatred, contempt or ridicule on account of their community or religion, and any person having the management or control of that organization, whether or not it is incorporated, shall be liable on summary conviction to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) The fact that any other organization or any part of the community has been exposed to hatred, contempt or ridicule shall be *prima facie* evidence of the object.

4. Where a person is convicted of an offence under section 3 of this Act, the judge or magistrate recording the conviction shall certify the facts for consideration by the Governor-General, and the Minister may by order declare the organization concerned to be a prohibited organization.

5. (1) No organization established substantially for the direct or indirect benefit or advancement of the interests of any particular community or religious faith shall organize or operate for the purposes of engaging in any election.

(2) If the Governor-General is satisfied that any organization is organized or operates contrary to the provisions of subsection 1 of this section, he may by order published in the *Gazette* declare the organization to be an illegal organization.

6. (1) No political party shall use or permit to be used any symbol or name which may be identified with any particular community or religious faith.

(2) If the Governor-General is satisfied that a political party uses or permits the use of any symbol contrary to the provisions of subsection 1 of this section, he may by order published in the *Gazette* prohibit the use of that symbol by a political party. Upon the publication of the order, the continued use of a prohibited symbol shall be an offence against this Act.

7. (1) No organization formed before or after the coming into operation of this Act for the primary benefit of any community, or religious faith shall, if it or any member of the organization in any manner engages in politics otherwise than by voting, permit or allow the use of any name or symbol of or associated with that organization for any political purpose:

Provided that nothing in this subsection shall apply to a political party.

(2) The Governor-General may, where he is satisfied that any name or symbol is used contrary to the provisions of subsection 1 of this section, prohibit the use of that name or symbol for any political purpose by order published in the *Gazette*. Upon the publication of the order, the continued use of the name or symbol for a political purpose shall be an offence against this Act.

(3) For the purposes of this section, the expression "engages in politics" means the doing of any act, matter or thing relating in any manner to the procuring or attempting to procure the election of any person, or a particular result of any election, and where a person is elected, includes the support in any way of that person or his political party; and the expression "political purpose" shall have a similar meaning.

8. Where the use of any name or symbol is prohibited under this Act, any variant of that name or symbol or any other name or symbol which includes that name or symbol or is calculated to deceive shall likewise be deemed to be prohibited under this Act; and the use of the variant or other name or symbol shall be an offence punishable in the same manner as the use of the name or symbol prohibited by the order is punishable under the provisions of this Act.

. . .

[1] Published as *Supplement to Ghana Gazette dated 31st December, 1957.*

[2] The Ghana (Constitution) Order in Council, 1957, provides for the holding of referenda in certain circumstances for the approval or rejection of bills abolishing or suspending, or diminishing the functions or powers of, any regional assembly (section 32 (3) (*d*)) and Bills altering the boundaries of a region (section 33 (2) — (3) and (5)).

THE EMERGENCY POWERS ACT, 1957

No. 28 of 1957, assented to on 30 December 1957[1]

2. (1) In this Act unless the context otherwise requires,

"Law" includes any Act, ordinance, order, rule, regulation, by-law or other law for the time being in force in Ghana, but does not include this Act or any constitutional provision within the meaning of subsection 1 of section 32 of the Ghana (Constitution) Order in Council, 1957;[2]

"Limited state of emergency" means any emergency arising out of any action taken or immediatel threatened by any person or persons or body of persons and from its nature or scale calculated or likely to prejudice public health or to interrupt the supply and distribution of food, water, fuel or light, or the means of locomotion so as to deprive any substantial portion of the community of the essentials of life, or to interfere in any way with the administration of government services and includes any emergency arising out of an event directly and exclusively due to natural causes without human intervention, and, where the cause may not be traced, fire.

"Local state of emergency" means a state of emergency in a particular part of or place in Ghana;

"State of emergency" includes any emergency however arising to the prejudice of the public safety or public order in Ghana.

. . .

[Subsections 1, 2 and 3 of section 3 authorize the Governor-General to declare by proclamation that sections 5, 6 and 7 respectively shall come into operation, if he is satisfied that a state of emergency, a local state of emergency or a limited state of emergency, respectively, exists. Section 4 requires such proclamations to be communicated to Parliament.]

5. (1) If a proclamation is issued under subsection 1 of section 3 of this Act the Governor-General may make such regulations as appear to him to be necessary or expedient for securing the public safety, the defence of Ghana, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by subsection 1 of this section, the regulations may, so far as it appears to the Governor-General to be necessary or expedient for any of the purposes mentioned in that subsection,

(*a*) Make provision for the detention of persons and the deportation and exclusion of persons from Ghana;

(*b*) Authorize

(i) The taking possession or control of any property or undertaking;

(ii) The acquisition of any property other than land;

(*c*) Authorize the entering and searching of any premises;

(*d*) Provide for amending any law, for suspending the operation of any law and for applying any law with or without modification;

(*e*) Provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;

(*f*) Provide for the payment of compensation and remuneration of persons affected by the regulations;

(*g*) Provide for the apprehension, trial and punishment of persons offending against the regulations.

6. (1) If a proclamation is issued under subsection 2 of section 3 of this Act, the Governor-General may make such regulations as appear to him to be necessary or expedient for securing the public safety, the maintenance of public order and the suppression of mutiny, rebellion and riot and for maintaining supplies and services essential to the life of the community in such part of or place in Ghana (in this section referred to as the emergency area) as may be specified in the proclamation, and any regulations made under this section shall, except as otherwise expressly provided under those regulations, have effect only in the emergency area:

Provided that nothing in this subsection shall be construed to restrict the exercise of the powers conferred by this Act to the emergency area.

(2) Without prejudice to the generality of the powers conferred by subsection 1 of this section the regulations may, so far as it appears to the Governor-General to be necessary or expedient for any of the purposes mentioned in that subsection,

(*a*) Make provision for the detention of any person for the commission of any act in relation to the local state of emergency, and for the exclusion of any person from the emergency area;

(*b*) Authorize

(i) The taking possession or control of any property or undertaking in the emergency area;

(ii) The acquisition of any property other than land in the emergency area;

(*c*) Authorize the entering and searching of any premises in the emergency area;

(*d*) Provide for amending any law, for suspending

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[1] Published as *Supplement to Ghana Gazette dated 30th December, 1957.*

[2] The subsection referred to above includes the following passage: "For the purposes of this subsection, the expression 'constitutional provisions' means this order, the existing orders and any Act (or instrument made under an Act) that amends, modifies, re-enacts (with or without any amendment or modification) or makes different provision in lieu of any provision of this order, the existing orders or any such Act (or instrument) previously made."

the operation of any law and for applying any law with or without modification in its application to the emergency area;

(*e*) Provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;

(*f*) Provide for the payment of compensation and remuneration of persons affected by the regulations;

(*g*) Provide for the apprehension, trial and punishment of persons offending against the regulations.

7. (1) If a proclamation is issued under subsection 3 of section 3 of this Act, the Governor-General may make such regulations as appear to him to be necessary or expedient in the interest of public health or to make available the uninterrupted supply and distribution of food, water, fuel or light or the means of locomotion to the community and the continued administration of government services:

Provided that nothing in this section shall be construed to authorize the making of regulations for the deportation of any person or the detention without trial of any person for a period of more than fourteen days:

Provided also that no regulation shall make it an offence for any person or persons to take part in a strike (not being a strike by any law declared to be illegal) or peaceably to persuade any other person or persons to take part in such a strike.

(2) Without prejudice to the generality of the powers conferred by subsection 1 of this section the regulations may, so far as it appears to the Governor-General to be necessary or expedient for any of the purposes mentioned in that subsection,

(*a*) Authorize

(i) The taking possession or control of any property or undertaking;

(ii) The acquisition of any property other than land;

(*b*) Authorize the entering and searching of any premises;

(*c*) Provide for amending any law, for suspending the operation of any law and for applying any law with or without modification;

(*d*) Provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;

(*e*) Provide for the payment of compensation and remuneration of persons affected by the regulations;

(*f*) Provide for the apprehension, trial and punishment of persons offending against the regulations.

. . .

9. Regulations made under sections 5, 6 or 7 of this Act shall be laid before Parliament as soon as practicable after Parliament shall have met, or if Parliament is in session, within seven days of the making of the regulations. The National Assembly shall within twenty-eight days of any regulations being so laid before Parliament by resolution confirm or reject the regulations; and unless the regulations are confirmed within twenty-eight days after they are laid before Parliament, they shall cease to have effect except as respect to things previously done or omitted to be done.

10. (1) Notwithstanding the provisons of this Act, it shall be lawful for regulations appropriate for a state of emergency, a local state of emergency or a limited state of emergency to be laid before Parliament, although no proclamation in accordance with section 3 of this Act has been made. The National Assembly may by resolution approve any regulations laid before Parliament under this section as appropriate to be brought into effect on the proclamation of a state of emergency, a local state of emergency or a limited state of emergency as the case may be.

. . .

12. Regulations made under this Act or orders or rules made in pursuance of the regulations shall have effect notwithstanding anything inconsistent therewith contained in any law; and any provision of a law which may be inconsistent with any regulation, order, or rule shall whether that provision shall or shall not have been amended, modified, or suspended in its operation under the provisions of this Act, to the extent of such inconsistency, have no effect so long as such regulation, order, or rule shall remain in force.

. . .

GREECE

NOTE[1]

I. Legislation

Law No. 3665/1957 provided for the granting of monthly subsidies under certain conditions to employees' children, who are studying and who prove to be good and zealous in their studies and who are unable to continue them for lack of financial means.

Law No. 3671/1957 was aimed at procuring a greater protection for the poor and unprotected who, either on account of age or illness, need the State's help. The Act allowed the State to conclude contracts with various private charity institutions, with a view to their taking institutional care of the abovementioned persons, whenever the aid offered by public institutions is insufficient.

Law No. 3703/1957, on the protection of children, provided that poor children whose parents were unable, for financial reasons, to take care of their recovery from sickness were to be nursed free in public hospitals. If these were numerically insufficient, the children were to be able to go to private hospitals, the State paying the expenses.

By Law No. 3749/1957, Greece ratified the convention signed in Paris on 31 December 1955 by the Foreign Ministers of the Member States of the Council of Europe. This convention provides that all the curative means existing in Europe will be put at the disposal of war cripples belonging to any of the member States and foresees the creation of a system permitting the exchange between these States of cripples, medical personnel and technical material.

Decree No. 3773/1957 concerns deposits for the creation of dowries for needy young girls.

Royal decree dated 6 August 1956 concerns financial aid accorded to needy girls so as to help them to get married.

[1] Information kindly furnished by the Permanent Representative of Greece to the United Nations.

II. Supreme Court Decisions

Decision of the Supreme Court No. 74/57. Section B April 1957. Jurisprudence Archives, Vol. 4, pp. 230-231

According to the Constitution, the death sentence is not applied to political crimes, which are those committed against the regime, with a view to overthrowing it or to changing the status quo. The acts committed by the accused in the case could not, however, be considered as political crimes, as they were intended to undermine the armed forces, which guarantee the country's independence and legal status.

Decision of the Supreme Court No. 126/57. Section B July 1957. Jurisprudence Archives, Vol. 6, p. 377

This verdict condemned proselytism, which was regarded as being the direct or indirect attempt to undermine the religious convictions of a person belonging to another religion, by fraudulently offering or promising him a material or other advantage or by exploiting his lack of experience, his confidence or his state of need or moral weakness with a view to persuading him to alter his religious convictions.

Decision of the Supreme Court No. 130/57. Section A June-July 1957. Jurisprudence Archives, Vol. 6-7, p. 379

According to articles 299 and 86 of the Penal Code, he who commits a murder is punished, either by death or by life imprisonment. The death sentence is applied only when the manner and the general circumstances under which the crime was committed were particularly revolting or when the murderer constituted a public danger.

Decision of the Supreme Court No. 192/57. Section B October 1957. Jurisprudence Archives, Vol. 10, p. 554

A necessary element of slanderous defamation is the act of intentionally spreading false statements knowing that they are capable of causing prejudice to the honour and reputation of the person concerned.

LEGISLATIVE DECREE No. 3370 PROMULGATING THE GREEK NATIONALITY CODE

of 20 September 1955[1]

SOLE ARTICLE

The Greek Nationality Code — drafted by the Committee constituted in accordance with article 1 of Act No. 3129/1955 on the Establishment of a Committee to amend, supplement and codify the provisions on Nationality — is hereby promulgated as follows:

Chapter A

ACQUISITION OF GREEK NATIONALITY

I. By Birth

Art. 1. The following are Greek nationals by birth:

(*a*) A person born of a Greek father;

(*b*) A person born of a Greek mother, if the father is stateless;

(*c*) A person born of a Greek woman out on wedlock;

(*d*) A person born in Greece who does not acquire another nationality by birth.

II. By Legitimation

Art. 2. A person legitimated as the child of a Greek national before the attainment of the age of twenty-one becomes a Greek national as from the legitimation.

III. By Acknowledgement

Art. 3. A person acknowledged as the child of a Greek national by voluntary or by full judicial acknowledgment before the attainment of the age of twenty-one becomes a Greek national as from the acknowledgment.

IV. By Marriage

Art. 4. 1. An alien woman who contracts marriage with a Greek national becomes a Greek national unless, retaining the nationality she possessed at the time of the celebration of the marriage, she states before the celebration that she does not wish to acquire Greek nationality. The statement is made solely by the woman, even if she is still a minor, before the mayor or the president of the community of the place of her domicile. If the woman resides abroad, the statement is made before the Greek consular authority of the place of her residence. The person before whom the statement is made shall transmit forthwith a copy of the latter to the Ministry of the Interior.

2. An alien woman does not become a Greek national by marriage:

(*a*) If a judgement of expulsion has been pronounced against her;

(*b*) If she is the subject of a state engaged in war against Greece, so long as the marriage was contracted during the war.

V. Recognition of Nationality of Persons of Greek Origin domiciled Abroad

Art. 5. 1. Persons of Greek ethnic origin who are stateless or of unknown nationality, have their domicile abroad and actually comport themselves as Greeks, may be recognized as Greek nationals if they file a petition with the Greek consular authority, if this petition is granted by the Minister of the Interior on the report of the consular authority, and if, subsequently, they take the oath of a Greek citizen before the said authority. The same applies also to their spouses, even if not of Greek ethnic origin.

2. The consequences of recognition ensue as from the taking of the oath.

3. The unmarried children of the person recognized who have not attained the age of twenty on the day when the oath is taken become Greek nationals as from that day.

VI. By Naturalization

Art. 6. An alien who has attained the age of twenty-one may become a Greek national by naturalization.

Art. 7. The fulfilment of the following conditions is necessary for naturalization:

(*a*) Declaration of intention by the alien before the mayor or the president of the community of the place in which he proposes to establish his domicile;

(*b*) If he is of non-Greek ethnic origin, residence in Greece for a duration of three years subsequent to the statement. This is not required of a person born and domiciled in Greece;

(*c*) Application for naturalization to the Ministry of the Interior;

(*d*) Good moral character of the petitioner.

2. An alien cannot become naturalized:

(*a*) Against whom a judgement of expulsion has been pronounced;

(*b*) Who has been convicted of any criminal offence whatsoever, or of the delict of high treason, of treason against the country, moral turpitude, larcency, swindling, breach of trust, extortion, false statement, coining of base money, counterfeiting

[1] Text published in *Official Gazette* of 23 September 1955. Translation kindly furnished by the Permanent Representative of Greece to the United Nations.

slanderous defamation or smuggling; of violation — in the degree of a delict punishable by corrective sentence — of the laws on settlement and movement of aliens in Greece, on protection of the national currency, on narcotics or on the treatment of drug addicts; or of any delict whatsoever perpetrated as by repetition or by habit, as well as of any delict whatsoever, provided the prison sentence imposed is of at least one year.

3. Naturalization is effected by decision of the Minister of the Interior, subsequent to investigation.

4. The decision refusing petition for naturalization need not state reasons.

Art. 8. By royal decree, issued after decision of the Council of Ministers and without the fulfilment of the conditions of sections 1 (*a-c*) and 3 of article 7, an alien may be naturalized who has rendered Greece exceptional services, introduced an important invention or industry in Greece, founded establishments serving the public interest or distinguished himself as having an outstanding intellect, or whose naturalization might serve the exceptional interests of Greece.

. . .

Art. 10. The unmarried children of a man at the time of his naturalization, who have not attained the age of twenty, become Greek nationals as from the naturalization. If they are of non-Greek ethnic origin they may, so long as they retain the nationality possessed at the time of the naturalization, renounce Greek nationality by a statement expressing such intention within one year from the attainment of the age of twenty before the mayor or the president of the community or the consular authority of the place of their domicile. The person before whom the statement is made shall transmit forthwith a copy of the latter to the Ministry of the Interior.

Art. 11. The spouse of a naturalized Greek may acquire Greek nationality if she makes a statement expressing such intention before the mayor or president of the community or the consular authority of the place of her domicile and takes the oath of a Greek citizen in accordance with article 9. The person before whom the statement is made shall transmit forthwith a copy of the latter to the Ministry of the Interior.

VII. By Enlistment in the Armed Services

Art. 12. Aliens of Greek ethnic origin who are admitted to military schools for officers and non-commissioned officers of the armed services in virtue of the particular law governing each institution, or enlist in the armed services as volunteers in virtue of the particular laws governing each arm, acquire Greek nationality without any further formality as from their admittance to such institutions or as from their enlistment.

Art. 13. 1. Aliens of Greek ethnic origin who enlist as volunteers in time of mobilization or war in accordance with the law on recruitment of the armed services may, if they so desire, acquire Greek nationality without any further formality, by petition to the Prefect.

2. Promotion to officer rank in the standing armed services or in the reserve confers, as of right, Greek nationality without any further formality to the aforementioned persons.

3. The military oath taken by the persons considered in the present article and in article 12 substitutes for the oath of a Greek citizen.

Chapter B

LOSS OF NATIONALITY

I. Because of Acquisition of Foreign Nationality

Art. 14. 1. A person incurs loss of Greek nationality who, in virtue of authorization:

(*a*) Adopted, of his own free will, foreign nationality; or (*b*) accepted official employment in the service of a foreign state, so long as such acceptance imparts acquisition of the nationality of that state.

Authorization may, for exceptional reasons, be given even after the acquisition of foreign nationality; in such a case loss of Greek nationality occurs as from when authorization is given.

2. Likewise, a person possessed also of a foreign nationality incurs loss of Greek nationality, so long as his petition to relinquish the latter is granted. In such a case, the loss of Greek nationality occurs as from the granting of the petition.

3. Authorization under section 1 is given, and petition is granted, by decision of the Minister of the Interior on advice of the Nationality Council; but authorization may never be given and petition never be granted if the petitioner is liable to military service or if his drafting was delayed or if he is prosecuted for a criminal offence or a delict.

II. By Declaration of Intention of Renunciation

Art. 15. An alien woman who acquired Greek nationality by marriage to a Greek incurs its loss if, retaining the nationality she possessed at the time of the celebration of the marriage, she states within a year from the latter the appropriate intention. The statement is made as provided for in article 4, section 1. This opinion is not granted to a woman prosecuted for a criminal offence or a delict.

III. Because of Marriage to an Alien

Art. 16. A Greek woman who contracts marriage with an alien incurs loss of Greek nationality if, because of the marriage, she acquires the nationality of her husband, unless she states before the marriage that she wishes to retain Greek nationality. The statement is made before the mayor or the president of the community of the place of her domicile, or, if she resides abroad, before the Greek consular autho-

rity of the place of her residence. The person before whom the statement is made shall transmit forthwith a copy of the latter to the Ministry of the Interior.

IV. Because of Dissolution of Marriage to a Greek National

Art. 17. An alien woman who acquired Greek nationality through marriage to a Greek national may, after the marriage is dissolved and so long as she acquires a foreign nationality, relinquish Greek nationality, if she states her intention to this effect to the competent mayor or president of the community or the Greek consular authority, and permission to relinquish the said nationality is granted by decision of the Minister of the Interior on the advice of the Nationality Council.

V. Because of Legitimation or Acknowledgment of a Person as Child of an Alien

Art. 18. A person legitimated or acknowledged as the child of an alien father before the attainment of the age of twenty-one loses Greek nationality if he acquires the nationality of the father as a result of the legitimation or the acknowledgment.

VI. Because of Departure from Greek Territory

Art. 19. A person of non-Greek ethnic origin leaving Greece without the intention of returning may be declared as having lost Greek nationality. This also applies to a person of non-Greek ethnic origin born and domiciled abroad. His minor children living abroad may be declared as having lost Greek nationality if both their parents or the surviving parent have lost it. The Minister of the Interior shall decide these matters with the concurring opinion of the Nationality Council.

VII. Because of Forfeiture

Art. 20. 1. A person may be declared to have forfeited Greek nationality who:

(*a*) In contravention of article 14, acquires, of his own free will, foreign nationality;

(*b*) Accepts official employment in the service of a foreign state, and, after having been enjoined by the Minister of the Interior to relinquish such employment within a specified period of time, persists in not doing so;

(*c*) Residing abroad, commits acts for the benefit of a foreign country incompatible with Greek nationality and prejudicial to the interests of Greece.

2. Forfeiture shall be pronounced by decision of the Minister of the Interior with the concurring opinion of the Nationality Council.

Chapter C

REACQUISITION OF GREEK NATIONALITY

Art. 21. 1. A person having lost Greek nationality in accordance with article 14 may reacquire it if, while residing in Greece, he submits an appropriate petition to the Ministry of the Interior, this petition is granted by decision of the Minister of the Interior and he takes the oath of a Greek citizen in accordance with article 9.

2. Articles 10 and 11 apply respectively to the minor children and the spouse of the person who has reacquired Greek nationality.

Art. 22. 1. A woman having relinquished Greek nationality in accordance with article 16 may reacquire it if she states her intention within a year after the marriage. The statement shall be made as provided for in that article.

2. A woman having relinquished Greek nationality according to article 16 may, once the marriage is dissolved, reacquire it if, while residing in Greece, she submits an appropriate petition to the Ministry of the Interior, this petition is granted by decision of the Minister of the Interior and she takes the oath of a Greek citizen. This applies also in case of separation from bed and board.

In exceptional instances the Minister of the Interior may permit a woman living abroad to reacquire Greek nationality without returning to Greece by taking the oath before the Greek consular authority.

Art. 23. 1. The provisions of sections 1 (*d*), 2 and 3 of article 7 are also applicable in the instances of reacquisition of Greek nationality provided for in articles 21 and 22, section 2.

2. The provisions of article 7, section 2, are also applicable in the instances provided for in article 22, section 1.

. . .

Chapter E

TRANSITIONAL AND FINAL PROVISIONS

Nationality in Case of Adoption

Art. 27. Adoption shall in no way affect the nationality of the adopted child.

Validity of Provisions of International Conventions

Art. 28. The provisions on nationality of international conventions shall not be affected by the present law.

Reacquisition of Greek Nationality by Persons of Greek Ethnic Origin

Art. 29. A person of Greek ethnic origin born in Greece and possessed of Greek nationality by birth, who had surrendered it according to article 23 of the Civil Law of 1956 by acquiring, of his own free will, foreign nationality and has relinquished such nationality by departing from the country in question, shall reacquire, as of right, Greek nationality after the completion of residence of two years in Greece.

Reacquisition of Greek Nationality by Married Women

Art. 30. 1. A Greek woman having relinquished Greek nationality because of marriage to an alien or a stateless person may, during the marriage, reacquire Greek nationality if, while residing in Greece, she files a petition with the Ministry of the Interior within six months of the coming into force of the present law, her petition is granted by decision of the Minister and she takes the oath of a Greek citizen.

2. The provisions of sections 1(*d*), 2 and 3 of article 7 and the second subsection of section 2 of article 22 are equally applicable here.

HAITI

NOTE[1]

I. General Comments

The civil disturbances which broke out at the beginning of December 1956 in connexion with the expiry of the term of the President of the republic continued until 22 October 1957, when the newly elected President took his oath of office, after a succession of five provisional governments.

New elections to reconstitute the dissolved Legislative Chambers were not held until 22 September 1957, when the election of the President of the republic also took place. The Chambers, acting together as a Constituent Assembly, drew up a new constitution to replace that of 1950.[2] Proclaimed on 19 December 1957, this constitution came into force on its publication in the *Journal officiel* on 22 December 1957.[3] It does not therefore embody the legislative changes affecting human rights which were enacted in 1957 and, in particular, the changes in electoral procedure instituted by decrees of orders of the various revolutionary governments or as a consequence of the ratification of certain international conventions by decree of the Government Military Council, the last of the provisional governments.

II. Constitutional Changes

The new constitution has retained, for the most part without textual change, all the previous provisions establishing human rights and individual liberties and guarantees. The most important change is the introduction in article 9 of the following provision confirming the granting of equal civil and political rights to Haitian women:

"All Haitians, who have attained the age of twenty-one years, of either sex, may exercise their civil and political rights, provided that they fulfil the conditions prescribed by the Constitution and the law."

It will be recalled that the previous constitution of November 1950 imposed some restrictions on the political rights of women. These restrictions were removed by the Act of 25 January 1957, a measure proposed by the first provisional government and one of the last to be passed by the previous Legislative Chambers before their dissolution. Women were thus able to vote in the legislative and presidential elections of 22 September 1957, which re-established the constitutional regime. Article 1 of that Act provided: "The full and complete exercise of all political rights is henceforth guaranteed to every Haitian woman who has attained the age of twenty-one years, provided that she fulfils the other conditions prescribed by the Constitution and the law."

Article 2 further provided: "A married woman who by law possesses and is qualified to exercise political rights shall not require any marital authority for the purpose of exercising the said rights."

The new constitution has, in particular, retained all the provisions concerning economic and social rights: freedom to work, the right to social security, to a fair wage and to health protection, freedom of trade union affiliation, etc.

III. Acts and Decrees

1. The electoral decree of 1 March 1957, bringing the previously established procedure into conformity with the current provisions of Haitian public law and, in particular, with those relating to the direct election of the President of the republic and the granting of the right to vote to Haitian women (*Moniteur*, No. 20, of 4 March 1957).

2. The electoral decrees of 12 March 1957, 23 April 1957 and 7 May 1957, amending that mentioned above (*Moniteur*, No. 44, of 9 May 1957).

3. The most recent electoral decree of 28 August 1957, of the Government Military Council (*Moniteur*, No. 92, of 29 August 1957).

4. The decree of 14 May 1957 of the Government Executive Council instituting penalties for subversive acts directed against the democratic measures taken by the Government Executive Council for the organization of elections to reconstitute the executive and legislative powers (*Moniteur*, No. 47, 16 May 1957).

5. The decree of 26 August 1957 of the Government Military Council, strengthening the provisions of the decree of 13 June 1950 concerning the press, in order to safeguard public order, particularly during the electoral campaign. The decree made it an offence under the ordinary law to utter insults and defamatory or abusive statements against the public and military authorities through the medium of the press or radio (*Moniteur*, No. 90, of 27 August 1957).

6. The decree of 29 September 1957 of the Govern-

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[1] Information kindly furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law of the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Yearbook on Human Rights for 1950*, pp. 115-119.

[3] See p. 121.

ment Military Council, instituting outlawry under martial law and authorizing the arrest and execution of persons outlawed by reason of the commission of acts of terrorism (*Moniteur*, No. 107, of 30 September 1957).

7. The decree of 11 October 1957 of the Government Military Council, amending articles 13, 18, 24, 40, 41 and 45 of the Act of 12 September 1951 concerning social insurance (*Moniteur*, No. 114, of 17 October 1957).

IV. International Conventions[1]

1. The decree of 31 July 1957 of the Government Military Council, ratifying the Inter-American Convention of 2 May 1948 on the granting of political rights to women[2] (*Moniteur*, No. 122, of 7 November 1957).

2. The decree of 5 August 1957 of the Government Military Council, ratifying the protocol to the convention on duties and rights of states in the event of civil strife of 1 May 1957 (*Moniteur*, No. 122, of 7 November 1957).

3. The decree of 31 July 1957 of the Government Military Council, ratifying the supplementary convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery, signed at Geneva on 7 September 1956[3] (*Moniteur*, No. 131, of 26 November 1957).

4. The decree of 26 September 1957 of the Government Military Council, ratifying convention No. 100 concerning equal remuneration for men and women workers for work of equal value, adopted at Geneva on 29 June 1951 by the International Labour Conference at its thirty-fourth session[4] (*Moniteur*, No. 135, of 5 December 1957).

5. The decree of 26 September 1957 of the Government Military Council, ratifying convention No. 105 concerning the abolition of forced labour, adopted at Geneva on 25 June 1957 by the International Labour Conference at its fortieth session[5] (*Moniteur*, No. 135, of 5 December 1957).

6. The decree of 26 September 1957 of the Government Military Council, ratifying convention No. 107 concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independant countries, adopted at Geneva on 26 June 1957 by the International Labour Conference at its fortieth session (*Moniteur*, No. 143, of 19 December 1957).

[1] See also pp. 306 and 307

[2] See *Yearbook on Human Rights for 1948*, pp. 439-440.

[3] See *Yearbook on Human Rights for 1956*, pp. 289-91.

[4] See *Yearbook on Human Rights for 1951*, pp. 471-472.

[5] See p. 303.

CONSTITUTION OF THE REPUBLIC OF HAITI of 19 December 1957[1]

Preamble

The Haitian people proclaims this constitution

To establish its rights, its freedoms, its sovereignty, its national independence and the democratic principles on which its existence shall be founded;

To define its civic duties and its responsibilities;

. . .

To ensure social justice and to protect labour;

To bring the benefits of culture to all Haitians without distinction;

To protect the health of urban and rural populations and to guarantee social security;

. . .

And thus to establish a socially just, economically free and politically independent Haitian nation.

Title I

The Territority of the Republic

Art. 1. The Republic of Haiti is one and indivisible; it is a free sovereign, independent, democratic and social State.

. . .

Title II

Rights

Chapter I. — *Haitians and Their Rights*

Art. 3. The rules governing nationality shall be prescribed by law.

Art. 4. Every person born of a father who was himself Haitian by birth is a native-born Haitian. Likewise, every person born in Haiti of an unknown father but of a mother who was herself Haitian by birth is a native-born Haitian.

Art. 5. The life and liberty of Haitians are inviolable and must be respected by individuals and by the State.

It is further incumbent on the State to ensure culture, economic well-being and social justice for the citizens of the republic.

Chapter II. — *Civil and Political Rights*

Art. 6. The aggregate of civil and political rights constitutes citizenship.

[1] The Constitution came into force on its publication in the *Moniteur* No. 144, of 22 December 1957. Translation by the United Nations Secretariat.

The exercise of civil rights, as distinct from political rights, is governed by the law.

Art. 7. The exercise, enjoyment, suspension and forfeiture of political rights shall be governed by the law.

Art. 8. Suffrage is a right and a duty of all citizens, with the exceptions established in this constitution.

Art. 9. All Haitians, who have attained the age of twenty-one years, of either sex, may exercise their civil and political rights, provided that they fulfil the conditions prescribed by the Constitution and the law.

Chapter III. — *Aliens*

Art. 10. After ten years of continuous residence in the territory of the republic, aliens may acquire Haitian nationality in conformity with the rules prescribed by law.

Aliens who become naturalized Haitians shall not be admitted to the exercise of political rights until five years have elapsed from the date of their naturalization.

Art. 11. A naturalized Haitian shall lose that status in the circumstances prescribed by law, *inter alia*, through continuous residence for more than three years outside Haitian territory without due authorization.

Nationality lost in this manner may not be reacquired.

Art. 12. Legal persons constituted in accordance with the laws of the republic which maintain their legal domicile outside the country shall be deemed to be Haitian.

The purpose of legal provisions for the protection of Haitians may not be fraudulently thwarted through the instrumentality of Haitian legal persons.

Art. 13. Every alien in Haitian territory must comply with the laws and regulations of the republic and shall enjoy the protection due to Haitians, save for any measures which may be found necessary with respect to the nationals of countries in which Haitian citizens do not enjoy a like protection.

Art. 14. The right to own real property for the purpose of residence is granted to aliens residing in Haiti.

Aliens residing in Haiti may not, however, own more than one dwelling house in the same district. They may in no case engage in the business of land agents.

Nevertheless, foreign building companies shall be accorded a special status governed by law.

Aliens residing in Haiti and foreign corporations are likewise granted the right to own real property for the purposes of their agricultural, commercial, industrial or educational establishments, within the limits and subject to the conditions prescribed by law.

This right shall cease within a period of two years following the date on which the alien ceases to reside in the country or following the termination of the operations of such corporations in accordance with the law which determines the rules governing the transmission and liquidation of the assets of aliens.

Any citizen is entitled to lay an information regarding infringements of these provisions, which entail the outright seizure of the property by the State; any citizen so doing qualifies for certain benefits determined by law.

Art. 15. The cases and forms in which aliens may be refused permission to enter or to stay in the national territory shall be established by law.

Aliens who directly or indirectly participate in the domestic political life of the State or who promulgate anarchistic or undemocratic doctrines may be refused permission to enter the country or be expelled therefrom by the competent authority.

Chapter IV. — *Public Law*

Art. 16. All Haitians are equal before the law, but certain privileges are reserved for native-born Haitians.

Every Haitian has the right to take an effective part in the government of his country, to hold public office or to be appointed to state employment, without distinction as to colour, sex or religion.

There shall be no privilege, favour or discrimination in the administration of the public services of the State, so far as appointments and terms and conditions of service are concerned.

Art. 17. Personal liberty is guaranteed. No person may be prosecuted, arrested or detained except in the cases defined and in the manner prescribed by law.

Furthermore, no person may be arrested or detained except on a warrant issued by an official competent under the law.

Such warrant may not be enforced unless:

1. It formally states the grounds for the detention and the statutory provisions under which the alleged act is punishable;

2. The warrant is served and a copy thereof is furnished to the detained person at the time of enforcement, unless he is taken *in flagrante delicto.*

No one shall be maintained in detention unless within forty-eight hours he has been brought before a judge who shall rule on the legality of the arrest and unless that judge has confirmed the detention by a decision stating the reasons on which it is based.

In the case of a petty offence, the detained person shall be brought before a judge of the lower court who shall give a final ruling at that time.

In the case of a crime or serious offence, he shall be entitled, without prior authorization and on a simple request, to apply to the senior judge of the competent civil court who, on the oral submission

of the Commissaire du Gouvernement, shall give a special ruling on the legality of the arrest during the hearing, without delay and regardless of the roster, and to the suspension of all other business.

In either case, if the arrest is held to be illegal, the detained person shall be released, appeal or application to the Court of Cassation notwithstanding.

Any force or constraint that is not necessary to apprehend a person or to maintain him in detention and any moral pressure or physical brutality are prohibited.

Violations of this provision are arbitrary acts against which the injured parties may, without prior authorization, appeal to the competent courts by instituting proceedings against either the principals or the agents, irrespective of their rank or the authority to which they belong.

Art. 18. No person may be removed from the judges assigned to him by the Constitution or by the law. A civilian may not be tried by a military court of any kind and, in civil matters, military personnel may not be removed from the courts of ordinary law unless a state of siege has been lawfully declared.

Art. 19. No house search or seizure of papers may take place except in pursuance of and in the form prescribed by the law.

Art. 20. The law may not have retroactive effect, except if favourable to the offender in criminal cases.

A law shall be deemed to have retroactive effect whenever it destroys acquired rights.

Art. 21. A penalty may not be established except by law or applied except in the circumstances defined by law.

Art. 22. The right of citizens to own property is guaranteed. Expropriation in the public interest, lawfully determined as such, may take place only subject to payment or the deposit of fair prior compensation in favour of the person or persons entitled.

The ownership of property also entails obligations. The right of ownership must be exercised in the general interest.

Land-owners have a duty *vis-à-vis* the community to cultivate and work the soil and protect it, in particular, against erosion.

A penalty for failing in this duty shall be prescribed by law.

The right of ownership does not extend to springs, rivers and other watercourses, mines and quarries, which are part of the public domain of the State.

The conditions governing the right to prospect and to work mines, surface mines and quarries are prescribed by law in such a manner as to assure to the owner of the land, the concessionnaire and the Haitian State a fair share of the profits derived from the exploitation of these natural resources.

The maximum height to which the right of ownership may extend above ground shall be determined by law.

Art. 23. Freedom to work shall be exercised under the control and supervision of the State and shall be subject to conditions laid down by law.

Nevertheless, save as otherwise provided by law, no importer, commission agent or manufacturer's agent may engage in retail trade, even through an intermediary.

The expression "intermediary" shall be defined by law.

Art. 24. Every worker is entitled to a fair wage, to the completion of his apprenticeship, to the protection of his health, to social security, and to the well-being of his family, to the extent commensurate with the economic development of the country.

Employers are under a moral obligation to contribute, according to their means, to the education of those of their workers who are illiterate.

Every worker has the right to participate, through his representatives, in the collective establishment of working conditions. Every worker has the right to rest and leisure.

Every worker has the right to defend his interest by trade union action. Every worker shall join the trade union corresponding to his occupation.

Annual holidays with pay are compulsory.

Art. 25. The death penalty may not be established for political offences, with the exception of treason.

The crime of treason consists in taking up arms against the Republic of Haiti, joining the avowed enemies of Haiti, or furnishing them with aid and support.

Art. 26. Every person has the right to express his opinions on any subject and by any means within his power. The expression of thought, in whatever form, may not be subject to prior censorship, except when a state of war has been declared.

Abuses of the right of expression are defined by and punishable under the law, but freedom of expression may not be restricted.

Art. 27. All forms of worship and all religions are equally free and recognized. Everyone has the right to profess his religion and to perform his religious rites, provided that he does not disturb public order.

No one may compel another person to belong to a religious group or to receive religious instruction against his convictions.

Art. 28. Since marriage fosters the purity of morals by contributing to a better organization of the family, as the foundation of society, the State shall, by every available means, facilitate and encourage the institution of marriage among the people, in particular among the rural population.

The law shall accord special protection to Haitian women.

Art. 29. Freedom of education shall be exercised in accordance with the law, under the control of the

State, which shall concern itself with the moral and civic training of young people.

Public education is a responsibility of the State and of the communes.

Primary education is compulsory.

Public education is free at all levels.

Technical and vocational education shall be generally available.

Access to higher studies shall be open to all on an equal footing and shall be governed by merit alone.

Art. 30. In the cases prescribed by law, trial by jury is established in criminal matters and for political offences committed through the press or otherwise.

Art. 31. Haitians have the right to assemble peacefully and without arms, even for a political object, in compliance with the laws regulating the exercise of this right; prior authorization shall not be required.

This provision is not applicable to public gatherings, which are governed wholly by the police laws.

Art. 32. Haitians have the right to associate and to form political parties, trade unions and co-operatives.

This right may not be subject to any preventive measure. No one may be compelled to join an association or a political party.

The law, in laying down the conditions governing the operation of such groups, shall encourage the formation of political parties, trade unions and co-operatives.

Art. 33. The right of petition may be exercised by one or more individuals personally, and never on behalf of a body.

Every petition submitted to the legislature must be decided upon according to the prescribed procedure.

Art. 34. The secrecy of correspondence is inviolable.

The categories of officials who may be held responsible in cases of tampering with the mail shall be determined by law.

Art. 35. French is the official language. Its use is compulsory in the public services. The cases and circumstances in which the use of Creole shall be permitted and even recommended to protect the material and moral interests of those citizens whose knowledge of the French language is inadequate shall be determined by law.

Art. 36. The right of asylum is recognized in the case of political refugees, provided that they obey the laws of the land.

Art. 37. Extradition shall neither be granted nor requested in political matters.

Art. 38. The law may not add to or depart from the Constitution. The letter of the Constitution shall always prevail.

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Title IV

NATIONAL SOVEREIGNTY

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Chapter 2. — *The Legislative Power*

Section 1. — *The Legislature*

Art. 48. Legislative power is exercised by a single Assembly, known as the "Legislative Chamber" ("*Chambre législative*").

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Art. 50. The qualifications of a member of the legislature are:

1. He must be a Haitian who has never renounced his nationality;

2. He must have completed his twenty-fifth year;

3. He must be in enjoyment of his civil and political rights;

4. He must have resided for at least five years in the circonscription to be represented.

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Art. 53. The following are not eligible as members of the legislature:

Persons having contracts with or holding concessions from the State for the exploitation of the national wealth or the operation of public services, as likewise their representatives and authorized agents and those of foreign companies in like position, unless they publicly close out their contracts or dispose of them to third parties who are neither blood relations nor relations by marriage.

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Chapter 3. — *The Executive Power*

Section 1. — *The President of the Republic*

Art. 86. Executive power shall be exercised by a citizen receiving the title of President of the republic, who shall be assisted by secretaries of state and under-secretaries of state.

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Art. 88. To be eligible as President of the republic, a person must fulfil the following conditions:

1. He must be a native-born Haitian who has never renounced his nationality;

2. He must have completed his fortieth year;

3. He must be in enjoyment of his civil and political rights;

4. He must have his domicile in the country;

5. He must have already received an honourable discharge from his duties, if he has been responsible for the management of public funds.

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Chapter 4. — *The Judiciary*

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Art. 119. The hearings of courts shall be public, unless such publicity is dangerous to public order

and morality. In such case, the court shall make an order to that effect.

Political and press offences may never be tried *in camera.*

Art. 120. Every judgement or decision shall state the reasons on which it is based and shall be rendered in open court.

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Title VIII

THE ECONOMIC SYSTEM

Art. 154. The economic system must be based essentially on principles of social justice such as to ensure to all the members of the community an existence worthy of human beings.

Art. 155. Economic freedom is guaranteed in so far as it is not inconsistent with the public interest.

The State shall encourage and protect private enterprise subject to the conditions necessary for increasing the national wealth and securing the benefits thereof to the greatest number.

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Art. 159. The construction of dwellings is declared to be a matter of public interest.

The State shall do all in its power to enable as many Haitian families as possible to own their homes. It shall take steps to see that every industrial and agricultural undertaking provides healthy and comfortable housing for its workers.

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Title IX

THE SOCIAL SYSTEM

Chapter 1. — *The Family*

Art. 161. The family, as the foundation of society, must be protected by the State, which shall promulgate the necessary laws and provisions to improve its position, to encourage marriage and to protect and assist mothers and children. Marriage is the legal basis of the family and rests on the political and economic equality of husband and wife.

The State shall protect the physical, mental and moral health of minors and shall guarantee their right to education and assistance.

Juvenile delinquency shall be the subject of special legal provisions.

Art. 162. Legitimate and illegitimate but legally acknowledged children shall have equal rights to education and assistance, and to protection by their parents.

The status of children born of adulterous and incestuous unions shall be prescribed by law.

The conditions under which paternity may be investigated shall be determined by law.

Chapter 2. —*Work*

Art. 163. Work is a social duty; it is protected by the State and is not considered an article of trade.

The State shall use all the resources at its disposal to provide employment for the manual and intellectual worker and to assure to him and to his family decent living conditions.

Art. 164. Work shall be regulated by a labour code which shall have as its principal aim the harmonization of relations between capital and labour and shall be based on general principles directed towards the improvement of the living conditions of the workers.

Art. 165. The rights secured to workers may not be renounced, and the laws by which they are recognized are binding on all the inhabitants of the territory.

The State shall take charge of indigent persons who by reason of their age or physical or mental incapacity are unable to work.

Title X

CULTURE

Art. 166. The encouragement and dissemination of culture are a primary aim and obligation of the State.

Education is an essential function of the State, which shall organize the educational system and set up the necessary institutions and services.

Art. 167. Education must provide for the full development of the personality of the pupils in order that they may make a constructive contribution to society and help to inculcate respect for human rights, combat all intolerance and hate, and promote the ideal of moral, national and Pan-American unity.

Fundamental education is compulsory and must be provided free by the State with a view to reducing the number of wholly illiterate persons and to enable everyone to fulfil adequately his role as worker, head of family and citizen.

Art. 168. Educational establishments, whether public or private, may not refuse to admit pupils because of the nature of the union of their parents or guardians, or because of any social, racial, political or religious differences.

Art. 169. A person who wishes to become a member of the teaching profession must establish his qualifications in the manner prescribed by law.

In all educational establishments, whether public or private, instruction in national history and geography, civics and the Constitution shall be given by Haitian teachers.

Art. 170. The artistic, historical and archeological treasures and the folklore of the country shall form part of the Haitian cultural heritage, which shall be protected by the State and shall be subject to special laws designed for its preservation.

Title XI

HEALTH AND PUBLIC ASSISTANCE

Art. 171. The health of the inhabitants of the territory is a matter of the public weal.

The State shall provide free medical aid for the sick and shall be in duty bound to prevent and control the propagation of contagious and endemic diseases.

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Title XIII

GENERAL PROVISIONS

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Art. 185. No place in and no part of the territory may be declared to be in a state of siege except in the case of civil disturbance, or imminent invasion by a foreign force.

The instrument whereby the President of Haiti declares a state of siege shall require the signature of the Council of Secretaries of State and shall summon the legislature to meet immediately for the purpose of ruling upon the desirability of the measure.

The legislature shall determine, in concert with the Executive Power, which constitutional safeguards may be suspended in the parts of the territory placed in a state of siege.

Art. 186. The effects of the state of siege shall be as determined by a special law.

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Title XV

TRANSITIONAL PROVISIONS

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Art. B. The Chamber of Deputies and the Senate, as reconstituted in the elections of 22 September 1957, shall exercise legislative power until the second Monday of April 1963, the date of expiry of the term of office of the twenty-one senators elected under the electoral decree of 28 August 1957 issued by the Military Council of Government.

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HONDURAS

NOTE

Extracts appear below from the Constitution promulgated by decree No. 21, of 19 December 1957, and from the Electoral Act promulgated by decree No. 113, of 22 July 1957.

Decree No. 169 of 15 October 1957 (*La Gaceta* No. 16356, of 12 December 1957) promulgated the Social Security Act. Translations of the Act into English and French have appeared as International Labour Office: *Legislative Series* 1957 — Hon.4.

CONSTITUTION OF THE REPUBLIC OF HONDURAS

Promulgated by decree No. 21, of 19 December 1957[1]

Title I

THE STATE AND ITS FORM OF GOVERNMENT

Sole Chapter

Art. 1. Honduras is a sovereign and independent State established as a democratic republic for the purpose of ensuring to its inhabitants the enjoyment of freedom, justice, social and economic well-being, and individual and collective betterment.

Art. 2. Sovereignty shall reside in the people and shall be exercised by the people either directly or through the public authorities created by their freely expressed will.

. . .

Art. 5. Public officials shall be the depositaries of the authority of the State and shall, under their oath of loyalty to the Constitution and the laws, undertake the obligation to exercise that authority as servants of the people. As a servant of the people, a public official shall be directly liable for his acts and omissions.

The right to institute proceedings against public officials in respect of punishable acts or omissions shall vest in the people and shall be imprescriptible.

Any act performed by a public official contrary to the law shall be null and void.

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Title II

NATIONALITY AND CITIZENSHIP

Chapter I. — *Hondurans*

Art. 15. Nationality is the spiritual and material bond that exists between Hondurans and is based on common traditions, interests and aspirations.

Art. 16. Honduran nationality shall be acquired by birth or by naturalization.

Art. 17. The following persons shall be Honduran by birth:

1. Persons born in the territory of Honduras, irrespective of the nationality of their parents, with the exception of the children of diplomatic representatives or of transient aliens;

2. Children born in another country of a Honduran father or mother;

3. Persons born on board a Honduran merchant or war vessel or a Honduran commercial or military aircraft;

4. Infants of unknown parentage found in Honduran territory.

Art. 18. Subject to reciprocity in the country of origin and within the limits of such reciprocity, a native of one of the other Central American republics shall be deemed to be a natural-born Honduran if, after one year's residence in Honduras, he informs the competent authorities of his desire to be a Honduran and fulfils the requirements prescribed by law.

Art. 19. The following persons shall be Honduran by naturalization:

1. Spaniards and natives of American countries who have resided in Honduras for one year;

2. Other aliens who have resided in Honduras for more than two consecutive years. In both cases, the applicant must first renounce his previous nationality and inform the competent authorities of his desire to adopt Honduran nationality;

3. Persons granted letters of naturalization by decision of the National Congress;

4. Persons who, being members of groups of selected immigrants brought to Honduras by the Government for agricultural or industrial purposes, have resided in the country for one year and have fulfilled the requirements prescribed by law.

Art. 20. No Honduran by birth may claim any nationality other than the Honduran while resident in the territory of the republic.

Art. 21. No naturalized Honduran may represent Honduras in an official capacity in his country of origin.

Art. 22. Neither marriage nor the dissolution of marriage shall have any effect on the nationality of the spouses and their children.

[1] Published in *La Gaceta* No. 16363, of 20 December 1957. Translation by the United Nations Secretariat.

Art. 23. Honduran nationality shall be lost through:

1. Voluntary naturalization in a foreign country;
2. Revocation of the letters of naturalization.

Art. 24. Every Honduran shall be bound to defend his country, to respect the authorities and to contribute to the moral and material well-being and progress of the nation.

Chapter II. — *Aliens*

Art. 25. Upon their entry into the territory of the republic, aliens shall be required to respect the authorities and to comply with the laws.

Art. 26. Aliens in Honduras shall enjoy the same civil rights as Hondurans, subject to such restrictions as may be established by law on stated grounds of public policy, security or national interest.

They shall be subject to all the ordinary and special obligations of a general character that are incumbent on Hondurans.

Art. 27. Aliens may not make claims or require any compensation from the State except in the form and in the cases in which Hondurans may do so.

They may not have recourse to the diplomatic channel except in cases of denial of justice. For this purpose, denial of justice shall not be construed to mean an enforceable judgement which is unfavourable to the claimant. Persons who contravene this provision shall forfeit the right to reside in the country.

Art. 28. The holding of non-supervisory posts for the teaching of arts and sciences, and the provision of technical and advisory services to the State, shall be open to aliens only if no qualified Hondurans are available.

Art. 29. Extradition may be granted only in virtue of a law or treaty for an offence against the ordinary law; it may in no case be granted for a political offence, even if an offence against the ordinary law has been committed in consequence of such offence.

Art. 30. The manner and cases in which an alien may be refused entry into the country shall be prescribed by law.

The Executive alone shall be empowered to expel from the country, in accordance with the procedure prescribed by law, an alien whose continued presence in the country is considered by the Executive to be objectionable.

Art. 31. Aliens shall have the same individual rights and duties as Hondurans, subject to the exceptions and restrictions specified by this Constitution and by law.

Art. 32. Aliens may not engage in political activities of a national or international character; any such activity shall make them liable to the penalties prescribed by law.

Art. 33. Matters relating to aliens shall be governed by a special law.

Chapter III. — *Citizens*

Art. 34. Citizenship is a legal status by virtue of which Hondurans have rights and duties of a political and patriotic character.

Art. 35. Every Honduran man and woman over eighteen years of age shall be a citizen.

Art. 36. As regards their rights, citizens shall be entitled to: vote and stand for election to public office; join together in forming legally constituted political parties; join or resign from existing political parties; hold public office, if qualified; and exercise all other rights recognized by law to ensure the effective functioning of democracy.

Active members of the army and the police may not vote, but they may stand for election to public office if not barred by law.

Art. 37. As regards their duties, citizens shall be required to: comply with the Constitution and ensure that it is complied with, and serve the State in conformity with the law.

Art. 38. Suspension, loss and restoration of citizenship shall be governed by the following provisions.

Citizenship shall be suspended in consequence of:

1. A warrant of committal to prison, an order of referral to trial or an order stating that there is sufficient evidence for requiring a trial;
2. A final decision revoking political rights;
3. Judicial restraint of civil rights, designation as a fraudulent debtor or legally declared vagrancy;
4. Unjustified refusal to hold elective public office. In this case, suspension shall operate for the duration of the office refused.

Citizenship shall be lost in consequence of:

1. Rendering service in time of war to an enemy of Honduras or its allies;
2. Lending assistance to an alien or to a foreign government in any diplomatic claim or international court proceedings against Honduras;
3. Holding military or political office within the country on behalf of a foreign State without the necessary authorization;
4. Accepting, without the necessary authorization, decorations which imply obedience or allegiance to the government granting them;
5. Obstructing the freedom of voting, falsifying electoral documents or employing fraudulent means to frustrate the will of the people;
6. Urging, promoting or supporting the continuance in office or the re-election of the President of the republic.

Citizenship shall be restored by virtue of:

1. A final decision suspending proceedings;
2. An acquittal not subject to appeal;

3. Satisfaction of the penalty imposed for an offence;

4. An amnesty or pardon;

5. Rehabilitation in accordance with the law.

Title III

SUFFRAGE AND POLITICAL PARTIES

Chapter I

Art. 39. Suffrage is an essential civic function. Its exercice by citizens is a right which cannot be renounced and a duty which must be performed.

Art. 40. Voting shall be by direct suffrage, equal for all, and secret.

Art. 41. Political parties shall be associations established in conformity with the law, for electoral purposes and for purposes of political guidance, by Honduran citizens entitled to the full enjoyment of their civil rights.

Art. 42. Political parties organized and registered in due legal form shall constitute entities under public law, and their existence and free operation shall be guaranteed by this constitution.

Art. 43. The organization, operation and activities of political parties shall be in harmony with the democratic and republican principles embodied in this constitution.

Art. 44. Honduran citizens shall have the right to establish political parties in accordance with the provisions of this constitution and of the Electoral Act.

Art. 45. The Electoral Act shall prescribe the number of members necessary for the establishment and registration of political parties.

Art. 46. All acts which prevent or restrict the participation of any citizen in the political life of the nation shall be punishable.

Art. 47. The establishment or functioning of political parties which advocate or practise doctrines contrary to the democratic principles of the Honduran people or which, because of their ideology or international connexions, are a threat to the sovereignty of the State shall be prohibited. A decision in such cases shall be taken by the National Congress in the light of a report from the National Board of Elections.

This prohibition shall not apply to organizations which advocate Central American union, continental solidarity or Pan Americanism.

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Title IV

INDIVIDUAL RIGHTS AND SAFEGUARDS

Sole Chapter

Art. 57. The dignity of the human being is inviolable; all men are equal before the law. All the inhabitants of the Republic of Honduras shall be entitled, without discrimination of any kind, to protection in the enjoyment of life, security, reputation, freedom, labour and property.

Art. 58. The rights of the individual shall be limited by the rights of the community, the general security and the just requirements of the general welfare and of democratic progress.

Art. 59. No provision of this constitution and none of the rights and safeguards set forth herein may in any way be construed as a denial of other unspecified rights stemming from the sovereignty of the nation, its republican and democratic form of government and the dignity of man.

Art. 60. Any law and any administrative or other regulation governing the exercise of the rights and the operation of the safeguards set forth in this constitution shall be null and void if it diminishes, restricts or perverts such rights and safeguards.

Art. 61. The right to life is inviolable. Capital punishment shall be abolished in Honduras.

Art. 62. No person shall be subjected to torture, to a dishonouring penalty or to cruel, inhuman or degrading treatment.

No person shall be subjected to arbitrary arrest, imprisonment or exile. Force may be used only to the extent necessary to detain an offender or a person awaiting trial. Prisons shall serve the purposes of security and social defence. An effort shall be made in prisons to effect the social rehabilitation of offenders.

Art. 63. Any statement obtained by means of violence shall be null and void, and an official obtaining a statement by such means shall be held accountable for his action.

Art. 64. Every person charged with a penal offence shall be entitled to be presumed not guilty.

Art. 65. No person shall be subjected to interference with his privacy, family, home or correspondence.

Telephonic communications may not be intercepted. The people shall be entitled to protection of their persons, homes, personal papers and effects against arbitrary search or seizure or arbitrary entry of premises.

No search warrant, warrant for entry of premises or warrant of arrest shall be issued except by a judicial authority and then only in connexion with legal proceedings where there appear to be reasonable grounds for requiring the search or seizure of property or the arrest of persons.

Art. 66. Private correspondence and private papers and books shall be inviolable; they may be seized or examined only by order of a judge having statutory jurisdiction in civil, commercial, labour or criminal matters, and in such case they shall be registered in the presence of the owner or, failing him, of his representative or of two witnesses, and to the extent that they are not relevant to the subject of the proceedings they shall be returned. Material

improperly obtained may not be used as evidence in judicial proceedings.

Art. 67. Every person shall be entitled to apply for an injunction against any unlawful or arbitrary action taken against him, and to demand the effective observance of all the rights guaranteed by this constitution if he is improperly hampered in the exercise thereof by any law or act of any authority, agent or public official.

Art. 68. The Constitution recognizes the right of *habeas corpus*. If a person is illegally held in custody or imprisoned, or if his personal freedom is in any way illegally curtailed, or if he suffers ill-treatment even when undergoing lawful imprisonment or custody, either he or any person who, without need of power of attorney, acts on his behalf shall be entitled to petition the appropriate court, either orally or by telegraph or in writing, that he be produced forthwith so that either he may be released or the ill-treatment or coercion to which he was subjected may be stopped. If the court orders his release, he shall thereupon be immediately set free.

Where a request to that effect is made, or the court or judge sees fit to do so, the person shall be produced at the place where he is held without prior announcement or notification to the parties.

A petition of *habeas corpus* shall be granted free of costs. The obligation to produce the person on whose behalf such petition is made shall be ineluctable. Any authority ordering the concealment of a person being held, any agent carrying out such an order, and any authority or agent who in any other way frustrates the operation of *habeas corpus*, shall be guilty of the offence of unlawful detention.

Art. 69. A detention order which is not issued by a competent authority, or is not drawn up in due legal form, shall be unlawful.

Detention for purposes of investigation may not exceed six days. No person may be held without means of communication for more than twenty-four hours. Contravention of these provisions shall give rise to criminal liability, irrespective of whatever other penalties are provided for by law.

Art. 70. No warrant of committal to prison may be issued unless there exists complete evidence of the commission of a crime or a simple offence punishable by deprivation of liberty and unless there are reasonable grounds for determining the identity of the offender.

The same provision shall apply with regard to the issuance of an order of referral to trial.

Art. 71. No person shall be compelled to incriminate himself by his own statement in criminal or police matters, or to testify against his spouse or against relatives within the fourth degree of consanguinity or the second degree of affinity. The silence of the accused shall not be taken into account or held against him.

Art. 72. No person may be imprisoned for debt.

Art. 73. No person may be tried a second time for the same offence.

Art. 74. No person may be taken to prison, even under a warrant of committal, nor be held in prison, if he offers sufficient bail and the penalty for the offence with which he is charged does not exceed three years.

Art. 75. No person may be punished for an offence except as the result of a trial based on a law enacted prior to the offence, nor may a person be imprisoned or held in custody elsewhere than at the places specified by law.

Art. 76. A "superior order" not drawn up in due legal form shall be unlawful.

Both the official who issues such an order and the subordinate who carries it out shall incur criminal liability as specified by law.

Art. 77. An offender caught *in flagrante delicto* may be apprehended by any person and at any place for the purpose of being handed over to the competent authorities.

Art. 78. The right to a defence is inviolable. No person may be sentenced without having been summoned, heard and convicted in judicial proceedings in which adequate provision is made for his defence.

No person may be tried by special commissions or by judges other than those specified by law. Breaches and contraventions of military discipline shall continue to be tried by military courts, but a military court may not in any circumstances or for any reason exercise jurisdiction over persons who do not belong to the Army.

Where a civilian or a discharged soldier is involved in a breach or contravention of military discipline, the case shall be dealt with by the appropriate civilian authority.

Art. 79. The State shall appoint lawyers or counsel for the needy to attend to the defence and the interests of minors and other legally incapacitated persons, and to provide legal aid to persons with insufficient means and represent them in court for the defence of their personal freedom and labour rights.

Art. 80. Any person or assembly of persons shall be entitled to submit petitions to the lawfully constituted authorities for consideration and to have the decision thereon communicated to them.

Art. 81. No person may be harassed or persecuted because of his opinions. Private actions which do not disturb the public peace or harm third parties shall in all cases remain outside the scope of the law.

Art. 82. The homes and other private premises of the inhabitants of Honduras shall be inviolable, provided that they may, by virtue of the written order of a competent judge and in conformity with the law, be entered for the purpose of preventing the commission of an offence or the obstruction of justice or of averting serious damage to persons or property.

Whenever a home other than that of the accused is to be entered, the authority in charge, or the agents of that authority, must first obtain the permission of the occupant.

No entry of premises may be carried out between 6 p.m. and 6 a.m. without the permission of the head of the household.

Art. 83. Freedom of expression and freedom of information shall be inviolable; this right shall include freedom to hold opinions without interference and to seek, receive, transmit and impart information through any media.

No law restricting these freedoms may be passed. The Expression of Opinion Act shall define the liability incurred by abusing this freedom to the detriment of the character, reputation or interests of any person or body.

Art. 84. No printing establishment, wireless broadcasting station or other medium of expression of opinion, nor the machinery or equipment thereof, may be sequestered, seized or confiscated; nor may the activities of any such establishment, station or medium be halted or interrupted by reason of an offence or contravention connected with the expression of opinion. The premises used by any kind of publishing establishment may be expropriated only by virtue of a judicial declaration of public necessity and convenience and in accordance with the procedure prescribed by law.

Even in such cases, the expropriation may be carried out only when the publishing establishment has been provided with adequate premises in which its equipment and shops can be installed so as to continue in operation.

Art. 85. The State recognizes the right of unarmed peaceful assembly. Outdoor meetings and public demonstrations may not be restricted or impeded.

The exercise of this right shall be regulated by law for the sole purpose of safeguarding the peace. All persons shall likewise be free to form associations for the purpose of promoting, pursuing and protecting political, economic, trade-union, religious, cultural or other interests, on condition that the democratic principles of the republic are upheld.

Art. 86. In accordance with the international conventions to which it is a party, Honduras recognizes the right of asylum in the case of prosecutions arising from non-political offences.

Art. 87. A Honduran may not be expelled from the territory of the country. Any contravention of this provision shall constitute an offence entailing criminal and civil liability which may be invoked at any time against the official at fault. The nature of this offence and the corresponding penalty shall be defined by law.

Art. 88. Every person shall have the right to freedom of movement and residence within the borders of the country. No person may be compelled to change his place of residence except by a court order based on statutory authority.

Every Honduran shall have the right to obtain a passport, and to leave the country and return thereto without restrictions of any kind.

Art. 89. Every person shall have the right to an education that is directed to the full development of his personality and to the strengthening of respect for human rights.

. . .

Art. 92. No law shall have retroactive effect, except in criminal matters where a new law is more favourable to the offender or accused.

Art. 93. All services other than those which by law or by virtue of a judgement based on law must be performed free of charge shall be remunerated.

. . .

Art. 95. No minister of religion may hold elective public office.

. . .

Art. 98. Prosecution in respect of offences against the rights and safeguards set forth in this chapter shall be instituted in the form of public proceedings on the basis of a mere complaint, without the need for posting a bond or for any other formality.

Title V

SOCIAL SAFEGUARDS

Chapter I. — *The Family*

Art. 99. The family, marriage and motherhood shall be under the protection of the State. Both spouses shall have equal rights before the law.

. . .

Art. 102. All classifications of parentage shall be abolished. No statement of any kind purporting to establish a differentiation of birth or relating to the marital status of the parents may be entered in a birth register or in any document, attestation or certificate referring to parentage. Consequently, all children shall be equal in status and shall have the same rights and duties.

. . .

Art. 105. Needy parents having five or more minor children shall receive special protection from the State. As between candidates of equal merit, such parents shall be entitled to preferential treatment in public employment.

Art. 106. Parents shall be required to feed, assist and educate their children. The State shall ensure that these obligations are complied with.

Art. 107. The State shall attend to the physical, mental and moral health of children by setting up appropriate institutions and agencies as required.

. . .

Art. 108. Minors who are physically handicapped or mentally deficient, orphans, aged persons, aban-

doned persons, delinquents and pre-delinquents, shall be subject to special legislation dealing with their supervision, rehabilitation and protection. No person under eighteen years of age shall be confined to a gaol or penitentiary.

. . .

Chapter II. — *Labour and Social Insurance*

Art. 111. Every person shall have the right to work, the free choice of employment or resignation from employment, to just and favourable conditions of work and to protection against unemployment.

Art. 112. Laws which govern relations between employers and workers shall be matters of public policy. Any provisions or agreements that disregard or restrict the following safeguards shall be null and void:

(1) The regular period of daytime work may not exceed eight hours a day or forty-four hours a week, although wages shall be computed on the basis of a forty-eight-hour week. Regular night work may not exceed six hours a day or thirty-six hours a week. Overtime work shall be remunerated in the manner prescribed by law. These provisions shall not apply in well-defined exceptional cases provided for by law.

Every worker shall be entitled to one day of rest, preferably a Sunday, for every six days of work.

(2) The principle of equal pay for equal work, without any discrimination, shall apply where the post, hours of work, efficiency and length of service are also equal.

(3) Wages must be paid in currency that is legal tender.

(4) Wages, employee compensation and social security contributions shall constitute preferential claims in the event of the bankruptcy or insolvency of the employer.

(5) Every worker shall be entitled to a minimum wage that shall be fixed periodically by the joint action of the State, the workers and the employers and shall be sufficient to meet normal household requirements in the material, moral and cultural order, due consideration being given to the type of occupation, the conditions peculiar to each region and type of work, the cost of living, the relative skill of the workers and the wage systems of the various undertakings.

A minimum wage shall also be fixed for those occupations in which no minimum wage is established by a collective contract or agreement.

The minimum wage shall not be subject to any attachment, offset or deduction except as provided by law in the light of the family and trade-union obligations of the worker.

(6) Subject to the penalties prescribed by law, an employer shall, as regards working premises, comply with the regulations concerning health and sanitation, take adequate measures for the prevention of accidents in the use of machinery, instruments and materials, and organize the work in such a way as to provide the greatest safeguard to the life and health of the workers, due regard being had to the nature of the undertaking.

Special protection shall be afforded to women and to persons under eighteen years of age.

(7) Persons under fourteen years of age, and those above that age who are reequired by law to attend school, may not be employed in any kind of work, provided that the authorities rerponsible for regulating the work of such persons may authorize their employment if this is considered essential for their support or for the support of their parents or their brothers and sisters and if the minimum requirements of compulsory education are not thereby interfered with.

For persons under sixteen years of age, the working day for any kind of work, which must be daytime work, may not exceed six hours a day or thirty-six hours a week.

(8) Workers shall be entitled to paid annual leave, the time and duration of which shall be regulated by law. In the event of dismissal without just cause, the employer shall, in addition to the compensation prescribed by law, make a cash payment corresponding to the amount of accrued leave.

(9) Workers shall be entitled to a day of rest with pay on all holidays specified by law; the law shall also specify the types of work not governed by this provision, but in such cases workers shall be entitled to extra pay.

(10) Women shall be entitled to maternity leave before and after childbirth without loss of employment or of wages. During the nursing period, a woman worker shall be entitled to special rest periods each day for nursing her child.

Expectant mothers may not be dismissed from employment except for justifiable causes specified by law.

(11) Employers shall be required, as provided by law, to pay compensation to their workers in respect of industrial accidents and occupational diseases.

(12) The right to strike or to enforce a lock-out shall be recognized. The exercise of this right shall be regulated by law and may be made subject to special restrictions on the case of those public services which the law specifies.

(13) Workers and employers shall be free to form associations for purposes connected exclusively with their economic and social interests, and in particular to establish trade unions and professional organizations. This right shall be regulated by law.

(14) Individual and collective contracts between employers and workers shall be subject to the supervision of the State.

Art. 113. Due consideration being given to the characteristics of particular industries and occupations and to just causes of dismissal, the worker shall

be guaranteed stability of employment by law. In the event of dismissal without just cause, the worker shall be entitled to his pay during the period of suspension from work and, at his option, to reinstatement or compensation.

Art. 114. The legal status of persons working at home shall be analogous to that of other workers, due allowance being made for the special characteristics of work at home.

Art. 115. Domestic workers shall be entitled to the benefits of the social legislation. Persons who render services of a domestic character in industrial, commercial, social and similar undertakings shall be treated as and shall have the same rights as manual workers.

Art. 116. Working conditions as regards railways, mines, merchant shipping and air transport shall, with due allowance for the particular circumstances in each case, be regulated by law.

Art. 117. Self-employed intellectual workers, and the products of their work, shall be protected by special legislation.

Art. 118. Workers shall be entitled to independence in respect of their moral, civic and political convictions. Provision shall be made by law against any interference from their employers in this regard.

. . .

Art. 120. Other conditions being equal, Honduran workers shall be given preference over foreign workers. The percentage of Honduran workers shall be fixed by law in respect of the various types of undertakings and employers but, subject to the exceptions specified by law, shall in no case be less than 90 per cent. The Executive may alter this percentage when the needs of agriculture or the national interest so require, and may, subject to reciprocity, make exceptions in favour of Central American workers.

. . .

Art. 124. The State shall promote the technical training of workers and their cultural and economic betterment.

Industrial undertakings, each in its own specialized field, shall establish schools to provide vocational training for the children of their workers or members. This matter shall be regulated by law.

Art. 125. The State shall promote the construction of houses and housing estates for workers and shall ensure that they fulfil health requirements. To this end, it shall have power to inspect houses built by private undertakings and to prescribe what measures must be taken in conformity with the public health regulations.

Art. 126. The law shall specify which undertakings and employers, because of the number of their employees or the amount of their capital, must provide their workers with suitable housing, schools, dispensaries and other services and must take measures that will foster the physical and moral well-being of the workers and their families.

Art. 127. Every person shall be entitled to economic security in the event of incapacity for work or inability to obtain gainful employment. Social security services shall be provided and administered by independent agencies and shall cover illness, maternity, family allowances, old age, orphans' allowances, enforced idleness, industrial accidents, occupational diseases and all other contingencies affecting the capacity to work and earn a living. The establishment of such social security services shall be encouraged by law as the need for them arises.

Social welfare and social security institutions shall be established by the State.

Art. 128. The extent, scope and operation of the social security system shall be regulated by law. The State, the employers and the workers shall contribute to the financing of social security and to its improvement and extension.

Art. 129. The passage of a Social Security Act shall be regarded as a matter of public interest.

. . .

Art. 132. The rights set forth in this chapter may not be renounced. Any stipulations purporting to restrict or suppress them shall be null and void.

Art. 133. The rights and safeguards set forth in this chapter shall be without prejudice to those deriving from the principles of social justice accepted by Honduras in international conventions.

Art. 134. A labour code shall be enacted as a matter of public interest, and its purpose shall be to regulate relations between capital and labour, placing them on a basis of social justice, so that the worker will be assured of conditions necessary for a normal life, and capital of a fair return on its investment.

Chapter III. — *Culture*

Art. 135. Education is an essential function of the State, for the preservation, development and dissemination of culture, which must extend its benefits throughout society without discrimination of any kind.

Art. 136. The State shall foster fundamental education for the people by setting up the necessary agencies for this purpose and placing them under the direct supervision of the Ministry of Education.

Art. 137. The State shall foster and encourage the establishment of institutions for pre-school, elementary and secondary education, including pre-vocational, vocational and art schools. It shall also promote education outside the schools through libraries, cultural centres and other cultural media.

Art. 138. The functional aspects of education shall be administered by the State. Public education shall be free and non-sectarian and elementary education shall, in addition, be compulsory and be paid for by the State.

Art. 139. The training of teachers shall be a primary function of the State.

Art. 140. Teachers shall be entitled to the benefits and privileges prescribed by law, and, in particular, to a salary in keeping with the importance of their calling and calculated to enhance their social, economic and cultural standing.

Art. 141. Provision shall be made by law for an Advancement Scale for Teachers that will safeguard tenure and promotion and be conducive to efficiency.

Art. 142. Private education shall be subject to such inspection and regulation as is approved by the State.

Art. 143. The qualifications for the teaching profession shall be determined by law.

Art. 144. In all public and private educational establishments, the teaching of the Constitution, civics and the history and geography of Honduras shall be reserved to native-born Honduran teachers.

Freedom of expression in teaching shall be guaranteed.

. . .

Art. 148. The State shall provide scholarships for study in the professions, arts and traditional crafts and for post-graduate training or specialization for the benefit of persons whose talents, abilities or other merits qualify them for such aid. This matter shall be regulated by law.

Art. 149. The State shall promote the establishment, and contribute to the support, of schools for the blind, the deaf and dumb and the mentally retarded.

Art. 150. The State shall contribute to the support of needy students in accordance with the provision of a special law.

. . .

Art. 152. Archaeological, artistic and historical treasures shall be under the supervision and protection of the State. The exportation thereof shall be prohibited and any transfer of ownership or transformation thereof may be prevented if the national interest so requires.

Art. 153. The traditional arts and crafts, being part of the national cultural heritage, shall be accorded special protection so that their authentic artistic character may be preserved and production and distirbution methods may be improved.

Chapter IV. — *Property*

Art. 154. Private property shall be recognized, fostered and protected by the State.

Art. 155. No person may be deprived of his property except by law or by virtue of a judgement based on law.

Art. 156. The expropriation of property on grounds of public necessity or convenience must be authorized by law or by a judgement based on law and may not take place without prior compensation.

In the event of war or internal disturbance, prior compensation shall not be an indispensable condition, but the appropriate payment shall be made not later than two years after the end of the state of emergency.

Art. 157. The social function of private property being recognized, the restrictions that are prescribed by law shall be motivated by public necessity and convenience or the interests of the community.

Art. 158. The right of ownership shall be without prejudice to the right of eminent domain within the territorial boundaries of the State and may not be invoked to the detriment of national institutions or works of a national character.

Art. 159. State lands, village commons, community property and private property situated within a forty-mile zone along the boundary with neighbouring States or the shore of either ocean or situated on an island, shoal, reef, protruding or sunken rock, or sandbank may be acquired, in full or partial ownership, only by a native-born Honduran, by a company or partnership composed entirely of Hondurans or by a state bank, and any deed or contract to the contrary shall be null and void.

Registrars of Property may not register documents which contravene this provision.

Urban property shall be excepted.

Art. 160. An author, inventor, producer or merchant shall be entitled to the temporary exclusive ownership of his work, invention, trade mark or trade name as specifically provided by law.

Art. 161. The right to recover confiscated property shall be imprescriptible.

Art. 162. No person having the free administration of his property may be deprived of the right to settle his civil affairs by agreement or arbitration.

Title VI

Sole Chapter. — *Suspension of Constitutional Safeguards*

Art. 163. The safeguards provided for in articles 66, 68, 69, 74, 76, 82, 83, 85, 88 and 90 of this constitution may be temporarily suspended throughout the republic or in any part thereof whenever the security of the State is seriously threatened by internal disturbance, war, a disruption of law and order which imperils the peace and transquillity of the republic, an epidemic or any other calamity.

Art. 164. The National Congress may order the suspension of the various constitutional safeguards referred to in the preceding article for a period of not more than sixty days.

Art. 165. When the National Congress is not in session, the Executive may suspend the constitutional safeguards referred to in article 163 for a period of not more than thirty days. In this event, the Executive must report to the National Congress at its next session on the reasons for the suspension and on the acts performed while it was in effect.

Art. 166. The area to which the suspension applies shall be subject, during the period of the suspension,

to the State of Siege Act, but neither that Act nor any other law may provide for the suspension of any constitutional safeguards other than those specified in article 163.

Art. 167. During the operation of the state of siege, no Honduran and no active journalist or news broadcaster shall be deported or be molested in any way because of his opinions.

Art. 168. Postal censorship may be imposed in the event of war.

Art. 169. Offences which, during the suspension of constitutional safeguards, are directed against the stability or security of the State shall be tried by the competent courts.

Art. 170. The Executive may not, during the operation of the state of siege, detain any person for more than ten days without placing him at the disposal of the competent court.

Art. 171. Also during the suspension of constitutional safeguards, no new offences may be created and no penalties may be imposed other than those established by the laws in force on the date when the suspension was ordered.

Art. 172. If the Executive contravenes any provision of this chapter, the injured party, or any person acting in his behalf, may lodge an appeal on the ground that there has been a breach of the Constitution.

Title VII

BRANCHES OF THE GOVERNMENT — LEGISLATIVE BRANCH

Chapter I. — *Organization of the Legislative Branch*

Art. 173. Legislative powers shall be vested in a Congress composed of deputies elected by direct suffrage. The National Congress shall meet for its regular session in the capital of the republic on the twenty-first day of November of every year without the necessity of being convened.

In order to stand for election as a deputy, a person must be: a citizen over twenty-five years of age enjoying the full exercise of his rights, a Honduran by birth or born outside the country of Hondurans by birth who retained their nationality, and a native or resident of the department for which he stands.

. . .

Art. 184. The following persons may not stand for election as deputies:

1. The President of the republic;
2. Ministers and under-secretaries of state;
3. Officials and employees of the Executive, with the exception of those engaged exclusively in teaching;
4. Officials and employees of the Judiciary;
5. The Controller-General of the republic, the Assistant Controller and other members of the Controller's Office;
6. The Procurador General de la República;
7. Members of the armed forces on active duty;
8. Active members of the national police;
9. Members of the National Board of Elections;
10. Diplomatic and consular representatives;
11. Directors of the Central Bank, members of the Board of Directors of the National Development Bank, and directors of other autonomous bodies;
12. Relatives of the President of the republic or of ministers of state within the fourth degree of consanguinity or the second degree of affinity;
13. Parties to pending contracts in respect of state concessions for the exploitation of national resources or the operation of public services, the representatives and attorneys of such parties, and the representative and attorneys of foreign companies having the status of such parties;
14. Taxpayers in arrears and persons still accountable for the administration of treasury funds.

. . .

Chapter II. — *Powers of Congress*

Art. 188. The National Congress shall have the following powers:

. . .

19. To order the suspension of constitutional safeguards in accordance with the provisions of this constitution and to ratify, amend or repeal any such suspension ordered by the Executive in accordance with the law;

. . .

EXECUTIVE BRANCH

Chapter IV. — *Organization of the Executive Branch*

Art. 193. Executive powers shall be vested in a citizen designated as President of the republic and, in his absence, in one of his substitutes.

Art. 194. The President of the republic and his substitutes shall be elected at the same time by direct popular suffrage and by virtue of a simple majority of votes. The results of the election shall be proclaimed by the National Board of Elections or, in default of the said Board, by the National Congress.

. . .

Art. 198. In order to stand for election as President of the republic or as substitute for the President of the republic, a person must:

1. Be a Honduran by birth;
2. Be over thirty years of age;
3. Enjoy the full exercise of citizenship rights;
4. Not be a minister of religion.

Art. 199. The following persons may not be elected President of the republic for the succeeding term:

1. Any citizen who has been President or Acting President during a given term;

2. Ministers or former ministers of state who have held office within six months before the elections;

3. Members of the National Board of Elections, and representatives or attorneys of holders of state concessions or of undertakings which operate public services;

4. Relatives of a President or of a substitute for the President who has held the office of President during the immediately preceding term, being relatives within the fourth degree of consanguinity or the second degree of affinity.

. . .

Chapter *V.* — *Powers of the Executive*

Art. 205. The President of the republic shall be responsible for the general administration of the country. He shall have the following powers:

. . .

4. To limit the exercise of constitutional safeguards, in agreement with the Council of Ministers and subject to the provisions of this constitution.

. . .

31. To submit to the Congress any decree he may issue ordering the suspension of constitutional safeguards as provided in article 165 of this constitution;

. . .

Chapter VII. — *Judicial Branch*

Organization

. . .

Art. 223. Justice shall be administered free of charge.

. . .

Art. 230. A justice or judge may not be removed from office except where improper conduct or failure to carry out the duties of his office constitutes an offence which, after investigation, results in the issue of a warrant of committal to prison or of an order of referral to trial. A decision concerning the relevant circumstances shall be made by the Supreme Court of Justice on the basis of a summary investigation and the hearing of the accused. Transfers of the judges and justices of courts of appeal shall be regulated by law.

. . .

Chapter VIII. — *Powers of the Supreme Court of Justice*

Art. 232. The Supreme Court of Justice shall exercise the following powers, in addition to those conferred upon it by law:

. . .

11. To declare, in the manner and in the cases specified in this constitution, that a law is unconstitutional;

. . .

TITLE VIII

Sole Chapter. — *Unconstitutionality and Review*

Art. 236. A law may be declared unconstitutional on grounds of form or of substance, in accordance with the provisions of the following articles.

. . .

Art. 238. A declaration that a law is unconstitutional and that its provisions consequently do not apply may be sought by any person who considers that his direct, personal and legitimate interests have been injured:

1. Such declaration may be sought by way of a main action, which must be introduced in the Supreme Court of Justice;

2. Such declaration may be sought by way of an objection raised in the course of any judicial proceedings;

3. Such declaration may also be sought, as a matter of course, by a judge or court in the course of judicial proceedings before pronouncing judgement. Where the said declaration is sought as provided in this or the preceding sub-paragraph, the proceedings shall be suspended and the case transferred to the Supreme Court of Justice.

. . .

TITLE X

Chapter I. — *Economic Matters*

. . .

Art. 255. The State recognizes and guarantees freedom of consumption, savings and investment, occupation, initiative, trade, contract and enterprise.

The foregoing enumeration does not exclude recognition of any other freedoms which stem from the democratic and liberal principles on which this constitution is based.

. . .

Art. 257. Action by the State in economic matters shall be based on the public interest and be limited by the fundamental rights and freedoms recognized by the Constitution.

Art. 258. The main purpose of the State in the promotion of economic activity shall be to foster an orderly growth in the levels of production, employment and income and the fair distribution of income, under conditions of reasonable currency stability, among those who contribute to its formation, so as to ensure the whole population of decent and adequate living conditions.

. . .

TITLE XII

Sole Chapter. — *Liability of Officials*

. . .

Art. 312. Public officials and civil servants who violate any of the rights and safeguards set forth in this constitution shall incur both civil and criminal liability; they may not benefit from a pardon or commutation of sentence during either the current or the succeeding term of office.

. . .

FINAL ARTICLE

Art. 345. The present constitution shall enter into force on 21 December 1957, on which date the Constitution of 28 March 1936 shall stand repealed.[1]

[1] Extracts from the Constitution of 28 March 1936 appeared in *Yearbook on Human Rights for 1946*, pp. 146-149. Amendments thereto are quoted or referred to in *Yearbook on Human Rights for 1951*, p. 127; *for 1952*, p. 107; and *for 1953*, p. 122.

DECREE No. 113: ELECTORAL ACT of 22 July 1957[1]

Chapter I

PRELIMINARY PROVISIONS

Art. 1. The election of deputies to the National Constituent Assembly shall be governed by the provisions of this Act.

. . .

Chapter II

SUFFRAGE

Art. 5. Hondurans of both sexes over twenty-one years of age, and those over eighteen years of age who are married or who know how to read and write, are entitled to vote, provided that they are entered in the electoral register, and are not included in any of the ineligible categories established in this Act.

Art. 6. For male citizens, the exercise of the suffrage is a right and a duty which may not be delegated or renounced. For female citizens, it is optional. Voting shall be by direct and secret ballot in the manner prescribed by this Act.

Art. 7. The following persons are not entitled to vote:

1. Persons serving with the army or the national police.

2. Persons against whom a warrant of arrest and custody or an order of commitment for trial has been issued.

3. Persons sentenced to forfeiture of their civil rights.

4. Persons deprived of their political rights by a decision not subject to appeal.

Art. 8. In order to be qualified to be elected as a deputy to the National Constituent Assembly, a person must be: a citizen enjoying the full exercise of his rights, a Honduran by birth, a native or resident of the department, and over twenty-one years of age.

Art. 9. The following persons shall not be qualified to be elected as deputies:

1. Members of the Junta Militar de Gobierno (Military Council of Government);

2. Secretaries and under-secretaries of state;

3. Advisers to the Junta Militar de Gobierno;

4. Officials and employees of the Executive, with the exception of those engaged exclusively in teaching;

5. Officials and employees of the Judiciary;

6. The Controller-General of the republic, the Assistant Controller and other members of the Controller's Office;

7. General Prosecutor for the Treasury;

8. Members of the armed forces on active duty;

9. Members of the National Board of Elections;

10. Members of the National Council for Economic Affairs;

11. Diplomatic and consular representatives;

12. Directors and managers of state banks and other autonomous government bodies;

13. Relatives, within the fourth degree of consanguinity or the second degree of affinity, of members of the Junta Militar de Gobierno, of secretaries and under-secretaries of state, and of justices of the Supreme Court of Justice;

14. Relatives, within the second degree of consanguinity or affinity, of military commandants and civil governors, when they stand for election in the department in which such commandants or governors perform their duties;

15. Contractors for public works and services defrayed from public funds who have accounts pending with the State in respect of such contracts;

16. Persons owing money to the Treasury as a result of the administration of public funds.

Art. 10. The prohibition imposed by the preceding article shall apply to persons occupying the positions indicated from the date on which elections are called.

. . .

[1] Text published in *La Gaceta* No. 16240, of 24 July 1957. The decree entered into force upon its publication in *La Gaceta*. Translation by the United Nations Secretariat.

HUNGARY

NOTE[1]

I. LEGISLATION

Act IV of 1957 on General Rules of Procedure of State Administration

This Act, in regulating proceedings before the organs of state administration, keeps two fundamental requirements in view: the protection of the rights and interests of citizens and the efficiency of the procedure. The Act extensively protects the legitimate interests of citizens by obliging the administrative organs dealing with a matter to pay attention to the personal circumstances of citizens: at the same time, the Act makes available to the organs of state administration acting in a matter all means to enable them to conduct the proceedings, come to the correct decision and ensure the success of the procedure.

The Act provides also for the application to foreign citizens of the general rules of procedure of state administration. Thus, cases of foreign citizens are treated, as far as procedural law is concerned, in the same manner as those of Hungarian citizens, exceptions being made only if provided for in international treaties or statutory provisons (article 1 (3)).

Article 12 of the Act contains the safeguarding provision that nobody should suffer any prejudice for not knowing the Hungarian language. A consequence thereof is the further provision that the rule on the use of the mother tongue shall apply not only to Hungarian citizens but also to foreign citizens who become parties to administrative proceedings. The realization of the principle expressed in this article is also served by article 81 of the Act providing that interpreters' fees are borne by the State.

Article 13 of the Act guarantees that citizens may apply in their administrative cases to the appropriate organ of state administration essentially without any formal constraint. Petitions objectionable as to their form must therefore not be rejected without examining the merits of the case, the acting organ being obliged to make inquiries and to take measures concerning the merits on the strength of the request ascertainable from the contents of the petition.

Provisions dealing with the right of citizens to legal redress are of particular importance in the domain of administrative proceedings. Hungarian citizens and foreigners entering into legal relation with administrative organs of the state are entitled to appeal against any first instance administrative decision affecting their interest. Observance of legality is a requirement of socialist life. Taking this into consideration in addition to the right of appeal the Act provides for other extensive means to prevent infringement of the law and to terminate infringements which may have occurred. Among means aiming at the reparation of grievances the Act makes provision for recourse to the judiciary, enumerating administrative cases in which there is a possibility of judicial supervision. In fact judicial proceedings with the increased safeguards comprised by them (absolute enforcement of hearing of both parties, utilization of special legal knowledge and experience, etc.) are so efficient as a means for protecting the rights and legitimate interests of citizens that they should not be foregone even in certain administrative cases.

According to the ministerial preamble of the Act recourse to the courts of justice is naturally not the general procedure for relief against infringements of statutory provisions, committed in the course of state administration. This is why the Act permits cases to be brought before the courts only when the protection of the citizen's rights particularly justifies such a course. Article 57 (1) contains the following provisions:

"Under this Act redress in courts of justice may be sought against:

"(*a*) Refusal or deletion of entries into registers of births, marriages and deaths and refusal to rectify such entries;

"(*b*) Decisions or dispositions ordering requisitioning of apartments or parts of apartments and decisions refusing approval of a mutual transfer of apartments;

"(*c*) Decisions refusing to release property seized or kept seized in the course of administrative proceedings;

"(*d*) Decisions or measures requiring the acquisition or use of land or other property;

"(*e*) Decisions establishing liability to taxes or duties (only as far as the title of assessment is concerned).

[1] Information kindly furnished by the Ministry for Foreign Affairs of the Hungarian People's Republic.

Reference may also be made to ordinance No. 3/1957 of the Ministry of Labour respecting unemployment assistance, dated 15 June 1957 (*Magyar Közlöny* No. 66, of 15 June 1957), translations of which into English and French have appeared in International Labour Office: *Legislative Series* 1957—Hun.1.

"In the cases enumerated under items (*a*) and (*c*), the court of justice may alter the decision of the organ of state administration."

Among the means for the termination of injustice the Act also regulates the rights of complaint of citizens. Against non-appealable decisions of the state administration the interested party may file a complaint which the superior organs of the administrative branch having dealt with the matter have to examine on its merits with the greatest care.

On the other hand the Act authorizes every citizen in his notification to reveal faults and deficiencies which he may have observed in any domain of state and economic life, and to make proposals for eliminating them. The name given to such notifications, as distinct from complaints filed in individual cases, is "notices of common concern."

Protection of the personal rights of citizens and the safeguarding of legality require that only persons in senior positions of employment should be entitled to order coercive measures against citizens. Accordingly, article 86 of the Act authorizes in general only heads of special administrative organs or persons in still higher positions of employment to impose fines. To ordering compulsory attendance — i.e., to dispositions affecting also the personal liberty of citizens — the Act applies an even stricter rule. Unless otherwise provided for in the law compulsory attendance may only be enforced with the approval of the public prosecutor. The head of the organ of administration may, however, not recommend such approval; only the minister (and persons authorized by him to sign) may do so and in the case of organs of councils the president of the executive committee, the deputy president or secretary.

Act V of 1957 on Hungarian Nationality

Act V of 1957 on Hungarian Nationality lays particular stress on the increased enforcement of the equality of rights of women, provides for still more efficient legal means for remedying statelessness and endeavours to reduce cases of double nationality. It renders the proof of Hungarian nationality simple and free from bureaucracy and provides for appropriate safeguards in cases when a person in spite of legal provisions does not obtain from the organs of state administration a certificate proving the existence or non-existence of Hungarian nationality. Over and above these provisions the Act goes far in serving the equality of citizens before the law; for instance, article 1 (2) of the Act forbids anybody to discriminate against others on account of their nationality.

Before this Act came into force a woman marrying a Hungarian citizen automatically acquired Hungarian nationality, by the fact of her marriage and as from its date. The principle contained in the former Act on Hungarian Nationality (Act LX of 1948) that the nationality of a woman is governed by that of her husband was contrary to the principle of equality of rights of women set out in Act XX of 1949 and in the Constitution; neither was it in accord with international requirements. (According to the Convention on the Nationality of Married Women, opened for signature in New York on 20 February 1957, a woman does not lose her nationality by contracting marriage.) The new Nationality Act (Act V of 1957) therefore declares that a woman contracting marriage shall keep her nationality of before the marriage, but that a woman contracting marriage with a foreign citizen may ask to be relieved of allegiance to Hungary and shall be entitled to preferential treatment in this respect (article 13). On the other hand any foreigner wishing to obtain the nationality of his or her Hungarian spouse shall be given preferential treatment when deciding on such application for naturalization (article 7).

According to article 2(2) any person born in Hungary after the entry into force of the Act shall be presumed to be a Hungarian citizen. In general children of stateless parents fall under this rule: the Act thereby extensively complies with the requirements of humanity by breaking the fundamental principle of Hungarian law based on origin (*ius sanguinis*) in order to put an end to the condition of statelessness, applying instead the principle of territory (*ius soli*). Another legal presumption arising from humanitarian considerations is the provision that children of unknown parents found in Hungary and brought up in this country shall be deemed to be Hungarian citizens until proof of foreign nationality has been established. This provision applies naturally not only to infants but to any person found under any circumstances on present-day Hungarian territory, having grown up here, whose nationality cannot be established.

Article 8 (*a*) of the Act provides that when dealing with the petition of a person asking for naturalization the circumstance of his being stateless or having lost his foreign nationality shall be taken into consideration in his favour. This is an efficient contribution of the Act to the fight against statelessness.

Article 10 of the Act contains provisions on preferential re-naturalization. Preferential re-naturalization may be granted to persons having lost their Hungarian nationality by being relieved of allegiance, absence, or acquisition of foreign nationality by naturalization provided they live in Hungary when submitting their application or wish to settle in this country. Exceptional preference in respect of re-naturalization is to be given to former Hungarian citizens who have lost their Hungarian nationality on the strength of Nationality Act LX of 1948 and statutory provisions repealed by this Act by marriage, legitimation, recognition of paternity or affiliation pronounced by a court of justice; living in Hungary is not to be deemed a requirement for petitioners submitting their petition under any of these headings. By virtue of article 17 of the Act, the granting and withdrawing of Hungarian nationality, as well as naturalization or re-naturalization, is to fall within the competence

of the Presidential Council of the People's Republic, whereas according to the former Act such cases were decided upon by administrative organs.

The provision of article 18(2) of the Act that judicial action can be taken against any statement of fact contained in a certificate concerning the existence, non-existence or loss of Hungarian nationality is a considerable innovation in the Hungarian law on nationality. This provision is of great service both to legality and to the interests of those concerned. The non-appealable judicial decision is binding on everybody, including administrative and judicial organs.

Government Decree No. 62/1957 on the Establishment of a National Council for the Protection of Children and Young People (Extracts)

Art. 1. (1) A Council for the Protection of Children and Young People (hereinafter called the Council) shall be set up in order to make the protection in Hungary of children and young people more efficient.

(2) The Council shall work under the direct supervision of the Council of Ministers.

Art. 2. The Council shall have as duty to co-ordinate, in respect of principles, organization and economics, the work of the different organs engaged in various aspects of the protection of children and young people. Within the scope of these duties the Council shall

(*a*) Study with particular care and bring to the notice of the competent state and social organs factors which may endanger the moral development of young people or cause their moral decline;

(*b*) Gather continuously information on the situation in the country of the protection of children and young people, ask the competent organs to take the necessary measures and/or put forward propositions to the Council of Ministers for enacting appropriate legislation;

(*c*) Watch the execution of the measures of the Council of Ministers concerning the protection of children and young people;

(*d*) Decide on questions arising in connexion with the protection of children and young people and submit for decision to the Council of Ministers disputes between ministries and organs of a national sphere of competence, giving in this latter case its opinion;

(*e*) Promote the establishment of institutions for the welfare of children and young people;

(*f*) Assist and urge the scientific treatment of problems of children and youth protection and the training of specialists and organize the exchange of experience both within the country and with other countries;

(*g*) Promote the development of sound public opinion against the danger of moral decline and on other matters of concern to the protection of children and young people;

(*h*) Make recommandations for rewarding persons having distinguished themselves in the practical and scientific work of child and youth protection.

Art. 3 (1) The president of the Council and its secretary shall be appointed by the Council of Ministers. The president shall be one of the deputy chairmen of the Council of Ministers.

II. International Agreements[1]

1. Legislative decree No. 14 of 1957 promulgated the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954.[2]

2. Legislative decree No. 53 of 1957 promulgated the Convention on the Recovery Abroad of Maintenance, done at New York on 20 June 1956.

[1] See also pp. 305 and 306

[2] See *Yearbook on Human Rights for 1954*, pp. 380-7.

LEGISLATIVE DECREE No. 1 OF 1957 OF THE PRESIDIUM OF THE PEOPLE'S REPUBLIC TO AMEND CERTAIN PROVISIONS OF LEGISLATIVE DECREE No. 31 OF 1956 CONCERNING PUBLIC SECURITY DETENTION[1]

1. Paragraph 2 of legislative decree No. 31 of 1956[2] shall be replaced by the following provision:

"2. Detention shall be ordered by the police authorities, with the approval of the competent prosecutor; the police authorities shall be responsible for carrying the order into effect."

2. Paragraph 5 of the said legislative decree shall be replaced by the following provision:

"5. The detailed regulations applicable to detention shall be laid down by decree of the Minister for the Armed Forces and Public Security Affairs, with the concurrence of the chief prosecutor."

3. The present legislative decree shall come into force on the date of its promulgation.

[1] Hungarian text in *Magyar Közlöny*, No. 2 of 8 January 1957. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1956*, p. 115.

DECREE No. 1/1957 (I.13) OF THE MINISTER FOR THE ARMED FORCES AND PUBLIC SECURITY AFFAIRS ON THE ENFORCEMENT OF LEGISLATIVE DECREES No. 31 OF 1956 AND No. 1 OF 1957[1]

For the purposes of the enforcement of legislative decrees No. 31 of 1956 and No. 1 of 1957 concerning public security detention,[2] and with the concurrence of the chief prosecutor, I hereby issue the following decree:

Art. 1. (1) Public security detention shall be ordered by a county (Budapest) police department, and a sentence to that effect shall be approved by a county (Budapest) prosecutor.

(2) The sentence imposing public security detention shall include particulars of the person to be placed under detention, a detailed description of the facts serving as a basis for the proceedings and an enumeration of the evidence.

Art. 2. A decision to approve a sentence imposing public security detention shall be taken by the competent prosecutor within forty-eight hours.

Art. 3. (1) An appeal against a sentence, as approved by the prosecutor, imposing public security detention shall be to the chief prosecutor.

(2) The appeal shall not have the effect of staying the enforcement of the public security detention.

(3) In the event of an appeal, the sentence imposing public security detention and copies of the documents in the case shall also be submitted to the chief prosecutor and shall be in his hands within seventy-two hours after the issuance of the detention order (approval of the prosecutor).

Art. 4. The sentence shall be pronounced in the presence of the person being placed under public security detention, and his attention shall be drawn to his right of appeal.

Art. 5. Public security detention shall be carried into effect at a place designated for that purpose by the national police department.

Art. 6. A person placed under public security detention may, at least once a month, be granted a visit authorization, receive a package or letter and write a letter. Such letters, packages and visits shall be subject to control by the police authority enforcing the detention.

Art. 7. (1) A person placed under public security detention may be required to work. In such event, he shall be provided with working clothes.

(2) If a person placed under public security detention is required to work, he shall receive suitable remuneration, the costs of public security detention being deducted therefrom.

Art. 8. A person placed under public security detention may, in connexion with any grievance which may arise during the period of detention, communicate with the prosecutor having jurisdiction over the area in which the place of detention is situated.

Art. 9. Public security detention shall be terminated if:

(*a*) Six months have elapsed since it was carried into effect;

(*b*) The circumstances serving as grounds for detention have ceased to exist;

(*c*) Such termination has been ordered.

Art. 10. No compensation shall be paid in respect of financial losses resulting from public security detention.

Art. 11. Enforcement of this decree shall be the responsibility of the head of the national police department, acting with the concurrence of the chief prosecutor.

[1] Hungarian text in *Magyar Közlöny* No. 4, of 13 January 1957. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1956*, p. 115, and p. 140 above.

LEGISLATIVE DECREE No. 41 OF 1957 OF THE PRESIDIUM OF THE PEOPLE'S REPUBLIC TO AMEND LEGISLATIVE DECREE No. 31 OF 1956[1]

I

The second sentence of paragraph 4 of legislative decree No. 31 of 1956 shall be replaced by the following provision:

The duration of public security detention shall be six months, and may be prolonged by the Ministry of the Interior with the approval of the Chief Prosecutor.

II

Paragraph 6 of the legislative decree shall no longer have effect.

III

The present legislative decree shall come into force on the day of its promulgation.

[1] Hungarian text in *Magyar Közlöny* No. 77, of 14 July 1957. Translation by the United Nations Secretariat. The text of legislative decree No. 31 of 1956 appears in *Yearbook on Human Rights for 1956*, p. 115.

ORDINANCE No. 1/1957 (III.19) B.M. OF THE MINISTER OF THE INTERIOR, CONCERNING EXPULSION AND POLICE SURVEILLANCE[1]

In the interest of enforcing ministerial ordinance No. 8.130/1939 and increasing the safeguards of legality, I hereby decree as follows:

Art. 1. The head of a county (Budapest) police department may, in the case of a person who is dangerous to state and public security, or to socialist society, or who is a risk from the point of view of any other important state interest, or who is harmful for economic reasons,

(*a*) Expel such person from his permanent or temporary place of residence, or from a specific part of the national territory;

(*b*) Place such person, in his permanent or temporary place of residence or on state-administered territory corresponding to his place of residence, under police surveillance;

(*c*) Concurrently with expulsion, place such person under police surveillance in another part of the country.

Art. 2. The compulsory measures mentioned in article 1 shall not be ordered against

(*a*) A person who is over the age of sixty years,

(*b*) A person who has at least two children under the age of ten years, or

(*c*) A person who has two dependants who are incapable of earning a living and for whose maintenance he provides, where the coercive measure would adversely affect the maintenance of his dependants.

Art. 3. Expulsion or subjection to police surveillance shall be prohibited in the case of:

(*a*) A person against whom criminal proceedings are to be instituted in accordance with information laid or information admissible as evidence,

(*b*) A young person,

(*c*) A person who, according to the findings of the police medical officer, is suffering from a persistent or serious illness,

(*d*) A woman who is in an advanced state of pregnancy,

(*d*) A person who is deaf or crippled or who can otherwise be considered disabled or who is mentally defective.

Art. 4. (1) The expelled person shall be obliged, within fifteen days from the delivery of an enforceable sentence, to move from his place of residence to another locality chosen by himself. The expelled person may choose his place of residence freely, except the area indicated in the sentence ordering the expulsion.

(2) The expelled person shall not return to the community (town, district, area) from which he has been expelled, unless he has previously obtained the authorization of the police authority having jurisdiction over his new place of residence.

Art. 5. A person who is placed under police surveillance concurrently with his expulsion shall be obliged, within fifteen days from the delivery of the enforceable sentence, to remove to the community (city, district, area) specified by the police department. He shall not leave his place of compulsory sojourn except with the authorization of the police department having jurisdiction for his new place of residence.

Art. 6. (1) A person who is placed under police surveillance

(*a*) Shall not leave his place of residence or the state-administered territory specified in the sentence without the previous authorization of the police department having jurisdiction over his place of residence,

(*b*) Shall be required to report, at the time prescribed in the sentence, to a specified police authority,

(*c*) Shall be required to comply with the restrictions laid down in the sentence.

(2) The sentence providing for police surveillance shall not require the person concerned to report to the authorities referred to in paragraph 1 more than once a week.

(3) The police department may forbid the person under police surveillance

(*a*) To leave his residence during a certain period of the day,

(*b*) To visit specified public places or public places in general,

(*c*) To maintain a telephone in operation in his residence.

(4) The restrictions shall be laid down in such a manner that they do not hamper the person under surveillance in the exercise of his occupation.

Art. 7. The expulsion and police surveillance shall be for a period of six months, which may be extended three times for a further six months but shall not exceed two years in all. At the expiration of every six months the case shall be re-examined automatically.

Art. 8. (1) An appeal is admissible against the original sentence ordering the compulsory measures laid down in this ordinance, and also against a supporting sentence issued in the course of the re-examination.

(2) In the case of an expulsion, an appeal lodged against the original sentence shall effect a stay.

(3) The National Police Department of the Ministry of the Interior shall pass judgement on the appeal.

[1] Hungarian text in *Magyar Közlöny* No. 32, of 19 March 1957. Translation by the United Nations Secretariat.

Art. 9. An enforceable order for the expulsion of a person or his subjection to police surveillance, or the cancellation of such an order shall be recorded in the identification papers of the person expelled or placed under police surveillance.

Art. 10. Any person, who, notwithstanding the fact that he has been expelled by the police authorities from one or more specified localities or from a specified part of the national territory, returns without authorization and while the order of expulsion is still in force to the place from which he was expelled, or any person who violates or evades the provisions relating to police surveillance shall be deemed to be guilty of an offence as laid down in legislative decree No. 16 of 1956.

Art. 11. This ordinance shall come into force on the day of its promulgation; the provisions thereof shall be applied also in respect of cases in which an enforceable judgement has not yet been passed.

Art. 12. The National Police Department of the Ministry of the Interior shall be responsible for the application of this ordinance.

Art. 13. Ordinance No. 760/1939 B.M. shall no longer have effect as from the date on which this ordinance comes into force.

IRAN

PUBLIC SECURITY ACT

of 13 March 1957[1]

Art. 1. For the preservation of order and public security, a commission to be known as the Public Security Commission shall be formed in respect of each Farmandari (provincial subdivision) consisting of the following members: the Governor (Chairman), the Judge of the District Court (or, in the absence of such a court, the Judge of the County Court), the Attorney-General, the Police Chief and the Chief of Gendarmerie.

Art. 2. The duties of the said commission are:

(*a*) To investigate cases in which a person or persons in towns and villages, by instigation and insitement to dissension among the people, cause unrest and disorder;

(*b*) To investigate cases in which a person or persons insite farmers to refuse to give to the landowner his share in the produce, or incite them not to cultivate the land, or to deny the landowner access to his land, or to prevent the landowner from exercising the rights of ownership in his land, or to commit acts directed against government employees which prevent them from performing their duties.

Art. 3. In any case arising under article 2, the Public Security Commission shall conduct an investigation immediately and the accused person, if guilty, shall be ordered to be exiled in a place to be specified by the Commission, which place should not have a bad climate, for not less than two nor more than six months.

If the offence is great and affects the public security, the Commission may pass a temporary judgement until the final judgement is passed. The temporary judgement shall be enforced in respect of each independent governor with the consent of the Ministry of the Interior and in respect of governors under the Governor-General with the consent of the Governor-General.

Art. 4. The accused person shall be notified immediately of the decision of the Commission and he shall have the right to appeal against the decision, within ten days after being notified as aforesaid, to the Appellate Court of the province in which the action has taken place.

The Appellate Court shall consider the complaint of the accused in his presence, in a special session to be convened immediately, and shall give its verdict. The procedure of the hearing shall be governed by the general provisions. The ruling of the Appellate Court is final and must be enforced.

Art. 5. Persons convicted by a final ruling may, after expiration of one-quarter of the term of correction, apply for a pardon. If such an application is made the file shall be referred to the Appellate Court competent to deal with applications for pardon. The verdict of the Appellate Court is final.

Art. 6. The Ministries of Justice and Interior shall be responsible for bringing these provisions into effect.

[1] Persian text kindly furnished by Mr. H. Zandi, Assistant Secretary, Iranian Association for the United Nations, acting on behalf of Dr. A. Matine-Daftary, President of the Association, Professor in the Faculty of Law of the University of Teheran, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat. The text which appeared in *Yearbook on Human Rights for 1955*, p. 126, was adopted by Parliament on 13 March 1957, subject to certain amendments, in the form here reproduced.

IRELAND

MARRIED WOMEN'S STATUS ACT, 1957

No. 5 of 1957, of 30 April 1957[1]

AN ACT TO CONSOLIDATE WITH AMENDMENTS THE LAW RELATING TO THE STATUS OF MARRIED WOMEN AND THE LIABILITIES OF HUSBANDS

1. Save where otherwise appears, this Act applies to persons whether married before or after the commencement of this Act.

2. (1) Subject to this Act, a married woman shall:

(*a*) Be capable of acquiring, holding, and disposing (by will or otherwise) of, any property, and

(*b*) Be capable of contracting, and

(*c*) Be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation, and

(*d*) Be capable of suing and being sued, and

(*e*) Be subject to the law relating to bankruptcy and to the enforcement of judgements and orders,

as if she were unmarried.

(2) Subsection 1 shall apply as between a married woman and her husband in like manner as it applies as between her and any other person.

(3) A married woman may act as a trustee or person representative as if she were unmarried.

(4) The provisions of the Settled Land Acts, 1882 to 1890, referring to a tenant for life and a settlement and settled land shall apply to a married woman as if she were unmarried.

(5) A married woman may be the protector of a settlement as if she were unmarried.

3. All property which:

(*a*) Immediately before the commencement of this Act was the separate property of a married woman or held for her separate use in equity, or

(*b*) Belongs at the time of her marriage to a woman married after such commencement, or

(*c*) After such commencement is acquired by or devolves upon a married woman,

shall belong to her as if she were unmarried and may be disposed of accordingly.

4. A husband and wife shall:

(*a*) Be capable of acquiring, holding and disposing of any property jointly or as tenants in common, and

(*b*) Be capable of rendering themselves, and being rendered, jointly liable in respect of any tort, contract, debt or obligation, and

(*c*) Be capable of suing and being sued, and

(*d*) Be capable of exercising any joint power given to them,

in like manner as if they were not married.

5. A husband and wife shall, for all purposes of acquisition of any property, under a disposition made or coming into operation after the commencement of this Act, be treated as two persons.

6. A restriction upon anticipation or alienation attached (whether before or after the commencement of this Act) to the enjoyment of any property by a woman which could not have been attached to the enjoyment of that property by a man shall be of no effect.

7. (1) This section applies to a policy of life assurance or endowment expressed to be for the benefit of, or by its express terms purporting to confer a benefit upon, the wife, husband or child of the insured.

(2) The policy shall create a trust in favour of the objects therein named.

(3) The moneys payable under the policy shall not, so long as any part of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.

(4) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, on account of their debts, payment out of the moneys payable under the policy, so, however, that the total amount of such payments shall not exceed the amount of the premiums so paid.

(5) The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and may from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or trustees thereof and for the investment of the moneys payable under the policy.

(6) In default of any such appointment of a trustee, the policy, immediately on its being effected, shall vest in the insured and his or her legal personal

[1] Text published in *The Acts of the Oireachtas* 1957, published by the Stationery Office, Dublin.

representatives in trust for the purposes aforesaid.

(7) The receipt of a trustee or trustees duly appointed or, in default either of any such appointment or of notice thereof to the insurer, the receipt of the legal personal representative of the insured shall be a good discharge to the insurer for any sum paid by him under the policy.

(8) In this section "child" includes stepchild, illegitimate child, adopted person (within the meaning of the Adoption Act, 1952 (No. 25 of 1952)), and a person to whom the insured is *in loco parentis*.

(9) This section applies whether the policy was effected before or after the commencement of this Act.

8. (1) Where a contract (other than a contract to which section 7 applies) is expressed to be for the benefit of, or by its express terms purports to confer a benefit upon, a third person being the wife, husband or child of one of the contracting parties, it shall be enforceable by the third person in his or her own name as if he or she were a party to it.

(2) The right conferred on a third person by this section shall be subject to any defence that would have been valid between the parties to the contract.

(3) Unless the contract otherwise provides, it may be rescinded by agreement of the contracting parties at any time before the third person has adopted it either expressly or by conduct.

(4) This section applies whether the contract was made before or after the commencement of this Act.

(5) In this section, "child" includes stepchild, illegitimate child, adopted person (within the meaning of the Adoption Act, 1952 (No. 25 of 1952), and a person to whom the contracting party is *in loco parentis*.

9. (1) Subject to subsection 3, every married woman shall have in her own name against all persons whomsoever, including her husband, the same remedies and redress by way of criminal proceedings for the protection and security of her property as if she were unmarried.

(2) Subject to subsection 3, a husband shall have against his wife the same remedies and redress by way of criminal proceedings for the protection and security of his property as if she were not his wife.

(3) No criminal proceedings concerning any property claimed by one spouse (in this subsection referred to as the claimant) shall, by virtue of subsection 1 or subsection 2, be taken by the claimant against the other spouse while they are living together, nor, while they are living apart, concerning any act done while living together by the other spouse, unless such property was wrongfully taken by the other spouse when leaving or deserting or about to leave or desert the claimant.

(4) In any criminal proceedings to which this section relates brought against one spouse, the other spouse may, notwithstanding anything to the contrary in any enactment or rule of law, be called as a witness either for the prosecution or defence and without the consent of the person charged.

(5) In any indictment or process grounding criminal proceedings in relation to the property of a married woman, it shall be sufficient to allege the property to be her property.

10. A woman after her marriage shall continue to be liable for all debts contracted and all contracts entered into or torts committed by her before her marriage, including any sums for which she may be liable as contributory, either before or after she has been placed on the list of contributories under and by virtue of the Companies (Consolidation) Act, 1908, and she may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such tort.

11. (1) The husband of a woman shall not, by reason only of his being her husband:

(*a*) Be liable in respect of any tort committed by her, whether before or after the marriage, or

(*b*) Be sued, or made a party to any legal proceedings brought, in respect of any such tort, or

(*c*) Be liable in respect of any contract entered into, or debt or obligation incurred by her before the marriage, or

(*d*) Be liable in respect of any contract entered into, or debt or obligation incurred by her (otherwise than as agent) after the marriage, or

(*e*) Be sued, or made a party to any legal proceedings brought, in respect of any such contract, debt or obligation.

(2) Notwithstanding subsection 1, where alimony has been ordered by a court to be paid and has not been duly paid by the husband, he shall be liable for necessaries supplied for the use of the wife.

12. (1) This section applies to the determination of any question arising between husband and wife as to the title to or possession of any property.

(2) Either party or any person concerned may apply in a summary way to the High Court or (at the option of the applicant irrespective of the value of the property in dispute) to the Circuit Court to determine the question and the court may make such order, with respect to the property in dispute and as to the costs consequent on the application, as the court thinks proper.

(3) Where the value of the personal property (other than chattels real) exceeds £2,000 or the rateble valuation of the land exceeds £60 and the application is made to the Circuit Court, that court shall, if a defendant or respondent so requires, transfer the proceedings to the High Court, but any order made or act done in the course of such proceedings before such transfer shall be valid unless discharged or varied by order of the High Court.

(4) If either party so requests, the court may hear the application in private.

(5) In any proceedings under this section, a person (other than the husband or wife) who is party thereto shall, for the purposes of costs or otherwise, be treated as a stakeholder only.

(6) The provisions of this section are without prejudice to the rights conferred by section 2.

13. (1) Subject to section 6 and to subsection 2 of this section, nothing in this Act shall interfere with or invalidate any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of a married woman, but no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made by a man would have against his creditors.

(2) (*a*) The provisons of this subsection shall have effect in relation to a settlement or agreement for a settlement made on or after the 1st day of January, 1908, whether before or after marriage, by the husband or intended husband, respecting the property of any woman he may marry or have married.

(*b*) It shall not be valid unless it was or is executed by her if of full age or, if she was or is not of full age, confirmed by her after she attains full age.

(*c*) If she dies an infant, any covenant or disposition by her husband contained in the settlement or agreement for a settlement shall bind or pass any interest in any property of hers to which he may become entitled on her death and which he could have bound or disposed of if the Married Women's Property Act, 1907, and this Act had not been passed.

(*d*) Nothing in this subsection shall render invalid any settlement or agreement for a settlement made or to be made under the provisions of the Infants Settlements Act, 1855.

14. The provisions of this Act as to the liabilities of married women shall extend to any liability arising out of a breach of trust or devastavit committed by a married woman, whether before or after her marriage, in her capacity as trustee or personal representative and her husband shall not, by reason only of his being her husband, be liable in respect thereof.

15. Section 24 (which provides for the cases in which a will is to be construed as speaking from the death of the testator) of the Wills Act, 1837, shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any property at the time of making it and such will shall not require to be re-executed or republished after the death of her husband.

16. A married woman, whether an infant or not, shall have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of the Conveyancing Acts, 1881 to 1911, relating to instruments creating powers of attorney shall apply thereto.

17. (1) Nothing in this Act shall affect any legal proceedings in respect of any tort if proceedings in respect thereof had been instituted before the commencement of this Act.

(2) Nothing in this Act shall enable any judgement or order against a married woman in respect of a contract entered into, or debt or obligation incurred before the commencement of this Act, to be enforced in bankruptcy or to be enforced otherwise than against her property.

18. (1) Nothing in this Act shall be construed as validating, as against creditors of the husband, any gift, by a husband to his wife, of any property which, after such gift, continues to be in the order or disposition or reputed ownership of the husband or any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors, and any such moneys so deposited or invested may be followed as if this Act had not been passed.

(2) Nothing in this Act shall be construed as validating, as against creditors of the wife, any gift, by a wife to her husband, of any property which, after such gift, continues to be in the order or disposition or reputed ownership of the wife or any deposit or other investment of moneys of the wife made by or in the name of her husband in fraud of her creditors, and any such moneys so deposited or invested may be followed as if this Act had not been passed.

19. The enactments mentioned in the schedule[1] are hereby repealed to the extent specified in the third column.

20. (1) This Act may be cited as the Married Women's Status Act, 1957.

(2) This Act shall come into operation on the first day of June, 1957.

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[1] Not here reproduced.

ISRAEL

HUMAN RIGHTS IN ISRAEL IN 1957[1]

I. LEGISLATION

1. The law of criminal procedure was revised[2] so as to secure that in all criminal trials, both before conviction and before sentence, the accused shall have the last word.[3] Even on appeal by the Attorney-General, where normally the appellant would be allowed to address the court in response to the respondent's reply, the accused is given the right to address the court last, whenever the appellate court is asked to impose or to increase a sentence.[4] The right conferred on the accused may be exercised either by the accused in person or by his counsel.[5]

2. The Juvenile Offenders Ordinance, 1937,[6] was amended in several important respects. While under the old Palestinian law a juvenile convicted of a capital offence or of an offence punishable with imprisonment for life, was to be detained during the pleasure of the High Commissioner[7] in such place and under such conditions as the High Commissioner may direct,[8] juveniles convicted of such offences are now to be imprisoned or detained or given other treatment for such period as the court may direct,[9] all such other treatment being, in the discretion of the court, available to them as to all other juvenile offenders. The facilities provided for adult offenders to be discharged from prison, before expiration of their terms, on the recommendation of a parole board,[10] is now made available to juvenile offenders, for whom a special Parole Board is set up, composed of a judge as chairman, a representative of the Minister of Social Welfare, a probation officer, a medical practitioner, and an educator; the case of every juvenile under detention or treatment for one year or more is automatically brought before the parole board; and the board may not take any decision adverse to the juvenile without having first given him, his parents and his counsel opportunity to be heard.[11] The Minister of Social Welfare is given authority to regulate, by rules, the follow-up treatment of juveniles subsequent to their discharge from the institutions where they were detained.[12]

3. The Penal Labour (Amendment) Act, 5717-1957,[13] extends the right of a person sentenced to imprisonment for a period not exceeding three months to be employed in public works outside prison walls and not to undergo imprisonment, to persons imprisoned for non-payment of a fine, provided the fine does not exceed £300.[14] A right of appeal is given against the refusal by prison authorities to grant the right conferred by the ordinance.[14]

4. The Prisons (Amendment) Act, 5718-1957,[15] empowers the Minister of Police to grant any prisoner, on his request or on the recommendation of the Commissioner of Prisons, special leave from prison which may not exceed ninety-six hours in each instance. The term of a prisoner's imprisonment may not be extended on account of any leave so granted to him. Where no other conditions have been attached by the Minister of Police to any particular leave, the conditions applying to the release of prisoners on parole apply *mutatis mutandis*.[16]

5. Another amendment to the law of procedure,[17] applicable both in civil and in criminal cases, provides that "on the examination of a witness in court, the court shall not allow any examination which, in the opinion of the court, is irrelevant and unfair; and, in particular, the court shall not allow any examination which tends to offend, intimidate, mislead or embarrass the witness, where such examination is irrelevant and unfair".[18] The power of the court

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[1] Note kindly furnished by Mr. Haim H. Cohn, Attorney-General of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Law of Criminal Procedure Revision (Summing-up) Act, 5717-1957, passed on 8 January 1957; *Sefer Ha-Hukim* No. 217.

[3] Sections 2 and 3, ibid.

[4] Section 4, ibid.

[5] Sections 2, 3 and 4, ibid.

[6] *Palestine Gazette*, 1937, supplement I, p. 137.

[7] In Israel: the Minister of Social Welfare.

[8] Sections 13 and 14, Juvenile Offenders Ordinance, 1937.

[9] Section 1, Juvenile Offenders (Amendment) Act, 5717-1957, passed on 11 February 1957; *Sefer Ha-Hukim* No. 220.

[10] Criminal Law Revision (Modes of Punishments) Act, 5714-1954.

[11] Section 2, Juvenile Offenders (Amendment) Act, 5717-1957.

[12] Section 3, ibid.

[13] Passed on 2 July 1957; *Sefer Ha-Hukim* 229.

[14] Section 1.

[15] Passed on 31 December 1957; *Sefer Ha-Hukim* 240.

[16] Section 1 (adding section 77A to the Prisons Ordinance, 1946).

[17] Law of Procedure Revision (Examination of Wirnesses) Act, 5718-1957, passed on 4 December 1957; *Sefer Ha-Hukim* 237.

[18] Section 2.

under this Act is expressed to be in addition to, and not in derogation of, any power vested in the court under any other law.[1]

6. The major opus of Israeli legislation in 1957 was a comprehensive Act codifying and consolidating the law as to the constitution and jurisdiction of the civil courts.[2] The sections bearing on human rights are reproduced below.

7. In the realm of substantive criminal law, the law relating to treason and espionage was revised and re-enacted.[3] While the death penalty was abolished for murder in 1954,[4] it still subsisted for treason,[5] and is being retained for intentional violation of the sovereignty or territorial integrity of the State,[6] and for aiding the enemy in levying war against Israel.[7] The court may not, however, impose the penalty of death "unless the offence was committed at a time when hostile military operations were conducted by or against Israel".[8] Activities which may appear as treasonable, seditious, or otherwise in contravention of the Act, are not punishable if done in good faith with the intention to procure by lawful means the alteration of the constitution or operation of the State or any foreign State or any international organization or their respective organs.[9] From the obligation to take such action as may be reasonably necessary to prevent the commission of completion of an offence punishable with imprisonment for fifteen years or more, there are exempted spouses, ascendants, descendants, brothers and sisters of the offender.[10] Where the court takes any measures under this Act or any other law to assure, for reasons of security of the State, the secrecy of the proceedings or of any particular piece of evidence, it may do so only if and when satisfied that the full and proper defence of the accused will not be jeopardized.[11]

8. Social legislation in 1957 included the Settlement of Labour Disputes Act, 5717-1957,[12] and the Collective Agreements Act, 5717-1957.[13] By the former, elaborate procedures are laid down for labour disputes to be referred for conciliation to Labour Relations Officers, or for arbitration to arbitral boards or single arbitrators to be appointed by labour relations officers; and a Labour Relations Council is created to advise the Minister of Labour in any matter pertaining to labour relations, such Council to be composed of representatives of employers and employees in equal numbers. Both labour relations officers and arbitrators are under obligation to treat all facts coming to their knowledge in the course of the conciliation or arbitration proceedings as confidential and may not divulge them;[14] and although conciliators and arbitrators are given powers to take evidence from any person, no person can be compelled to give any evidence which may tend to incriminate him.[15]

The Collective Agreements Act, 5717-1957, provides for the registration of collective agreements between employers or their organizations and an employees' organization with the Ministry of Labour, and empowers the Minister to extend, by order, the scope of application of a collective agreement to parties who would not otherwise be bound thereby, if, having regard to the number of employers and employees to whom the agreement applies and its importance in regulating labour relations, he deems it necessary so to do.[16] Such an extension order cannot impair the right, of any person to employment regardless of whether or not he is a member of any particular employees' organization;[17] and no such order may be made unless notice of the intention to make the order has been published three months in advance and all interested persons have been given an opportunity to be heard in opposition to the intended order,[18] nor without prior consultation of the Labour Relations Council.[19]

Translations of the two Acts into English and French have appeared as International Labour Office: *Legislative Series* 1957 — Isr.1 and 2, respectively.

II. Administrative Rulings

1. The Administrator-General, who is charged with the administration of the property of mental patients so long as no guardian is appointed by a competent court,[20] may, by statute, fulfil such of the patient's financial obligations as do not suffer delay.

A question having arisen as to whether the obligation to maintain his children or his aged parents was an obligation which the Administrator-General ought or ought not to perform under the Act, it was ruled that maintenance obligations did not, in the nature of things, suffer delay, and that only the expenses for the patient's own maintenance may be preferred

[1] Section 3.

[2] Courts Act, 5717-1957, passed on 23 July 1957; *Sefer Ha-Hukim* 233.

[3] Criminal Law Revision (Security of the State) Act, 5717-1957, passed on 31 July 1957; *Sefer Ha-Hukim* 235.

[4] See *Yearbook on Human Rights for 1954*, p. 161.

[5] Sections 49 and 50, Criminal Code Ordinance, 1936 (Palestine).

[6] Section 7, Criminal Law Revision (Security of the State) Act, 5717-1957.

[7] Sections 8 and 9, ibid.

[8] Section 6, ibid.

[9] Section 4, ibid.

[10] Section 5, ibid.

[11] Section 38, ibid.

[12] Passed on 18 February 1957; *Sefer Ha-Hukim* No. 220.

[13] Passed on 18 February 1957; *Sefer Ha-Hukim* No. 221.

[14] Sections 13 and 34.

[15] Sections 8 (*a*) (1) and 23 (*a*) (1).

[16] Section 25.

[17] Section 27 (1).

[18] Section 26.

[19] Section 27 (3).

[20] Mental Patients Treatment Act, 5715-1955, section 27; see *Yearbook on Human Rights for 1955*, p. 137.

to his obligations towards his infant children or aged parents.[1]

2. The earnings of a prisoner in respect of his work in prison[2] are liable to attachment for his ordinary debts in the same manner as any other money due to him from the State or from his employer — i.e., to the extent of 75 per cent.[3]

3. A magistrate may issue a warrant of arrest against any person accused of crime pending his trial.[4] Several magistrates having issued warrants directing the detention of accused persons in a particular place of detention or under particular conditions, although the statute did not expressly authorize a magistrate to impose any condition upon issuing a warrant of arrest,[5] police and prison authorities were instructed to comply with any such conditions attached to the warrant of arrest, or else to release the person under arrest.[6]

4. For the guidance of police officers who may arrest persons suspected of crime and detain them for a period of forty-eight hours, at the expiration of which they must either release the person or bring him before a magistrate,[7] it was laid down that the police officer had in each case to be satisfied, and to record in writing, that it would not be possible to carry out investigations, or that further breaches of the peace might occur, unless the suspect is detained.[7]

5. Several accidents having occurred by reason of the fact that children had been playing on or near unfenced railway grounds, a dispute arose between local authorities (represented by the Ministry of the Interior) and the railways management (a government agency) as to which was the authority responsible for fencing the grounds. Whereas the local authorities are authorized by statute to do all such acts as may be necessary or expedient for the maintenance of public health and security,[8] the railways administration has specific authority to make or build such fences as may be required for the purpose of the maintenance and operation of the railways.[9] It was argued for the railways that the safety of the public, including playing children, was the charge of local authorities, and that the authority to build fences was vested in the railways for purposes connected with the efficient working of the railways only. It was, however, ruled that the specific authority vested in the railways was paramount to the general authority vested in the local authorities, and that for being able properly to maintain and operate the railways, a duty was cast on the railways administration to build such fences as would prevent playing (albeit trespassing) children from being hurt.[10]

6. The Druze community was granted recognition as a separate and independent religious community in Israel.[11]

III. Judicial Decisions

1. Children born out of Wedlock — Proof of Paternity

A. B *v.* C. D.

Supreme Court of Israel sitting as Court of Civil Appeal

19 February 1957[12]

On the distribution of the estate of an intestate, the appellant claimed to be entitled to a share in the estate as the natural son of the deceased born out of wedlock. The widow of the deceased and his legitimate sons contested the claim. The only evidence adduced in support of the claim was the testimony of the appellant's mother that he was the son of the deceased; but at the time of his birth, the mother was married to another man. The mother further testified that the deceased paid the child's maintenance for several months after the birth; her testimony on this point was corroborated by the evidence of a lawyer through whom some of the maintenance payments had been made.

Per Vitkon, J.: ". . . As the true respondent is no longer alive and cannot come forward and explain why he promised to and did pay maintenance, the court has to ask itself, whether this fact can in any way be interpreted other than as an admission of paternity, and if some other reasonable explanation can be found which will make it plausible that he paid maintenance for the child without being his father, then the claim will have to be dismissed. . . . With respect, the explanations accepted by the learned judge do not appear to us acceptable at all. . . . We think that in the circumstances, there being no doubt that the deceased repeatedly promised to pay, and for some time did pay, maintenance for the child, we cannot but conclude that he thereby admitted he was the father of the child. . . . While the court must be very careful indeed where a claim such as

[1] Opinion of the Attorney-General of 14 March 1957, following the reasoning of the District Court of Tel Aviv (Kister 2) in a judgement of 14 June 1956 (unreported).

[2] See *Yearbook on Human Rights for 1956*, p. 136.

[3] Opinion of the Attorney-General of 12 May 1957, on an order of attachment made by the Chief Execution Officer in the Magistrates' Court at Tel Aviv.

[4] Criminal Procedure (Arrest and Searches) Ordinance, Cap. 33 of the Laws of Palestine.

[5] On a petition for *habeas corpus*, the Supreme Court had held in 1950 that a magistrate had the power to order the detention of an accused person at the place where he would be tried: *Kuttner* v. *Minister of Police* (5 *Piskei Din* 23).

[6] Opinion of the Attorney-General, of 7 July 1957.

[7] Opinion of the Attorney-General, of 24 November 1957.

[8] Section 98(27), Municipal Corporations Ordinance, 1934 (Palestine).

[9] Section 4, Railways Ordinance, 1936 (Palestine).

[10] Opinion of the Attorney-General, of 9 August 1957.

[11] Regulations made by the Minister of Religions on 15 April 1957, in exercise of his powers under the Religious Communities (Organization) Ordinance, Cap. 126 of the Laws of Palestine.

[12] Reported in 11 *Piskei Din* 314.

this is raised and the alleged father is no longer alive, we hold that the appellant before us has discharged the burden of proof which rested on him that the deceased was admittedly his father. . . ."

2. *Arrest Pending Trial— Previous Convictions — Fair Trial*

Mizrahi *v.* Attorney-General

Before the President of the Supreme Court

14 May 1957[1]

The police sought to object to the release on bail of a prisoner awaiting trial on the ground that a great number of previous convictions were recorded against him. The judge hearing the application for bail refused to listen to any argument as to, or peruse any record of, previous convictions of the application, holding that such record can become relevant only after conviction and for the purpose of sentence. On an application for review, it was

Held that the previous convictions of an applicant for bail should be taken into consideration.

Per Olshan, J.: ". . . It is quite true that during the course of a trial, no mention may be made (unless in exceptional cases provided for by law) of the previous convictions of an accused; but this does not mean that a judge dealing with an application for bail may not entertain the argument that there are previous convictions recorded against the accused; and when it afterwards comes to the trial, the judge who dealt with the application for bail (if he still remembers it) should abstain from trying the case. . . ."

3. *Freedom From Arrest — Self-Help — Wrongful Imprisonment*

Artsi *v.* Attorney-General

In the Supreme Court of Israel sitting as Court of Criminal Appeal

30 June 1957[2]

The appellant was the owner of a fruit garden. Thefts of fruit having repeatedly been committed from his garden, he stood watch one night, and saw the complainant climb the fence of the garden and pick some fruit. When the complainant took flight, the appellant chased after him, eventually caught him, beat him, and forcibly dragged him into a car in order to bring him to a police station.

Held that the appellant was rightly convicted of an assault[3] and of an affray.[4] The court assumed (without deciding) that the appellant had the right to arrest the complainant when in his presence the complainant committed a felony,[5] and that in order to effect such arrest, he had the right to use all reasonable means necessary therefor;[6] but the means employed by the appellant, and more particularly the beating, exceeded the measure of the reasonably necessary to effect the arrest.

4. *Fair Trial — Confession — Promise Not to Prosecute*

Saadia *v.* Attorney-General

In the Supreme Court of Israel sitting as Court of Criminal Appeal

10 April 1957[7]

The appellant was promised by a police officer that, if he confessed, he would not be prosecuted, but called as a witness for the prosecution against other participants in the crime. The trial court nevertheless admitted the confession in evidence against the appellant, holding that it had in fact been given freely and voluntarily, and that it contained a true statement of the facts. On appeal against conviction, it was

Held that the confession was wrongly admitted in evidence, and that the accused should be acquitted.

Per Landau, J.: ". . . The circumstances clearly indicate that the confession of the appellant was the direct and immediate result of the promise given to him that he would appear as a witness for the State. Prior to that promise, the appellant refused to co-operate with the police; immediately thereafter he dictated and signed a full confession. . . . The fact that the police were dissatisfied when the appellant confessed to this particular offence only and not to other crimes may perhaps explains why they thought they were not bound by their promise; but that does not remove the defect inherent in the confession which was given as a result of that promise. . . . The police must know that whenever a man is promised to become a state witness, any statement made by him as a result of or in response to that promise will not be admissible in evidence against him. . . ."

5. *Fair Trial — Vexatious Complaint — Costs — Right to be Heard*

Cohen *v.* Chief Execution Officer, Tel Aviv

In the Supreme Court of Israel sitting as High Court of Justice

28 July 1957[8]

The petitioner was ordered to bear the costs of criminal proceedings which had been instituted by the Attorney-General upon the petitioner's complaint to the police.

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[1] Reported in 11 *Piskei Din* 653.

[2] Reported in 11 *Piskei Din* 913.

[3] Section 250, Criminal Code Ordinance, 1936 (Palestine).

[4] Section 98, ibid.

[5] Section 5, Criminal Procedure (Arrest and Searches) Ordinance, Cap. 33 of the Laws of Palestine.

[6] Section 22, ibid.

[7] Reported in 11 *Piskei Din* 513.

[8] Reported in 11 *Piskei Din* 1084.

Under section 37 of the Criminal Law Revision (Punishments) Act, 5714-1954, the court may order a complainant to the police to bear the costs of the trial, wherever satisfied that the complaint had been frivolous or vexatious; provided the accused was acquitted of the charge.

On the return to an order *nisi* to show cause why execution on the order to pay costs should not be stayed, it was

Held that the order was unlawful and that no execution could issue thereon.

Per Cheshin, J.: ". . . The learned magistrate made the order without having warned the petitioner and without having heard him first. It is true that section 37 (of the 1954 Act) does not lay down any requirement in this respect; but it would be contrary to the most fundamental principles of natural justice if a man could be ordered to pay a sum of money — whether the order be civil or criminal in character — without hearing first what he has to say in his defence. Moreover, even the questions which arise upon every application of section 37 — e.g., whether a complaint had or had not been frivolous or vexatious — cannot properly be determined without hearing argument thereon by both sides, and without affording the complainant an opportunity to satisfy the court that he had acted neither frivolously nor vexatiously. . . ."

6. Publicity of Trial — Freedom of Press — Security Considerations

Shorer and Others *v.* Attorney-General

In the Supreme Court of Israel sitting as Court of Criminal Appeal

31 May 1957[1]

The appellants published, in their respective newspapers, the name and description of a person on trial for espionage. The trial court had ordered the trial to be held *in camera*[2] and had made a further order specifically prohibiting the disclosure of the identity of the accused.

On appeal against conviction of the offence of disobedience to lawful order,[3] it was

Held that the order of the court to hold the trial *in camera* and not to admit the public implies a prohibition to publish any report of the proceedings, including the name and description of the accused, and the further specific order had not been necessary. The convictions were affirmed.

Per Landau, J.: ". . . In a democratic regime such as ours, all agree that, for obvious and well-known reasons, the importance of the publicity of judicial proceedings is paramount. So is the free publication of everything said in court, which (as Lord Halsbury once said[4]) 'is enlarging the area of the court and communicating to all that which all had the right to know.' But there are different considerations which at times render the realization of these ideals impossible. In so far as the considerations which require a restriction on the publicity of trials and the freedom of publication have found expression in the statute book, the court has no duty other than to interpret and to carry into effect the intention of the legislature. In so far as recourse is sought to the additional powers of the court such as are not expressed in the statute book, but as are indispensable for the proper functioning of the court — the so-called inherent powers — the court should never impose any restrictions upon the conduct of persons not before the court, beyond what is absolutely necessary for the conduct of the proceedings in court. It is not the function, nor within the competence, of the court to perform acts of censorship. . . . I think that every exercise of the statutory power to exclude the public from any trial under the Official Secrets Ordinance automatically implies a prohibition to disclose in public anything said or done in the course of such trial. The very charges in these cases are for the violation of the duty of non-disclosure which the law imposes for the sake of the security of the State; the more reason that the trial itself should not be allowed to serve as an instrument for the disclosure of official secrets. This appears clearly from the language of the law under which the trial may be held *in camera* whenever the court is satisfied that the publication of any evidence given or statement made in the course of the proceedings might be prejudicial to the safety or to interests of the State[5] — that is, the exclusion of the public is only the means to secure the non-publication of the proceedings. . . . I reject the argument that the name of the accused is no evidence given, and no statement made, and generally no part of the proceedings from which the public was excluded. I agree with the judge below that everything said in court from the moment the proceedings start are statements within the meaning of the section, and that includes, of course, the name of the accused who is called upon to plead to the charge. . . ."

7. Right of Privacy — Unauthorized Publication of Photograph

Rabinovitz *v.* Mirlin and Others

In the Supreme Court of Israel sitting as Court of Civil Appeal

16 October 1957[6]

The appellant, a ballet dancer, had in 1952 agreed to have her photograph published and distributed,

[1] Reported in 11 *Piskei Din* 750.

[2] Section 19, Official Secrets Ordinance, Cap. 100 of the Laws of Palestine (now replaced by section 38, Courts Act, 5717-1957, reproduced *infra*).

[3] Section 143, Criminal Code Ordinance, 1936 (Palestine).

[4] *MacDougal* v. *Knight* (1880), 14 Appeal Cases 194, p. 200.

[5] See footnote 2, this page.

[6] Reported in 11 *Piskei-Din* 1224.

indicating her name and professional affiliations, and her purpose was to obtain publicity as a ballet dancer. In 1954, her photograph was published and distributed on greeting cards, without indicating her name.

On an appeal against the dismissal of her action for damages for the violation of her privacy and for defamation, it was

Held (1) that the law of torts in Israel being statutory law,[1] no new torts could be added by the courts, and the violation of the right to privacy was not one of the torts recognized by law;

(2) that the publication of the appellant's photograph did not constitute defamation, as the photograph in issue could not possibly have exposed the appellant, in the eyes of any right-thinking member of society generally,[2] to hatred, contempt or ridicule, and as no injury or damage was or could have been caused to her in her profession or calling.[3]

Per Olshan, J.: ". . . I have been much impressed with the argument that such a publication of the appellant's photograph would be defamatory, because people who see the picture would never believe it was published without her consent, and the appellant would thus be made to appear as a person who allowed her picture, for money, to be printed and distributed on greeting cards; and that might affect, and injure her in, her professional standing. If the appellant had only adduced some evidence that the printing and sale of her photograph on greeting cards has in fact evoked such belief and created such impressions, we might have found her a remedy, possibly by way of injunction; but in the absence of any such evidence we cannot establish, as a general principle, that whenever the photograph of a person is published, that person will be commonly believed to have sold his photograph for money. I think the more well-known and famous a person is, the less common will that belief be. . . ."

8. *Administrative Agencies — Duties to Citizens*

Ageege *v.* Controller of Road Transport

In the Supreme Court of Israel sitting as High Court of Justice

28 February 1957[4]

On a return to an order *nisi* directed to the respondent to show cause why he should not grant the petitioner a licence to drive a taxi.

Per Berenson, J.: ". . . The petitioner applied to the respondent for a taxi licence on 16 January 1956. It was only on 5 June 1956, after repeated reminders, that the petitioner received a negative reply. This reply did not give any reasons for the refusal of the licence. It was only during the proceedings in this Court that the petitioner obtained full information, on affidavit, of the reasons which prompted the respondent in his refusal, and generally of the policy of the respondent's office in dealing with applications of this kind. . . . Nor was any record made in the respondent's files as to why the petitioner's application was refused — and this in contravention of a standing instruction of the Government to the effect that all civil servants who have authority under law to make final decisions, should record all their final decisions and the reasons therefor upon their official files. The respondent's conduct, however, was deprecable not only from an administrative point of view, as being contrary to government instructions; it was deprecable also from the point of view of the law. The Road Transport Ordinance from which the respondent derives his powers says nothing about giving reasons for his decisions; it does not impose upon him an obligation to give reasons; nor does it exempt him from the duty to give reasons. There is, we think, a general duty incumbent upon the authorities to give reasons for every discretionary decision by which the right of a citizen might be affected. They have the duty to show the citizen affected how they arrived at their decision, and they may not wait and see whether the citizen goes to court and disclose their reasons only then. Every such decision, if it is not arbitrary, must be based on facts, findings and considerations, and there is no valid reason why these should not be recorded and notified to the person affected. The respondent told us in evidence that he intentionally withheld his reasons from the petitioner, so as to avoid any possible discussion or bargaining. Firstly, I am not at all sure that that purpose would be attained by not disclosing the reasons for a refusal: the less a person knows of the reasons which prompted the authorities to turn his application down, the more likely he is to try again and again. . . . But secondly and mainly, we think that no consideration of administrative convenience could or should derogate in any way from the duty incumbent upon every civil servant to give his reasons for every exercise of a discretion vested in him by law. The only exceptions which can justify a departure from this rule are considerations that the disclosure of such reasons may be prejudicial to the security or other vital interests of the State. . . ."

9. *Right to trade — Non-interference by State — Monopolies*

Traders and Shippers, Ltd. *v.* Minister of Finance

In the Supreme Court of Israel sitting as High Court of Justice

25 December 1957[5]

A firm of importers had obtained an import licence for timber from Finland on condition that the timber would be shipped by particular shippers named in the licence. The petitioners, a firm of shippers, alleged

[1] Civil Wrongs Ordinance, 1944 (Palestine).

[2] Per Lord Atkin in *Sim* v. *Stretch* (1936); 2 *All England Law Reports* 1237, p. 1240.

[3] Section 16, Civil Wrongs Ordinance, 1944.

[4] Ibid.

[5] Reported in 11 *Piskei Din* 1490,

that that condition deprived them of the shipping contract which they would otherwise have obtained. The condition had been imposed by the competent authority in pursuance of an agreement between the respondent and the shippers named in the licence, by which the shippers undertook to maintain regular shipping services between Finland and Israel, and the State derived substantial benefits in saving foreign exchange.

Per Cheshin, J.: ". . . The agreement between the Government and the shippers confers upon the latter a monopoly to ship timber from Finland to Israel, so long as the agreement remains in force. It is not a monopoly in the usual sense of a combination of a few to bring the market under their control and exclude competitors. It is rather a privilege which the authorities confer upon particular firms, and thereby prefer their services to the services of other firms operating in the same field. In this case, this privilege confers on the shippers selected the sole and unlimited control of the shipping line from Finland to Israel . . . and though the baby is not called by its name, this privilege is nothing else but a monopoly. An old authority defined monopoly as 'an institution or allowance by the King . . . to any person or persons . . . of or for the sole buying, selling, making, working, or using, of any thing, whereby any person or persons . . . are sought to be restrained of any liberty that they had before or hindered in their lawful trade'. . . .[1] Such a monopoly can be, and is sought to be, justified only where express authority for its creation is given by law. . . . I can find neither express nor implied authority in any law to justify the creation of the monopoly in issue. . . . But it has been argued also that great public benefit is derived from the agreement which the Government has concluded, and where the public good is concerned, you overlook legal niceties. . . . However wise and beneficial the policy of the Government may be, where it is not founded on the law, it amounts to an usurpation of the powers of the legislature. And whenever there occurs a trespass by the executive on the realms of the legislature or of the judiciary, this court has the right and the duty to interfere. . . ."

[1] 3 Coke's Institutes 181.

10. Right to work — Right to strike — Right to Wages

Attorney-General *v.* Doljanski and Others

In the Supreme Court of Israel sitting as Court of Civil Appeal

31 May 1957[2]

The respondents were civil servants who went on strike and absented themselves from their offices during twelve days. The Government refused to pay their wages for that period, regarding the respondents as having been on leave without pay. Under the Annual Leave Act, 5711-1951, every employer — including the State — is under obligation to grant his employees annual leave with full pay for certain periods prescribed by law. It was not disputed that the period of annual leave with full pay still due to each of the respondents exceeded the period of their strike. The respondents claimed full pay for the period of the strike, but agreed that it should be deducted from the periods of annual leave still due to them under the law, and the court below entered judgement in their favour. On appeal by Government, it was

Held that the respondents were entitled to have their absence from work on account of their strike reckoned as annual leave with pay; and an employer could regard such absence as leave without pay only where the annual leave due to the employee under the Act had already been exhausted.

IV. International Agreements[3]

Israel ratified in 1957 the following international conventions relating to human rights:

1. Protocol extending the validity of the Convention on the Declaration of Death of Absent Persons;
2. Convention on the Recovery Abroad of Maintenance.

[2] Reported in 11 *Piskei Din* 745.

[3] See also pp. 305 and 306

COURTS ACT, 5717-1957[1]

7. (*a*) The Supreme Court sitting as a High Court of Justice shall deal with matters in which it seems necessary to grant relief in the interests of justice and which are not within the jurisdiction of any other court or tribunal.

(*b*) Without prejudice to the generality of the provisions of subsection (*a*), the Supreme Court sitting as a High Court of Justice shall be competent:

(1) To order the release of persons unlawfully detained or imprisoned;

(2) To order state authorities, local authorities and officials of state authorities or local authorities, and such other bodies and individuals as exercise any public functions by virtue of law, to do or refrain from doing any act in the lawful exercise of their functions or, if they have been unlawfully elected or appointed, to refrain from acting;

[1] Passed by the Knesset on the 24th Tammuz, 5717 (23 July 1957) and published in *Sefer Ha-Hukim* No. 233, of the 4th Av, 5717 (1 August 1957), p. 148; the Bill and an explanatory note were published in *Hatza'ot Chok* No. 226 of 5715, p. 64. The texts of sections reproduced above were kindly furnished by Mr. Haim H. Cohn, Attorney-General of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

(3) To order courts, tribunals and any such bodies and individuals as are vested with judicial powers by virtue of law — other than courts dealt with by this law and religious courts — to deal, or to refrain from dealing or from continuing to deal, with a particular matter, and to quash any proceeding taken or decision given unlawfully;

(4) To order religious courts to deal with a particular matter within their jurisdiction or to refrain from dealing or from continuing to deal with a particular matter not within their jurisdiction; but the court shall not entertain a petition under this paragraph unless the petitioner has raised the question of jurisdiction at the earliest opportunity he had; and where he has not had a reasonable opportunity to raise such question before a decision was given by the religious court, the court may quash any proceeding or decision of the religious court taken or given without jurisdiction.

9. (*a*) The President of the Supreme Court or his permanent deputy may direct that the Supreme Court, or a district court designated by him for that purpose, shall hold a retrial in a criminal matter which has been finally determined if it appears to him:

(1) That a court has decided that any of the evidence produced in the matter was based on falsehood or forgery and that there is reason to believe that the absence of such evidence might have altered the outcome of the case in favour of the sentenced person; or

(2) That new facts or new evidence have come to light which are likely, by themselves or together with the material which was originally before the court, to alter the outcome of the case in favour of the sentenced person and which could not have been in the possession of, or known to, the sentenced person at the time of his trial; or

(3) That another person has meanwhile been convicted of the commission of the criminal act in question, and that it appears from the circumstances come to light at the trial of such other person that the person originally sentenced for the offence did not commit it.

(*b*) The sentenced person and the Attorney-General have the right to request a retrial; where the sentenced person has died, such right shall vest in his spouse and in every one of his descendants, parents, brothers and sisters.

(*c*) In a retrial, the Supreme Court or a district court shall have all the powers vested in a district court in a trial upon information and vested in the Supreme Court in a criminal appeal, except the power to increase the penalty; and the court may make any order it thinks fit to indemnify a sentenced person who has undergone his penalty or part of it and whose conviction has been quashed as a result of the retrial, or may grant him any other relief; where the accused has died, the court may make an order as aforesaid in favour of another person.

(*d*) The procedure for, and the time of submission of, the request, and the procedure on a retrial, shall be prescribed by regulations.

10. (*a*) Where a petition for a pardon or for the reduction of a penalty has been submitted to the President of the State, and a question arises which in the opinion of the Minister of Justice deserves to be dealt with by the Supreme Court, but which cannot provide a ground for a retrial under section 9, the Minister of Justice may refer such question to the Supreme Court.

(*b*) The Supreme Court shall decide whether to deal with a question referred to it under subsection (*a*); if it decides in the affirmative, it shall deal with the question as if the President of the Supreme Court had directed a retrial under section 9.

32. Where a bench of three or more judges is in disagreement, the view of the majority shall prevail; if there is not a majority for any one view, the view of the presiding judge or — in a criminal case — the view which in the opinion of the presiding judge is more favourable to the accused shall prevail.

38. (*a*) A court shall sit in public.

(*bI* A court may deal with the whole or any part of a particular matter *in camera* if it deems it necessary so to do for the purpose of safeguarding state security, protecting morality or protecting the well-being of a minor.

(*c*) Applications for interim orders, provisional orders and other interim decision may be dealt with by the court *in camera*.

(*d*) Where the court has decided to hold a trial *in camera*, it may permit a person or particular classes of persons to be present at the whole or any part of the proceedings.

39. The court may prohibit a minor from being in court at the time of any proceedings and may order his removal.

40. (*a*) A person shall not publish anything concerning proceedings which have been held *in camera* in any court save with the permission of such court.

(*b*) A person shall not take photographs in the courtroom or publish a photograph so taken, save with the permission of the court.

(*c*) A person shall not without the permission of the court publish the name, picture or address, or any other particulars likely to lead to the identification, of a minor under sixteen years of age who is an accused or witness in a criminal trial or a complainant or injured party in a trial for an offence under chapter 17 of the Criminal Code Ordinance, 1936.[1]

(*d*) A court may prohibit any publication in connexion with its proceedings in so far as it deems it necessary so to do in order to protect the safety of a

[1] *P.G.* of 1936, Suppl. I, No. 652, p. 285 (English edition).

party or witness or of any other person whose name has been mentioned during the proceedings.

(*e*) A person who contravenes any of the provisions of this section is liable to imprisonment for a term of six months or to a fine of one thousand pounds.

41. (*a*) A person shall not publish anything concerning a matter pending in any court if the publication is calculated to influence the course or outcome of the trial; however, this prohibition shall not apply to the *bona fide* publication of a report of something that has been said, or has occurred, in an open session of the court.

(*b*) A person who contravenes the provisions of this section is liable to imprisonment for a term of one year or to a fine of two thousand pounds.

ITALY

NOTE[1]

I. LEGISLATION

During 1957, Italian legislative activity connected with the application of the principles of the Universal Declaration of Human Rights was chiefly concerned with employment and economic rights within the meaning of articles 22 to 25 of the Declaration.

A development of great significance for the social and economic life of the nation — and from the point of view of securing the fuller application of the principles set out in articles 22 to 25 of the Universal Declaration — was the action taken to give effect to the constitutional provision providing for the *establishment of the National Economic and Labour Council.*

Under article 99 of the Constitution,[2] the Council is one of the "auxiliary bodies"[3] of the Government but, unlike the other two auxiliary bodies, it has, in addition to advisory functions, the power of legislative initiative. The Council was established by Act No. 33 of 5 January 1957 (*Gazetta Ufficiale* No. 63, of 9 March 1957), article 1 of which lays down its organization and functions.

The Council is responsible for assisting the Government and the Parliament in solving the complex and interrelated problems of economic life and employment, in adapting the existing economic and social structure to new requirements and in achieving a balance in the various sectors of production and employment which will ensure the full satisfaction of the various social calsses.

Article 2 of the Act lays down the composition of the Council which is made up of representatives of the various categories of persons engaged in production — employees, self-employed persons and employers — and experts. It provides for the inclusion in the Council of representatives of industry (small, medium and large), agriculture, commerce, transport, finance and insurance. In addition to representatives of private industry, the Council includes a representative of the municipalized undertakings, a representative of the Institute for Industrial Reconstruction and two representatives of the national social security agencies. Article 2 also prescribes the number of representatives of employees and self-employed workers.

In determining the number of representatives of these categories, the principle has been followed of giving labour greater representation than employers, in accordance with the spirit of the Italian Constitution. There are in fact eighteen representatives of private enterprises, public enterprise and public agencies, and twenty-nine representatives of labour, including employees and self-employed persons.

There are twenty experts, selected from among "outstanding experts" in economic and social matters. Experts have been included in the membership of the Council because of its highly technical functions and their contribution is of particular value. The experts are nominated by the higher councils of technical bodies, by the National Academic Union and by the President of the republic in order to ensure that the experts shall not only be outstanding but also completely independent of any private interest.

Articles 3, 4, 5, 6 and 7 lay down the procedure for the appointment of members of the Council. In drafting these articles, the legislator, in order to overcome the difficulties created by the gaps in trade union legislation, provided for appointment in various ways so as to ensure that the members are as representative and independent as possible.

Article 3 is in any case a transitional provision which will cease to apply when the new trade union legislation implementing article 39 of the Constitution enters into force.

The chairman of the Council is appointed by the President of the republic on the proposal of the vice-president of the Council of Ministers and after consultation with the Council of Ministers. The two chairmen are elected by the Council itself (article 4). The term of office of the chairman and members of the Council is three years and may be renewed (article 7). Article 5 provides that no member of the

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[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Communità internazionale*, a publication of the Association, and government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] Constitution, article 99: "The National Economic and Labour Council shall be composed, in the manner determined by law, of experts and of representatives of the various categories of persons engaged in production, on a basis which takes into account their numerical and qualitative importance.

"It shall be the consultative organ of the Chambers and the Government in connexion with the matters and functions assigned to it by law.

"It shall have the powers of legislative initiative and may contribute to the drafting of economic and social legislation in accordance with the principles and subject to the limitations determined by law."

[3] The other two auxiliary bodies are the Council of State and the Court of Accounts (Constitution, article 100.)

Council may also be a member of Parliament. This rule is based on the principle followed in other connexions of establishing a clear division between the powers of the various organs of the State and the functions of their members. Article 6 provides that the members of the Council "may not be bound by any mandate".

Articles 8 to 13 define the powers of the Council and specify its functions, which are to act as a consultative body, to originate legislation and to examine various matters. The opinion of the Council may be sought "on matters having a bearing on economic, financial and social policy and on any question connected with the economy or labour", by the Chambers and the Government (article 8) and by the regions (article 13). Article 8 provides that the Council may also "contribute to the drafting of legislation" on such subjects and may submit to the Chambers and to the Government "such comments and proposals as it may deem appropriate". However, "the advisory functions of the Council do not extend to drafts of constitutional legislation or to draft measures concerning the budget estimates of ministries or revenue and expenditure accounts". Article 9 provides that the Council shall transmit, together with its views, any documentation it may deem relevant, and that its reports "shall mention any minority opinion of the Council, together with the reasons therefor".

As was made clear in the report presented when the Bill was submitted to Parliament, the Chambers and the Government are not required to consult the Council, and the Council's opinion is not binding. The provision concerning the transmission of any relevant documentation with the Council's opinion and the reporting of minority views were included in view of the need to emphasize the strictly technical functions of the Council, whose findings must in no case be considered as conclusions arrived at by a majority of interested parties.

Articles 10 and 11 contain provisions concerning the Council's right of legislative initiative. The Council 'is empowered to submit draft legislation to the Parliament . . . on economic and labour matters provided it has previously decided by an absolute majority to consider such draft legislation and provided that the draft text has thereafter been approved by majority vote with at least two-thirds of the membership present". There are some limitations in this respect: the Council's competence does not extend to constitutional, fiscal or budgetary legislation, or legislation concerning the delegation of legislative powers or authorizing the ratification of international treaties (article 10).[1]

Moreover, the Council's legislative initiative "may not be exercised in connexion with a subject on which one of the Chambers or the Government has already sought the opinion of the Council, or on which the Government has already submitted draft legislation to the Parliament". This limitation is, however, only in effect "for a period of six months after the publication of the corresponding legislation or after the rejection of the draft legislation by one of the two Chambers of the Parliament" (article 11).

The Council is empowered to undertake, at the request of the Chambers or of the Government or on its own initiative, "studies and inquiries on matters within its competence" (article 12). Such inquiries, like those which the Chambers may institute under article 82 of the Constitution, are intended to furnish the Parliament with the information it requires in order to exercise its legislative power with a full knowledge of the relevant facts.

The provisions of articles 14 to 18 are concerned with the organization of the Council and its method of work. The Council shall meet whenever one of the Chambers or the Council itself so requests (article 14) and the chairmen of Parliamentary Committees and members of the Government may participate, without the right to vote, in its meetings or in the meetings of any committees it may establish. Representatives of public services and persons with special knowledge of the subjects considered may also be heard by the Council (article 15). The meetings of the Council are not public (article 16) but records of its proceedings must be published in accordance with the rules of procedure to be established by the Council (article 17). The general secretary of the Council shall be appointed by the President of the republic, on the recommendation of the President of the Council of Ministers, after consultation with the Council of Ministers and the Chairman of the National Economic and Labour Council (article 18). Article 19 provides for the elimination of certain central bodies to which matters now the responsibility of the National Economic and Labour Council were referred; the Central Industrial Committee, the Central Committee for Foreign Trade, the National Economic Council and the Higher Council for Foreign Trade.

Articles 21 and 22 relate to the budgetary provision for the functioning of the Council.

In the course of the year, two measures were enacted to renew and extend similar legislation enacted in 1950 with a view to accelerating the *development of the economically backward areas*, creating new and permanent employment opportunities and contributing to the improvement of levels of living in those areas. Act No. 634, of 29 July 1957, and Act No. 635, of 29 July 1957 (*G.U.* No. 193, of 3 August 1957), extend and supplement, respectively, Act No. 646 of 10 August 1950, which established the Southern Development Fund (Cassa del Mezzogiorno) (amended by Act No. 949, of 25 July 1952), and Act No. 647, of 10 August 1950, which provides for the execution of public works in central and northern Italy.[2]

[1] For such matters, article 72 of the Constitution lays down a procedure which may not be departed from.

[2] See *Yearbook on Human Rights for 1951*, p. 193 and *for 1952*, pp. 152-154 and 155.

Act No. 634 of 1957 was intended by the legislature to mark the beginning of a new cycle of activity to assist southern Italy and an expansion of policies designed to promote the development of that area. The Act is divided into four titles: I. Duration, Financing and Activities of the Southern Development Fund; II. Measures for the Development of Agriculture; III. Measures to facilitate Industrial Development; IV. Fiscal and Other Measures.

The Southern Development Fund was continued in existence until 30 June 1965. The fund's activities were extended to include fisheries (article 5); the construction and equipment of vocational schools for technicians and skilled workers (article 4); the assumption of new responsibilities, previously borne by the communes, in connexion with the organization of certain public health projects (article 6); the provision and organization of ferry-boat services recognized to be of special importance for the economic development of the southern regions (article 14); the improvement of the attractions of tourist centres (article 10); and the construction of electrical transmission and distribution facilities for the use of land improvement districts (article 9).

The most important part of the Act is the series of provisions concerned with the acceleration of industrialization. The Act provides for direct assistance and for credit, fiscal and social security measures to encourage industrial ventures by private entrepreneurs. The benefits currently provided are extended until 1965. Under articles 20 and 21, the fund may provide up to 20 per cent of the cost of establishing small and medium industrial enterprises in communes with under 75,000 inhabitants when there are no industrial establishments. The communes, provinces, chambers of commerce, industry and agriculture and other interested bodies may form associations to construct and manage development facilities with a view to encouraging new industrial ventures in particular areas (article 21). The fund may also make loans for the purchase of sites for industrial plants or construction work (article 22) and may make grants towards the payment of interest on certain bonds issued by credit institutions or to assist in financing operations designed to promote industrial activity (article 24).

New fiscal advantages have also been introduced, those provided for in article 40 being of particular importance. Under article 40 a five-year exemption from the category B movable property tax may be granted on half of any profit *reinvested* in agricultural improvements or industrial plants in the south, up to a maximum of 50 per cent of the cost of the works or plants concerned. The exemption is granted to companies and bodies taxable on the basis of their balance sheets and to individual taxpayers who elect to be taxed on the basis of their accounts.

The Act also provides for and regulates direct intervention by state undertakings to promote the industrialization of the south.

Act No. 635 of 1957 deals with the depressed areas in central-northern Italy, where the level of living is as low as in the south. It is intended to provide incentives for the development of economic activities which will supplement traditional activities and provide new and permanent sources of employment that will raise incomes and thus help to counter the serious depopulation of the mountain centres. In addition to extending existing measures to 1965 and increasing the funds made available, Act No. 635 also authorizes the State to assume the cost of the construction of water and public health works in the case of small communes (article 3) and provides for the construction of mountain railways (article 4) and a ten-year tax exemption on new handicraft undertakings and small industries established in the area, etc.

A further measure in the field of employment which deserves mention because of its special humanitarian significance is Act No. 594, of 14 July 1957 (*G.U.* No. 188, of 29 July 1957), which lays down regulations requiring the *employment of blind telephone operators* in civil service departments, state agencies and state undertakings.

Other legislation has been enacted to extend and improve measures for the welfare of workers.

Because of its particularly broad scope, mention should be made of Act No. 1047, of 26 October 1957 (*G.U.* No. 278, of 11 November 1957), which extends *sickness and old-age insurance* to farmers, métayers and tenant-farmers normally employed in tilling the soil or in the care of livestock and to members of their immediate families similarly employed on the same farms. The insurance does not cover part-time farmers, métayers or tenant-farmers who are employed in such work for less than thirty man-days a year.

II. Treaties and Conventions relating to Human Rights made operative in Italy in 1957

Charter of the United Nations, signed at San Francisco on 26 June 1945. Made effective in Italy as of 14 December 1955 by Act No. 848 of 17 August 1957 (*G.U.* No. 238, of 25 September 1957, supplement).

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, signed at Geneva on 7 September 1956.

Ratified and made effective in Italy by Act No. 1304, of 20 December 1957 (*G.U.* No. 14, of 18 January 1958).

European Cultural Convention, signed at Paris on 19 December 1954. Ratified and made effective in Italy by Act No. 268, of 19 February 1957 (*G.U.* No. 115, of 6 May 1957).

Convention on Social Security, with annexed final protocol, concluded between the Italian Republic and the Kingdom of Sweden at Rome on 25 May 1955.

Ratified and made effective in Italy by Act No. 137, of 19 February 1957 (*G.U.* No. 84, of 1 April 1957).

Convention concerning reciprocal judicial assistance, concluded between Italy and France at Rome on 12 January 1955.

Ratified and made effective in Italy by Act No. 155 of 19 February 1957 (*G.U.* No. 87, of 4 April 1957).

Convention concerning extradition and judicial assistance in criminal matters, concluded between Italy and the State of Israel at Rome on 24 February 1956.

Ratified and made effective in Italy by Act No. 1342 of 24 December 1957 (*G.U.* No. 25, of 30 January 1958).

(A) Agreement concerning patents for industrial inventions and exchange of notes; (B) Exchange of notes concerning the agreements on social insurance and on patents for industrial inventions concluded between the two countries at Rome on 5 and 12 May 1953 and on 12 November 1953, respectively.

Agreements and notes ratified and made effective in Italy by Act No. 811, of 12 August 1957 (*G.U.* No. 229, of 14 September 1957).

III. Judicial Decisions

In 1957, a decision of particular importance from the point of view of *freedom of assembly* and *freedom of worship*, which confirms the rights proclaimed in articles 20(1) and 18 of the Universal Declaration, was given by the Constitutional Court. The decision of the Foggia Magistrate's Court, the main points of which are reported below, also upheld the principle of *freedom of religion* and, in addition, the *right to personal freedom and freedom of movement*, to which articles 9 and 13(1) of the Declaration refer.

The two other decisions of the ordinary courts reported below reaffirmed the *prohibition of racial discrimination* of any kind (Universal Declaration, article 7) and the right to the *protection of authors' rights* (Universal Declaration, article 27(2)).

1. Constitutional Court — Decision No. 45, of 8 March 1957 (*Raccolta ufficiale delle sentenze e ordinanze della Corte costituzionale*, vol. 2, 1957, p. 491)

In this decision, the court ruled on two questions involving the constitutionality of article 25 of the consolidated text of the Public Security Laws[1] raised by two orders, the first made on 17 April 1956 by the Court of Cassation in the criminal proceedings against L. U. (*G.U.* No. 141, of 9 June 1956), and the second made on 16 November 1956 by the Leonfonte Magistrate in the criminal proceedings against C. G. and C. P. (*G.U.* No. 316, of 15 December 1956).

The evangelical pastor L. U. was convicted by a magistrate's court "for promoting and conducting a religious ceremony . . . in a place other than a place of worship, without having given the prescribed notice to the authorities", thus infringing the provisions of article 25 of the consolidated text of the Public Security Laws. The court of second instance acquitted the accused, "because the act in question did not constitute an offence". An appeal was lodged by the Public Prosecutor and the Court of Cassation, having suspended the proceedings, submitted to the Constitutional Court the question of the constitutionality of article 25 in the light of articles 17, 19 and 20 of the Constitution. The State intervened as a party, and the Advocate-General submitted written pleadings requesting the court to rule that article 25 was constitutional.

The second order related to the criminal proceedings against two persons who were charged with an offence under article 25 of the Public Security Laws on the ground that they had "promoted a public procession without having given prior notice to the police". At the request of the defence, the magistrate submitted the records of the case to the Constitutional Court for a ruling on the constitutionality of article 25 of the Public Security Laws in the light of article 17 of the Constitution. In this instance, the parties to the case did not enter a formal appearance.

The Constitutional Court considered it advisable to rule on the two orders in a single decision.

In connexion with the order made by the Court of Cassation, the Constitutional Court decided that it should concern itself solely with the relationship between article 25 of the Public Security Laws and article 17 of the Constitution[2] and, more particularly, with the question whether that part of article 25 could be retained which implied an obligation to give prior notice of religious functions, ceremonies or practices even if not held in a public place.

The Constitutional Court held that "Article 17 of the Constitution contains a clear reaffirmation of freedom of assembly. It is based on such an important and fundamental requirement of social life that it must necessarily have the widest application and effectiveness, which does not permit of the possibility of special regulations. With regard to religi, ous gatherings, it should be noted that article 8-

[1] Consolidated text of the Public Security Laws, article 25: "Any person promoting or conducting religious functions, ceremonies or practices in a place other than a place of worship, or promoting or directing ecclesiastical or civil processions on the public highway must give at least three days' prior notice to the police. . . ."

[2] Constitution, article 17: ". . . citizens have the right to meet in peaceful and unarmed assembly.

"No previous notice is required of meetings, even if held in places open to the public.

"Meetings in public places shall be subject to prior notice to the authorities, which may prohibit them, only on substantiated grounds of public security or safety."

paragraph 1,[1] and article 19[2] of the Constitution grant full freedom of worship to all religious denominations; but when persons worship in community with others, these provisions must obviously be applied in conjunction with article 17, so that religious gatherings are not excluded from the general rules governing all meetings, in so far as freedom of assembly and the limitation imposed on that freedom in the higher interest of society are concerned."

The Advocate-General argued, in support of the view that article 25 was constitutional, that article 19 of the Constitution sanctioned a limitation in so far as it provided that the rites must not offend public morality, and that requirement of prior notice must consequently be understood as being intended to provide an opportunity of determining in each individual case whether the religious functions and practices proposed to be performed in places intended for such purposes — and therefore also open to the public — involved rites offensive to public morality.

This argument was rejected by the court, which pointed out that ". . . the rule which would follow from such an interpretation, namely, that any limitation imposed on a constitutional freedom must imply a corresponding power of prior control vested in the public security authorities, has no place in our legal system. Any infringement of the limitation imposed in article 19 may constitute an unlawful act and even an offence and in such case the prohibition will be reinforced by appropriate penalties. But, apart from this hypothesis, the preventive powers of the police, if and in so far as they imply a restriction of the freedom under the law of citizens in regard to their possible conduct at some future time, may be exercised only in the case and in the manner expressly provided by law."

The court's conclusion was as follows: ". . . the general nature of the rule contained in article 17 and its applicability to every type of meeting, including religious gatherings, having been established, the rule in that article cannot be reconciled with that part of article 25 of the Public Security Laws which imposes an obligation to give prior notice even in the case of non-public meetings."

On the question concerning the constitutionality of article 25 of the Public Security Laws raised by the Leonfonte magistrate, the court ruled that the meetings in question being "meetings held in public places, must be accounted meetings in respect of which the requirement to give prior notice subsists, so that this part of article 25 is therefore constitutional".

[1] Constitution, article 8, first paragraph: "All religious denominations are equally free before the law."

[2] Constitution, article 19: "Everyone has the right to make free profession of his own religious convictions in any form whatsoever, personally or as a member of an association; to advocate the doctrines thereof and to practise its worship in private or in public, provided they are not rites which offend public morality."

The court accordingly declared "unconstitutional, in the light of article 17 of the Constitution, that part of the provision contained in article 25 of the consolidated text of the Public Security Laws, No. 773, of 18 July 1931, which implies an obligation to give prior notice of religious functions, ceremonies or practices in places open to the public".

2. The Foggia Magistrate's Court, decision of 27 December 1957 (II *Foro Italiano*, 1958, II, 42)

This decision arose from a police order which ordered the compulsory repatriation of Mr. D. G. and prohibited him from returning to Foggia without prior permission on the dual grounds: (1) that he was an idler and habitual vagabond although fit for work and was habitually and notoriously engaged in illicit traffic; and (2) that he had violated article 156 of the consolidated text of the Public Security Laws (which prohibits — except where otherwise provided by the Concordat between the Holy See and Italy — collections or appeals for funds or donations in kind or without the authorization of the chief of police).

The judge dismissed the second charge as groundless, and accepted D. G.'s allegation that "an attempt had in fact been made to prevent him from exercising a right", that of advocating the doctrines of his own sect, "Jehovah's Witnesses".

The decision dealt first with the second charge and discussed the rights under the law recognized to citizens by articles 3, 8 and 19 of the Constitution. Article 3 provides that "all citizens are equal . . . before the law, without distinction as to . . . religion", and is wholly consonant with article 8 which provides that "all religious denominations are equally free before the law", while article 19 guarantees, without distinction, the right of everyone "to make free profession of his own religious convictions . . . to advocate the doctrines thereof", the only exception being in regard to rites offensive to public morality.

The decision laid particular emphasis on the fact that during the examination of article 19 by the Constituent Assembly, the deletion of the phrase "rites which offend public morality" — which is employed in article 1 of Act No. 1159, of 24 June 1929 — had been considered "with a view to protecting the various religious faiths and all citizens, without distinction, from intervention by the executive power, and in order to deprive the latter of any power to prohibit religious ceremonies, in conformity with article 20 which prohibits any legislative restrictions on associations or institutions on the grounds of their ecclesiastical character or religious or ritual aims. A consequence of this prohibition of interference by the executive in ceremonies of any religious faith has been the abolition of all restrictions imposed on the Evangelical Church".

The decision states further that "apart from the fact that article 1 of Act No. 1159 is unconstitutional in relation to the provision concerning "rites which offend public morality", as can be inferred from the

text of article 19 of the Constitution, there is justification for the view that Act No. 1159 and decree No. 289 are clearly in conflict with articles 19 and 20 of the basic law of the State inasmuch as they contain restrictions on freedom of religion. It is probable that the Constitutional Court will be called upon to rule in the near future on the constitutionality of the abovementioned Acts, which were considered irrelevant to the case recently decided by decision No. 45, of 8 March 1957. . . . However, with regard to the scope of individual freedom and the peaceful exercise of the personal rights derived therefrom, which are of particular concern to us in this case, it is pointed out that the rules contained in articles 3, 8, first paragraph, and 19 of the Constitution were framed in accordance with the principle of equality in the matter of freedom of the individual, religious freedom being one of the fundamental rights of freedom. The Constitution recognizes to all without distinction the right to make free profession of one's faith, the right to advocate the doctrines thereof and the right to practise its worship in private or in public, provided that the rites in question do not offend public morality. These rights must be fully respected by individuals and by the community and must enjoy the full protection of the law and of the authorities".

With regard to the specific case of D. G., the decision states:

"The circumstances were, however, wholly different in the case of D. G., whose right to advocate the doctrines of his faith was grievously violated by the public security authorities, whereas in fact that right should have been safeguarded in the face of the protesting crowd which, as the police order indicates, had gathered to prevent him from exercising it. No situation constituting a threat to public security could have arisen had it not been for the behaviour of the crowd, whose conduct demonstrated intolerance and defiance of the law and jeopardized an individual right which the Constitution clearly proclaims and which the citizen may claim to exercise without risking injury to his person or affronts to his dignity within the organized community of which he is a member."

Turning to the other charge given as a ground for the police order against D. G., issued by the chief of police in accordance with article 1 of Act No. 1423 of 27 December 1956 (preventive measures in respect of persons who are a danger to security and public morality), the decision points out that the ground for the police order was, in accordance with article 1 of the Act, the fact that D. G. was an idler and habitual vagabond, although fit for work, or was a person habitually engaged in illicit traffic, who encouraged prostitution, engaged in the traffic of narcotic substances, etc. "But the existence of these facts is not of itself sufficient ground for a repatriation order, which can be issued only if the person concerned is otherwise a danger to public security, since the fact of being a social parasite does not of itself make a person a danger to public security, which is understood as orderly civil life in which the citizen can follow his own lawful pursuits without any threat to or restriction on his person. And it is plain that the danger must be evidenced by concrete facts."

The decision concludes as follows: ". . . since it is fully established that D. G. lived in Foggia with V., who was of the same religious faith and provided him with food and lodging; that he advocated the doctrines of his own religious faith on specific instructions from the Rome headquarters of 'Jehovah's Witnesses', which bore the expenses he incurred in carrying out his missionary work; and since it is established . . . that he was not making a collection, but was merely exercising one of his fundamental rights, it is plainly demonstrated that the circumstances set out as the grounds for the dual repatriation order did not exist; the order was thus not in accordance with the law, and is therefore rescinded."

3. Court of Cassation — Decision No. 4717, of 17 December 1957 (*Foro Italiano*, 1958, I, 14)

By this decision, which quashed the decision of the Rome Court of Appeals of 31 July 1956, the Supreme Court reaffirmed the principle of non-discrimination on grounds of race and interpreted certain regulations issued in Italy in 1944 for the restoration of the civil and political rights of persons persecuted on racial grounds, in the broader sense of their conformity with the dual principle of condemnation of any racial discrimination and the moral compensation due to persons who had been the victims of such discrimination in the past.

The situation in fact and in law which gave rise to this decision of the Court of Cassation may be summarized as follows: Mr. M., the manager of the private firm R., was dismissed in 1938 as a result of the fascist racial orders. Following the issuance of royal legislative decree No. 25 of 20 January 1944 (providing for the restoration of civil and political rights to Italian and foreign citizens previously declared of Jewish origin), article 4 of which requires the reinstatement in employment of all persons dismissed for racial reasons, R. refused to reinstate Mr. M. The latter therefore took his case to the courts, and the case finally came before the Rome Court of Appeals, which found against the plaintiff.

The Court of Cassation found that article 4 of legislative decree No. 25 had been violated, and held that M. "had an undeniable right to reinstatement" under article 4.

After refuting the various points in the reasoning of the Court of Appeals, and declaring it to be in error, the decision of the Court of Cassation continues: ". . . article 4 of legislative decree No. 25 of 20 January 1944 extended the scope of legislative decree No. 9 of 6 January 1944 (on the reinstatement of all persons employed by the national civil service, local bodies, semi-state bodies, bodies controlled by the State or any public enterprise, who were dismissed for political

reasons, including racial reasons) to all Jews, without distinction, who had been deprived of employment as a result of the racial laws, by providing that 'any person whose services were dispensed with under any provision or regulation of a racial nature . . . shall be reinstated in employment'. The content and clear terms of this provision clearly indicate that the legislator wished thereby compulsorily to reinstate all employment relationships which were suspended by legal order — i.e., those contracts of employment which the employer was compelled to break by reason of the racial laws — and to ensure the re-employment of Jewish workers who were dismissed *iussu legis*, and that this was done on social grounds with the moral and legal object of eliminating any effect or trace of the rescinded racial legislation."

With reference to "the distinction made by the court" — that the right of reinstatement under article 4 applied only the Jewish employees with permanent posts and not to those with indeterminate contracts — the Court of Cassation said that this interpretation could not easily be reconciled "with the literal meaning and scope of the provision which embraces all those who were dismissed from employment for racial reasons". The Court of Cassation continued: "Such a distinction cannot be inferred from the fact that an indeterminate contract does not give the employee a right to be maintained in his post, because . . . the legislature, by imposing on employers an obligation to reinstate all their employees dismissed under the racial legislation, wished to make moral and legal amends for an unjust action and, instead of simply providing that employees dismissed on racial grounds should be re-employed by those who had wronged them, wished itself to reinstate them, subject to certain conditions with regard to time . . . ; if the Court's argument was to be accepted, the essentially compensatory purpose of the law would be impaired. . . ."

The decision of the Supreme Court concludes as follows:

'In the light of the foregoing the following principle of law is clear: Article 4 of royal legislative decree No. 25, of 20 January 1944, which provides for the reinstatement of all Italians and foreigners whose employment was terminated because they were declared to be, or were deemed to be, Jewish, applies to all employees, including those whose contracts of employment at the time of their dismissal were not of a permanent nature."

4. Rome Magistrate's Court — Order of 16 February 1957 (*Giurisprudenza Italiana*, 1957, I, section 2, 417)

The order is concerned with various aspects of the question of copyright. This decision is of interest both because of the important questions decided and because of the work which was seized. This was the film "Il Pellegrino", based — without the permission of the author or of the firm holding the copyright — on four films made by Charlie Chaplin, which were altered and provided with a sound-track. Mr. B. M. had placed these films in circulation under the name Chaplin as a single work which he had wrongfully brought into being by means of a hybrid rearragement and numerous alterations and mutilations of the four original films. He had, moreover, shown this silent film in a sound version, with spoken commentary and some additional sequences which had been filmed later. The plaintiffs (Chaplin and the Ray Export Company) contended that this act constituted unfair competition and infringement of copyright, and also specifically injured the honour and reputation of the author in his right and titles. They requested an injunction against the exhibition of the film in Italy or abroad, and the seizure of all originals and copies.

As the decision cannot be summarized in view of its extreme length and complexity, only the premises, as published in the *Giurisprudenza Italiana*, will be reproduced, together with an extract from the decision which clearly indicates the principles relating to the protection of the moral and artistic rights of authors by which the magistrate was guided.

Six principles are stated in the decision: "Both the author-actor and the holder of the exhibition rights are legally entitled to take measures to protect cinematographic works.

"The authors of works produced in the United States of America enjoy in Italy the same position as Italian authors, in accordance with the principle of general reciprocity, and there is therefore no requirement to file copies of such works or to have them registered in the United States of America.

"American films enjoy in Italy a thirty-year period of protection in regard to commercial exhibition rights, which period was extended for six years by legislative decree No. 440, of 20 July 1945, and was suspended during the war. The moral right of the author continues throughout his lifetime or the lifetime of those legally authorized to act on his behalf.

"Under our laws, original films may not be remade into another film without the consent of the author.

"The moral right of a foreign author is also entitled to be protected, even if he is a national of a State in which there is no specific and separate provision for the protection of the moral right of authors.

"The artistic reputation of the author-actor is damaged if a person makes a single film from four separate original works, altering the thread of the story, distorting the intention of the author and adding a musical commentary."

In the course of the decision the magistrate stated:

"It is scarcely necessary to point out that under our laws the protection of the author's moral right is not extinguished by lapse of time; it continues throughout the lifetime of the author and of those

of his heirs and assigns entitled in accordance with the provisions of article 23 (Act No. 633, of 22 April 1941, on copyright) to invoke it. The broad legal provisions referring specifically to deformation and mutilation and, in a wider sense, to the modification of original works must also be understood to include the re-making or transformation of the original work into another work with substantial adaptation and modification of the original. The degree of protection is the greater when the remaking of the original work may injure the reputation or honour of the author. The notions of honour and reputation are embodied in our legal provisions for the protection of personal rights as a barrier to invasion of each person's personal rights by other persons not lawfully empowered to do so or authorized by his representative. Honour is commonly understood in a subjective sense as personal dignity and the subjective consideration with which each person views himself; reputation is understood in an objective sense as the esteem in which a person is held by others, as social consideration for what a person does, for his work and performance. In the artistic world, these goods are undeniably more highly prized and indeed have an economic value. What an artist earns depends on the value others place on his work. Every artist enjoys a degree of esteem and success and these are also the measure of the financial value of his work."

JAPAN

NOTE[1]

I. LEGISLATION

1. *Act amending the Act concerning the State Subsidy for the Supply of Schoolbooks to Destitute Schoolchildren* (Act No. 19, of 30 March 1957)

Subsidies by the city, town and village towards the expenses necessary for the supply to destitute schoolchildren of books in use in school teaching have hitherto been for elementary-school children only but the law has been amended so as to apply also to students of the middle school.

2. *Act amending the School Lunch Act* (Act No. 20, of 30 March 1957)

The State has hitherto been paying part of the expenses of the school lunch for destitute children only of the public elementary schools but the scope of the Act has been extended by the amendment so as to cover also the public middle schools.

3. *Act concerning Medical Treatment, etc. for Sufferers from Atomic Bomb Casualties* (Act No. 41, of 31 March 1957)

In view of the special health conditions of the victims of the atomic bombs with which Hiroshima and Nagasaki were attacked, the purpose of this Act is to maintain and promote their health by health examinations and medical treatment.

Under the Act such victims may receive health examinations every year at the expense of the State and those who were injured or diseased through the harmful effect of the atomic bomb and whose condition requires medical treatment may receive the necessary medical treatment at the expense of the State.

4. *Act amending the Tuberculosis Control Act* (Act No. 63, of 15 April 1957)

By this amendment health examinations, tuberculin tests and vaccinations may be received free of charge.

5. *Act amending the Child Welfare Act* (Act No. 78, of 25 April 1957)

The Child Welfare Act has hitherto provided for eleven kinds of child welfare institutions to be established and operated by the State or a local public entity according to the minimum standards prescribed for each kind; by this amendment institutions for feeble-minded children have been added to them. These are institutions which feeble-minded children are required to visit every day from the homes of their guardians, in order to give them protection and the necessary knowledge and ability to live an independent life.

6. *Act concerning School Lunches of Children in Pre-school Classes and High-school Courses of Blind Schools, Deaf Schools and Handicapped Children's Schools* (Act No. 118, of 20 May 1957)

In view of the special nature of the blind schools, deaf schools and handicapped children's schools, the object of this law is to make certain provisions concerning the supplying of school lunches, in order to help the healthy growth of the minds and bodies of the students of such schools attending their infants' classes and higher classes and also in order to contribute to the improvement of the dietary life of the people. According to this law, the founders of these schools must make efforts to have lunch supplied by their schools, and the State and local public entities must make efforts for the adoption of the system of school lunches by more schools and for its improvement.

7. *Act concerning the Labour Welfare Projects Corporation* (Act No. 126, of 20 May 1957)

This Act provides for the Labour Welfare Projects Corporation, a juristic person with the object of contributing towards the promotion of workers' welfare by properly and effectively establishing and operating medical treatment, vocational retraining and other facilities designated by cabinet order out of the insurance facilities provided for in the Labourer's Accident Compensation Insurance Law, and the vocational training, lodging accommodation and other facilities designated by cabinet order out of those provided for in the Unemployment Insurance Act. The Labour Welfare Projects Corporation is under the supervision of the Labour Minister.

II. ADMINISTRATIVE MEASURES

Regulation for Suspect's Compensation (Ministry of Justice Instruction No. 1, of 12 April 1957)

A person who has been arrested or detained as a suspect can, under this instruction, be compensated for loss caused to him by the arrest or detention when it has been decided not to bring a criminal action

[1] Information kindly furnished by Mr. Saizo Suzuki, Director of the Civil Liberties Bureau of the Japanese Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights*.

against him before the court and there are sufficient grounds for admitting that he has not committed the offence.

Article 40 of the Constitution[1] provides that when an arrested or detained person has been acquitted he has the right to sue the State for redress, and hitherto has been given criminal indemnification in accordance with the Criminal Compensation Act (Act No. 1, of 1 January 1950).[2] However, according to the Criminal Compensation Act, a prerequisite for the compensation is acquittal or an equivalent judgement. When a person has been arrested or detained and it is decided not to bring an action against him, naturally he cannot be given a judgement of "not guilty" and consequently he cannot be redressed for his arrest or detention, although he is proved to be "not guilty". In order to provide a remedy for him in such a case, this Regulation for Suspect's Compensation has been adopted.

The text of the instruction is as follows:

The Regulation for Suspect's Compensation

Ministry of Justice Instruction No. 1 of 1957

General Provisions

Art. 1. This regulation provides for the criminal compensation of persons who have been arrested or detained as suspects.

2. This regulation shall be reasonably administered in accordance with the principle of respecting human rights and taking into account individual circumstances.

Conditions of Compensation

Art. 2. When a public prosecutor decides not to institute a prosecution against a person who has been arrested or detained, and there are sufficient reasons for finding that that person has not committed the crime, the public prosecutor may compensate him for his arrest or detention.

Method of Compensation

Art. 3. Compensation shall be made by giving the person an amount not exceeding 400 yen per day for the period of his arrest or detention.

2. When the person has died the compensation money may be given to his successor or any other person deemed proper, in case of necessity.

Criteria for Discretionary Determination

Art. 4. In determining the necessity and the amount of compensation the public prosecutor shall take into consideration the following factors and other circumstances:

(1) Mental and material damage;

(2) Whether or not any other facts which were investigated during the arrest or detention constitute any other crime;

(3) The desires of the person with respect to compensation.

2. There shall be no compensation in the following cases unless there exist particular circumstances justifying it:

(1) When the act of the person is rendered not punishable under the provisions in articles 39 to 41 of the Penal Code;

(2) When it is found that the person has caused his own arrest or detention by making a false confession or otherwise fabricating incriminating evidence for the purpose of misleading the investigation or trial.

Public Prosecutor in Charge

Art. 5. The decision on compensation shall be rendered by a public prosecutor of the public prosecutor's office to which the public prosecutor who has decided not to institute the prosecution belongs. However, if such public prosecutor's office is a local public prosecutor's office, the district public prosecutor's office superior to it shall make the decision.

Decision on Compensation

Art. 6. In deciding a case concerning compensation the public prosecutor shall prepare a written decision on compensation.

2. When a decision in favour of compensation has been made, or when a decision against compensation has been made upon an application for compensation, the person who is entitled to receive the compensation or the applicant shall be notified of the gist of the decision.

Limited Period for Receiving Compensation

Art. 7. If the person who is to receive the compensation fails to apply for the receipt of the money within six months of the day of his receiving the notification under the preceding article, the public prosecutor shall not give him the money.

Publication of Compensation

Art. 8. If the person who has received compensation money applies for the publication of the fact of compensation within thirty days of the day of his receiving the money, the public prosecutor shall publicize the gist of the decision awarding compensation in the *Official Gazette* and a newspaper deemed proper, or in either of them.

Supplementary Provision

This regulation shall come into effect on 12 April 1957 and apply to arrests or detentions made on or after the first day of that month.

[1] See *Yearbook on Human Rights for 1946*, p. 172.

[2] See *Yearbook on Human Rights for 1950*, p. 168.

III. JUDICIAL DECISIONS OF THE SUPREME COURT

1. The Supreme Court in its judgement of 20 February 1957 decided that, while article 38, paragraph 1 of the Constitution[1] should clearly be interpreted so as to guarantee that no person shall be compelled to make a statement concerning a matter as a result of which he may be charged with a crime, the history of the development of this system shows that to say one's name is not in principle to testify against himself within the meaning of the said provision of the Constitution.

2. On the question whether or not the translation of D. H. Lawrence's *Lady Chatterley's Lover* constitutes obscene literature, the Supreme Court, in its judgement of 13 March 1957, decided as follows:

"Obscene literature" as used in article 175 of the Penal Code means literature which contravenes the virtuous idea of sex morals in that it wantonly excites the reader's sexual desire and offends the normal sense of sexual shame. It is a question of the interpretation of the provisions of law whether literature is obscene or not and such interpretation should be made according to the universally accepted idea. There are cases in which a piece of literature is obscene although it is a work of art, and whether or not there is any obscene quality in a piece of literature should be decided according to an objective judgement of the literature itself. The literature in this case is considered to be obscene in such a sense.

Further, in reply to the argument that the freedom of expression guaranteed under article 21 of the Constitution[2] is absolute and cannot be restricted even by the requirements of public welfare, the court, quoting precedents, asserts that as the freedom of the press and other forms of expression are also restricted by the requirements of public welfare and there is no room for doubt that the public welfare requires the maintenance of order in sexual matters and at least the minimum observance of sex morals. The decision of the court of first instance that the translation in this case constitutes obscene literature and that its publication goes against the welfare of the public has been justly rendered.

3. In its judgement of 19 June 1957, the Supreme Court admitted the constitutionality of article 3 of the Aliens' Registration Order (imperial order No. 207 of 1947) prohibiting an alien's entry into Japan. The effect of the judgement is as follows: As the guarantees set forth in article 22, paragraph 1, of the Constitution[2] relate only to residence, removal and emigration to foreign countries and as residence and removal are provided for separately from emigration, residence and removal are interpreted to mean residence and removal within Japan. It follows that there is no provision with respect to a foreigner's entry into Japan and this coincides with the idea which underlies the international custom according to which the granting or refusal to an alien of permission to enter can be determined at the discretion of the country concerned, and so long as there does not exist a special agreement the State is not bound to given an alien permission to enter the country.

[1] See *Yearbook on Human Rights for 1946*, p. 172.

[2] See *Yearbook on Human Rights for 1946*, p. 171.

REPUBLIC OF KOREA

NOTE[1]

I. Introduction

From the point of view of the advancement and promotion of human rights, the year 1957 was significant in Korea, as in other democratic states. For the Republic of Korea has continuously devoted itself to protecting and enhancing the enjoyment of fundamental human rights ever since its birth.

The Korean Constitution specifically provides for such rights as personal liberty, and freedom of speech, religion and conscience, in order to assure each person the fullest opportunity to enjoy his human rights and to develop his individual capacity and initiative. Some of these rights cannot be limited even by the legislative power, except through constitutional amendment.

In addition, the Constitution, in accord with modern principles of public welfare, makes positive provision for the protection of social and economic rights, including social security for the disabled and the aged, and imposes limitations on economic activities in the interest of the general welfare.

II. Legislation

Since the establishment of the Republic of Korea, many laws and regulations have been promulgated to give the fullest effect to the constitutional guarantees of political, social and economic rights, personal liberty, and freedom of speech, press, religion and conscience.

Constant efforts have been made to protect human rights in accordance with the laws and regulations previously instituted. And, additionally, some laws were amended and others were newly enacted to further this purpose. (There was no amendment of the Constitution in 1957.)

For instance, pursuant to the provisions of the Court Organization Act (Act No. 409), amended in December 1956, qualified judges took over the summary trial of those cases, previously conducted by police magistrates, calling for fines of less than 50,000 hwan or detention for less than 30 days. And in February 1957, the Summary Trial Procedure Act (Act No. 439) was enacted to lay down the legal basis for summary trials and to expedite their handling.

III. Judicial Measures

In June 1950, when Korea was invaded, the emergency presidential order for the punishment of crimes committed during the national emergency was promulgated to meet the needs of the exceptional situation.

Although every measure was taken to insure fair and just trial under this order, the circumstances of the national emergency sometimes made it difficult completely to preclude error. In the interest of rectifying any such error, those who considered their sentences unfair were given the opportunity of re-trial.

For instance, Duk Hi, Chung (alias Soo Nam, Kye), who had aided the enemy during the war and had been sentenced to death by the Seoul district court, later had his sentence commuted to twenty years by presidential leniency. Finally, as a result of a re-trial in June 1957, his sentence was reduced to three years.

IV. Protection of Discharged Prisoners

Many organizations have been established to protect discharged prisoners and to provide them with food, clothing and jobs, especially those without relatives to help them. There are 23 such protection organizations in the Republic of Korea. During 1957, these organizations accommodated and supported 1,411 discharged prisoners, and aided 5,122 with clothing and with travel expenses for returning to their homes.

. . .

[1] Information kindly furnished by the Minister of Foreign Affairs of the Republic of Korea.

LEBANON

ACT OF 24 APRIL 1957[1]

amending the Chamber of Deputies Election Act

Art. 4. All the electors in an electoral ward, of whatever denomination, shall vote for the candidates standing for that ward.

Art. 5. Suffrage shall be universal, direct and by secret ballot.

Art. 6. A person shall not be elected to the Chamber of Deputies unless he is a Lebanese national, is registered in the roll of electors, is over the age of twenty-five years, is in possession of his civil and political rights, and is educated. A naturalized Lebanese shall not be eligible until ten years have elapsed since the date of his naturalization.

If a deputy during his term of office is convicted and sentenced to a penalty involving removal of his name from the roll of electors in accordance with article 11, he shall by a resolution of the Chamber be debarred from the function of deputy.

. . .

Art. 11. The following persons shall not be placed on the rolls of electors:

(1) Persons sentenced to loss of civil rights;

(2) Persons sentenced to permanent disqualification for public rank and office. Persons who have been disqualified for office for a term shall not be placed on the rolls until such term has expired;

(3) Persons sentenced for a crime or an offence involving character.

The following offences shall be deemed to involve character: theft, fraud, drawing a cheque without funds, breach of trust, embezzlement, bribery, perjury, rape, threatening, forgery, uttering forged documents, offences against public morals as stipulated in Book 7 of the Penal Code, and offences connected with the cultivation of and trade in narcotic drugs;

(4) Persons interdicted by judicial order, as long as the order remains in force;

(5) Persons who have been declared bankrupt; such persons shall not be placed on the rolls of electors until they have been discharged;

(6) Persons sentenced to the penalties prescribed in articles 329-334 of the Penal Code.

. . .

Art. 21. The rolls of electors shall include the names of male and female Lebanese who have reached the age of twenty-one years, who are in possession of their civil and political rights and who have had their principal and actual domicile in the electoral ward within the preceding six months at least.

. . .

Art. 23. Members of the armed forces and persons of equivalent status, whatever their rank and whether they are in the army or the gendarmerie, the police or the public security forces, shall not vote while attached to their units or posts or while exercising their functions. When such persons, however, are at the time of the elections temporarily separated from duty or on official leave they may vote in the ward in which they have been registered.

Members of the armed forces and persons of equivalent status, whatever their rank and whether they are in the army or the gendarmerie, the police or the public security forces, shall not be elected to the Chamber of Deputies, even when they have been temporarily separated from duty or placed on reserve. Nevertheless, they may be elected if they have retired on pension or resigned six months before the date of the elections.

Art. 24. Membership of the Chamber of Deputies shall be incompatible with the holding of a public or religious office remunerated by the State Treasury. An official who has been elected deputy shall *ipso facto* be deemed separated from his office unless he has given notice of his rejection of the membership of the Chamber of Deputies within eight days following the decision on the validity of the elections.

Any member of the Chamber of Deputies who is appointed to a paid public office shall by his very acceptance thereof cease to be a member of the Chamber. Nevertheless, a deputy may, with the consent of the Chamber of Deputies, be appointed to a temporary political mission abroad not constituting a regular state appointment, for a non-renewable term not exceeding six months.

A deputy who ceases to possess the qualifications prescribed in article 11 shall *ipso facto* cease to be a member of the Chamber.

Art. 25. The following persons may not be elected in any ward while occupying their offices and during the six months following the date of their final relinquishment of office:

[1] Published in Official Gazette No. 18 of 25 April 1957. Translation by the United Nations Secretariat.

1. Judges of the Court of Cassation and members of the Council of State and the audit department;
2. Directors-general, directors and heads of public departments;
3. Inspectors-general and inspectors whose competence extends over the whole territory of Lebanon.

Art. 26. The following persons may not be elected in the wards falling within the domain of their office functions as long as they are in office and during the six months following the date of their final relinquishment of office:

1. Judges of the courts of appeal and single judges;
2. Mouhafez and Caimacams;[1]
3. Engineers in charge of departments and inspection offices in a particular area;
4. Inspectors in the Ministry of National Education;
5. Accountants, treasurers and other officials of whatever rank serving under them and, in general, all treasury employees and employees of the revenue offices.

In the event of a seat falling vacant as a result of the death or resignation of a deputy, or of the dissolution of the Chamber, the officials referred to in this article and the foregoing article may be elected, if they finally relinquish their office within eight days of the date of the decree convoking the electoral bodies.

[1] Governors of provinces and administrators of districts [Ed. note].

LIBERIA

ALIENS AND NATIONALITY LAW[1]

Chapter 3. Naturalization

80. *Title of Act.* The provisions of this chapter shall be known as the "Naturalization Act".

81. *Eligibility for naturalization.* Any alien Negro of the age of twenty-one years and upward or any alien person of Negro descent of the age of twenty-one years and upward may become a citizen of the Republic of Liberia in the manner prescribed in this Act.

82. *Definition of "naturalization".* The term "naturalization" when used in this Act shall mean the act of granting to any alien eligible for naturalization the privileges of a native citizen of the Republic of Liberia.

. . .

[Section 84 provides, *inter alia*, that, as part of the information which an applicant for naturalization must give, "he must state that he does not believe in anarchy. The petition must also show that he renounces all foreign allegiance and intends to reside permanently within the Republic of Liberia. . . . The witnesses verifying the petition shall be citizens of the Republic of Liberia, who personally know that the applicant has been at least two years a resident in the territority of the Republic of Liberia, or of the country where the application is made, and who personally know him to be of good moral character, and that he has not been guilty of any impropriety in his public conduct."]

. . .

93. *Grounds for cancellation of certificate of naturalization.* Any naturalized citizen of the Republic of Liberia shall, upon complaint to any of the circuit courts of the Republic by the Attorney-General or any prosecuting officer, have his certificate of natuzalization annulled or cancelled for any of the following reasons:

(*a*) If any naturalized citizen shall have resided for two years in that foreign State from whence he came or for five years in any other foreign state, it shall be presumed that he has ceased to be a Liberian citizen and his place of general abode shall be deemed his place of residence during the said years; provided, that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the Republic under such rules and regulations as the Department of State may prescribe;

(*b*) If it is shown that at the time the person acquired citizenship he was not eligible to such citizenship by some existing law of the Republic, or that he was not eligible to enter or reside in the Republic;

(*c*) If the person who has acquired citizenship is not of good moral character and such fact was not known at the time he became a citizen;

(*d*) If at the time the certificate of naturalization was issued, the person naturalized was an anarchist, or naturally opposed to all government or if subsequent disloyalty shows that at the time of naturalization he failed to disclose that he had stronger feelings for his native land than for his adopted country;

(*e*) If it can be shown that the person naturalized intentionally concealed material facts about himself or wilfully made a misstatement or misrepresentation of such facts;

(*f*) If a manifest error of law or fact on the part of the person authorized to issue certificates of citizenship results in the granting of a certificate without compliance with statutory requirements, such as where the person granting the certificate has no jurisdiction, or where the certificate is granted before it should be, or where all the laws governing the naturalization of a citizen are not fully complied with.

An official or employee of the government who may be engaged on government duties abroad shall not be subject to cancellation of his certificate of naturalization on the ground stated in paragraph (*a*) of this section.

. . .

Chapter 4. Nationality

110. *Native citizens.* All persons of Negro descent born in the Republic of Liberia and subject to its jurisdiction are citizens thereof.

111. *Children born abroad of citizens.* All children born out of the limits and jurisdiction of the Republic whose fathers were at the time of their birth citizens thereof are citizens of the Republic; but the rights of citizenship do not descend to children whose fathers never resided in the Republic.

112. *Oath of allegiance required.* Every child born without the Republic of Liberia of Liberian parents and resident abroad upon attaining his majority is required in order to conserve his Liberian citizenship to take the oath of allegiance to the Republic of Liberia before a Liberian consul.

[1] The Aliens and Nationality Law is title 3 of the Liberian Code of Laws of 1956 (see *Yearbook on Human Rights for 1956*, p. 150), published by Cornell University Press, Ithaca, New York, U.S.A.

113. *Children of naturalized citizens.* The naturalization or resumption of Liberian citizenship of the parents confers Liberian citizenship upon the minor children. Such citizenship shall begin at the time such minor children begin to reside permanently in the Republic of Liberia.

114. *Woman who marries citizen.* Any woman of Negro descent married to a citizen of the Republic is a citizen thereof; and it is immaterial whether the husband became a citizen before or after marriage. Any woman who acquires Liberian citizenship by marriage shall be assumed to have retained it after the termination of the marital relation by death or absolute divorce if she continues to reside in the Republic of Liberia, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens; or, if she resides abroad, she may retain Liberian citizenship by registering as a Liberian citizen before a Liberian consul within one year after the termination of the marital relation.

115. *Liberian woman who marries alien.* A Liberian woman who marries a foreigner takes the nationality of her husband. At the termination of the marital relation by death or absolute divorce, she may resume her Liberian citizenship: if abroad, by registering as a Liberian citizen within one year with a consul of the Republic of Liberia, or by returning to reside in the Republic of Liberia; or if residing in the Republic of Liberia at the termination of the marital relation, by continuing to reside therein.

116. *Expatriation.* A Liberian citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with the laws, or when he has taken an oath of allegiance to any foreign State. A Liberian citizen shall not be allowed to expatriate himself when this country is at war.

117. *Resumption of citizenship.* Any citizen who shall expatriate himself by one of the methods mentioned in section 116 of this title, shall not be entitled to the privileges of citizenship in this republic until he has returned and taken the oath of allegiance to the Government of Liberia and remained in the Republic for at least twelve months thereafter.

. . .

INJURIES LAW[1]

Chapter 4. Injuries to the Reputation

60. *Injuries to the reputation defined.* Injuries to the reputation include defamation and bringing a malicious suit, action, prosecution, or other legal proceeding.

61. *Defamation defined.* Defamation is an injury to the reputation of a person by an allegation which is not true. Every false statement about a person constitutes defamation if any special damage results therefrom.

Defamation committed verbally or by signs is called slander; defamation committed by writing or painting is called libel.

62. *Defamatory allegations.* Defamation is committed whenever the words, signs, or figures used convey any of the following ideas:

(*a*) That the person to whom they refer has been guilty of some crime or offence punishable by law;

(*b*) That the person to whom they refer has done some act or been guilty of some omission which although not a crime is of a nature to make people avoid social intercourse with him or her or lessen their confidence in his or her integrity;

(*c*) That the person to whom they refer has some moral vice or bodily or mental defect or disease that would cause his or her society to be generally shunned;

(*d*) That the general character of the person to whom they refer is such as to make persons avoid his or her society or to lessen their confidence in his or her integrity;

(*e*) That the person referred to wants the necessary talents or knowledge or is otherwise incompetent to perform or conduct the office, business, profession, or trade in which he is engaged or that he is dishonest in the conduct thereof; or

(*f*) That for any other reason the person referred to deserves the hatred, ridicule, or contempt of the public or to be deprived of the benefits of social intercourse.

63. *Allegations which do not constitute defamation.* The following do not constitute defamation:

(*a*) A true statement of fact or an expression of any opinion, whether or not correct, as to the qualifications of any person for any public office when such statement is made or such opinion expressed with the honest intention of giving information to any persons who have the power of appointing or electing to such office;

(*b*) A true statement of facts or an expression of any personal opinion, whether or not correct, as to the integrity or qualifications of any person to perform the duties of any station, profession, or trade when such statement is made or opinion expressed with the honest intention of giving advice to any person who has asked for it or to whom it was a duty arising from law, social connexion, or humanity to give such advice; or

[1] The Injuries Law is title 17 of the Liberian Code of Laws of 1956 (see *Yearbook on Human Rights for 1956*, p. 150), published by Cornell University Press, Ithaca, New York, U.S.A.

(*c*) Making or publishing any criticism or examination of any work of literature, science, or art or expression of an opinion, whether or not correct, as to the qualifications, merits, or competency of the author of such works in relation thereto although such criticism, examination, or opinion may damage the person to whom it refers; provided, however, that such criticism or expression is not intended to injure the person to whom it refers.

All statements of fact made under the circumstances referred to in the paragraph above shall be taken as true until the contrary appears or until personal malice or intent to harm is shown. If such statements are shown to be untrue and to have been made with intent to injure the person to whom they refer, they constitute injuries for which an action will lie.

Nothing said or written, whether by judge, juror, witness, party, or agent for a party in a trial, in a court of justice, or in the course of a legal proceeding or in any investigation or conference preparatory to a trial or other legal proceeding shall constitute defamation; provided, however, that what is said or written is relevant to the trial or proceeding or to the preparation therefor and that it is not introduced for the sole purpose of injuring the person to whom it refers.

An answer justifying a former alleged libel or slander as true, which answer is withdrawn or is not supported by any evidence as to its truth, is not protected by the provisions of the third paragraph of this section and may be deemed a defamation; but it shall be considered the act of the party to the cause only and not of any of his agents.

64. *Definitions.* In the definition of slander and elsewhere in this chapter "verbally" means by means of the voice; and "by signs" comprehends every motion of the fingers or other gesture or facial or bodily expression that is used to convey ideas.

In the definition of libel and elsewhere in this chapter "writing" and "write" comprehend not only writing in a paper or manuscript but also typewriting, printing, engraving, etching, lithography, and any other means now known or which may be hereafter discovered or invented to make words visible. "Painting" and "paints" include not only the art, but also drawing, engraving, etching, lithography, or representing figures in any other way; they also include hieroglyphics or the representation of words by objects which they signify.

65. *Who commits libel.* Everyone who makes, publishes, or circulates a libel commits defamation.

The maker of a libel is the person who contrives it and either executes it himself or causes it to be done by others. The publisher of a libel is the person who executes the mechanical labour, who writes, paints, copies, engraves, prints, or otherwise reproduces it. The circulator of a libel is the person who, knowing its contents, sells, gives, distributes, exhibits, reads, or shows to others the document or other object containing the libel.

A person who merely gives, lends, or reads to another a book, paper, or other document containing a libel after such book, paper, or document is already in general circulation does not commit an injusy unless special circumstances are shown to prove that it was done with intent to injure or that special damages have resulted from the act.

66. *Defamation by repeating contents of a libel.* It is slander to repeat verbally or by signs the contents of any libel or the words or substance of any slander except in the cases provided in the third paragraph of section 65 or unless the person who repeats the defamation states at the time of his repetition the name of the person from whom he has heard the allegation or shows that his repetition is not actuated by any desire to injure the person defamed. But if special damages can be shown to have resulted from such repetition, it shall be deemed an injury regardless of the preceding provisions of this section.

. . .

LABOUR LAW[1]

Chapter 2. Conditions of Employment

Subchapter A. General

. . .

21. *Definitions.* When used in this chapter, the terms listed below shall be defined or construed as indicated in this section:

(*a*) "Workman" includes every employed person whose earnings do not exceed one hundred dollars per month, except persons employed in the following occupations: agriculture; forestry; processing the products of agriculture and forestry; domestic service; and administration of aid, comfort, or care to the sick.

(*b*) "Time and one-half" means one and one-half times the wage rate.

. . .

(*d*) "Skilled workman" means any employed person who by reason of training and experience is able to perform services requiring special knowledge, ability or mental dexterity and whose wages do not exceed one hundred dollars per month.

(*e*) "Wage", "earning" or "rate" shall be construed to include the reasonable cost to the employer of furnishing the workman with food, medical care, and other facilities which are customarily furnished

[1] The Labour Law is title 19 of the Liberian Code of Laws of 1956 (see *Yearbook on Human Rights for 1956*, p. 150), published by Cornell University Press, Ithaca, New York, U.S.A.

by such employer to his employees; provided, however, that "wage", "earning" or "rate" shall be construed to mean monetary compensation only in subchapter B of this chapter.

The provisions of this chapter shall not apply to (*a*) public employees to the extent that their wages and other working conditions are determined by budgetary appropriation or by other statutes or rules and regulations; (*b*) seamen and seagoing labourers, insofar as the provisions of this chapter conflict with the provisons of chapter 10 of the Maritime Law; and (*c*) persons required to work on public works.

Subchapter B. Wages

30. *Minimum wages.* All workmen shall be entitled to and shall receive the following rates of pay during he period of their employment:

(a) Unskilled workmen shall be entitled to and receive a minimum wage of four cents per hour for each hour worked in any workday.

(b) Skilled workmen shall be entitled to and receive as minimum wages such weekly, hourly, or monthly rates as may be determined from time to time for each class of skilled workmen by the "Minimum Wage Committee" in the manner prescribed in section 31 below.

. . .

33. *Trainees or apprentices.* It shall be lawful for an employer to engage a person as a trainee or apprentice for a period of not less than one year and not more than two years without paying such person the required minimum wage; the trainee or apprentice shall nevertheless be paid a subsistence allowance during that period to cover food, clothing, and lodging. After the period of training or apprenticeship has been completed, the person shall be classed as a skilled workman and shall be paid wages (not less than the established minimum) according to the proficiency of his work. A trainee or apprentice shall not be considered an unskilled labourer.

. . .

Subchapter C. Hours of Work

50. *Legal working day defined: day's wages.* The legal working day shall consist of eight hours. Every employee shall be entitled to a full day's wages from his employer, whether or not the business office or job is open or lasts eight hours per day, except that:

(*a*) An employee dismissed for inefficiency, lack of qualifications, unfitness for the job, or for other cause shall be paid only for the time he worked; and

(*b*) An employee who reports to his customary place of employment as required and is prevented from carrying out his duties during the working day shall be paid at least three hours' wages: provided, however, that no pay shall be required except for time actually worked if he fails to carry out his duties due to illness, injury, or death on his part or to act of God or *force majeure*.

[Section 51 requires the payment of time and one-half for hours worked in excess of 48 per week.]

52. *Leave of absence to vote.* Any employee may obtain a leave of absence to vote in any election without penalty or disproportionate deduction from pay in accordance with the procedure and under the circumstances prescribed in section 142 of the Election Law.

Subchapter D. Other Conditions of Employment

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72. *Control of abusive language.* It shall be unlawful:

(*a*) For any alien employer or his agents to utter or direct any abusive language to or against any Liberian worker which reflects on his race; or

(*b*) For any Liberian employee or employer to utter or direct any abusive language to or against any alien or his agents which reflects on his or their race.

Upon conviction of a violation of this section before a labour court the offender shall be fined not more than one thousand dollars; in addition, if the offender is an alien, the court may recommend to the Attorney-General the immediate deportation of the guilty party from the Republic.

73. *Hospitalization and compensation for injury.* Each employer shall be responsible for the cost of hospitalization of any employee who may be injured in the course of his employment.

Any employee who in the course of his employment suffers any permanent injury (not attributable to his own negligence or carelessness) which wholly incapacitates him for further work shall be compensated by his employer by a sum equivalent to the aggregate pay he would receive in three years at the rate of pay he was receiving at the time of his injury or accident. Proportionate compensation shall be paid for injuries which incapacitate workers for a shorter period.

74. *Child labour prohibited.* It shall be unlawful for any person to employ or hire any child under the age of sixteen years during the hours when he is required to attend school in any portion of any month when school is in session; provided, however, that a person may employ minors under sixteen if he keeps a register and the school certificates of such employees open to inspection, which certificates shall show that each of the said minors listed in the register is attending school regularly and is able to read at sight and write simple sentences legibly. Any employer violating the provisions of this section shall be fined one hundred dollars and be committed until such fine is paid; any parent, guardian, or other person having control of any child under sixteen who permits such child to be employed in violation of this section shall be fined for each offence not less than fifteen dollars nor more than twenty-five dollars and shall be committed until the fine is paid.

. . .

PENAL LAW[1]

Chapter 2. General Provisons relating to Punishments

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43. *Infamous crimes; consequences of sentence.* Murder, treason, sedition, conspiracy against the State or its official Head, rape, slave trading, pawning, burglary, embezzlement, kidnapping, larceny, robbery, receiving stolen goods, perjury, bribery, forgery, and arson are infamous crimes. Any person convicted and sentenced for an infamous crime shall be disfranchised; he shall be disqualified from voting and from serving as a public officer, as a witness in an action, or as a juror.

Chapter 3. Crimes affecting the Existence of Organized Government

. . .

52. *Sedition.* 1. A citizen of Liberia or other person resident within the territory of the Republic is guilty of sedition who:

(*a*) Stirs up rebellion or sets on foot, incites or in any way promotes insurrection against the authority of the Government of the Republic; or

(*b*) Communicates by speech or in writing to any tribe, chief of a tribe, or other person, any statement imputing to the government unfairness in the treatment of the aborigines, if untrue, or of any other class or section of the community with the intent in so doing to cause discontent and political unrest among them; or

(*c*) Writes or inspires the writing of any document to a foreign government or any official thereof making representations on any matter properly the subject of domestic inquiry and adjustment; or,

(*d*) Convenes or promotes the convening of any meeting, public or private, the object of which is to defy, subvert or overthrow the constituted authority of the government; or

(*e*) Writes or speaks in a disrespectful or defamatory manner of the incumbent of the presidential office with intent in so doing to show disrespect to the Head of State and degrade the office and thereby bring disintegration into the organization of the government.

. . .

54. *Seditious libel.* Any person who with intent to disturb the peace of society and the existence of government, or to bring the executive authorities or the courts of justice or any public authority into contempt, makes, publishes, circulates or exposes to public view any writing, drawing, engraving, printing or effigy, or by such publication attempts to stir up against constituted authority sedition and rebellion, is guilty of seditious libel and punishable by a fine of not more than one thousand dollars and by imprisonment for not more than three years.

55. *Criminal libel.* 1. Any person who maliciously makes, publishes, exposes for sale or to public view any writing, printing, engraving, drawing or effigy charging the President of Liberia or the diplomatic representatives of any foreign government with the commission of any act which, if true, would warrant a criminal prosecution against such official, with the intent in so doing to defame, degrade, revile or expose to public hatred, ridicule and contempt any of the aforesaid officials, or to disturb the peace and friendship between any foreign government and the Government of the Republic of Liberia, is guilty of criminal libel and punishable by a fine of not less than three hundred nor more than one thousand dollars and by imprisonment for a period of not less than six months nor more than two years according to the gravity of the offence.

2. In all prosecutions for the commission of said offence malice shall be conclusively presumed. The Circuit Court shall in all such cases direct the empanelling of a special jury for the trial of said case in said court.

3. Where the President of the nation shall have been defamed, the period of limitations for the commencement of a civil suit of defamation shall not begin to run until one year after the incumbent shall have retired to private life.

56. *False publication.* 1. Whoever prints or publishes or causes to be printed or published any statement:

(*a*) Which is misleading and harmful by reason of a misstatement of a fact or facts, or

(*b*) Which is misleading and harmful by reason of the implying [of] a misstatement of a fact or facts, or

(*c*) Which is misleading and harmful by reason of the suppressing of a fact or facts,

is, if the statements relate to a matter of public interest or concern, punishable on summary conviction by a fine of not less than fifty nor more than one hundred dollars.

2. Nothing in this section shall be construed as affecting in any way the law relating to libel, or the procedure in actions or proceedings respecting or relating to libel.

3. This section applies to the tribal jurisdiction as well as the county jurisdiction, and proceedings thereunder shall be brought before the district commissioners in the tribal jurisdiction or in any court having competent jurisdiction in the county jurisdiction, respectively.

57. *Criminal malevolence.* Any person who writes, prints or mimeographs or causes the writing, printing or mimeographing of any slanderous or scandalous matter against any government official or private

[1] The Penal Law is title 27 of the Liberian Code of Laws of 1956 (see *Yearbook on Human Rights for 1956*, p. 150), published by Cornell University Press, Ithaca, New York, U.S.A.

person and circulates the same or causes it to be circulated under cover of night or by other stealthy means without signing his or her name thereto or signing a false name thereto, is guilty of criminal malevolence, and punishable by a fine of not more than one thousand dollars and imprisonment for a period not exceeding five years.

Chapter 4. Crimes affecting Foreign Relations

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77. *Spreading false news and rumours.* Any person who makes, spreads or circulates any false news or rumours, by any means whatsoever, whereby discord may grow between the Republic of Liberia and any foreign government, shall be guilty of a misdemeanour and shall be fined in a sum not exceeding one thousand dollars, or be imprisoned for a period not exceeding two years.

. . .

Chapter 9. Crimes affecting Civil Rights

260. *Slave trading.* 1. Any person who unlawfully either by force, fraud or deceit, carries off another, and delivers such person into the custody or power of another who has no legal right to hold or detain such person, or who holds or detains any person carried off and delivered into his custody or power, without legal right to so hold or detain him, is punishable by a fine not exceeding five thousand dollars and by imprisonment for not more than two years.

2. Any person who as master, factor or owner builds, sends away, or in any way prepares any vessel for the purpose of carrying on traffic in slaves, knowing or intending that it shall be so employed, or who in any way aids or abets therein, is guilty of piracy.

3. Any citizen or other person resident within the jurisdiction of this republic who knowingly receives or transports any person held as a slave, or intended to be enslaved, is guilty of piracy.

4. Any vessel prepared or used for slave trading may be seized by any officer of the navy, customs or Revenue Service and condemned in any court of competent jurisdiction; the proceeds of its sale shall be divided equally, one-half to the Republic and one-half to the officers and men who seize and bring such vessel into port for condemnation.

261. *Pawning of persons.* Any person who receives, holds or gives a person in pawn is guilty of a felony and punishable by imprisonment for not more than two years.

262. *Criminal discrimination.* Any person who in the conduct of any educational enterprise, labour union, hospital, cafe, hotel, restaurant, transportation facility or place of business or public accommodation generally, either commits or omits doing an act to the prejudice of another person, which discriminates against him because of race, colour, clan, tribe, national origin or religion, is guilty of a misdemeanour and punishable by a fine of not more than one thousand dollars or imprisonment not exceeding six months.

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Chapter 12. Crimes affecting the General Safety, Health and Peace and Order

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340. *Breach of the peace.* Any person who disturbs the public peace by indecent behaviour, by using obscene or blasphemous language or language tending to cause a breach of the peace, by threatening the life of another, by quarrelling or fighting, by unlawfully discharging firearms, or by wilfully making other loud noises to the disturbance of other persons, is guilty of a misdemeanour and punishable by a fine nor exceeding twenty-five dollars.

When the offence is threatening the life of another, the defendant may be required to give a bond, in an amount not exceeding fifty dollars and for a period not exceeding six months, to keep the peace.

341. *Breach of the peace by persons living and cohabiting together.* Any male and female who live and cohabit together in an open and notorious manner and who outrage public decency by habitual quarrelling, fighting, and using abusive and obscene language, to the disturbance and annoyance of the public, are guilty of a misdemeanour and punishable by a fine not exceeding twenty-five dollars and by imposition of all costs as often as they are complained against and convicted.

342. *Riot.* 1. Any three or more persons who in a tumultuous manner disturb the public peace by assembling together of their own authority, with an intent mutually to assist each other against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful, are guilty of a misdemeanour and punishable by a fine not exceeding five hundred dollars or by imprisonment for not more than three years.

2. Where it is necessary for the Executive to call the armed forces into service for the purpose of suppressing a riot, the officer in command shall require the rioters to disperse; on their failure so to do, the officer shall use such force as is necessary to disperse them; and should death ensue in his efforts neither he, nor any soldier or officer obeying his orders, shall be criminally liable.

343. *Rout.* Any three or more persons who disturb the peace by assembling together with an intention to do a thing which, if executed, would make them rioters, and actually make a motion towards the execution of their purpose, are guilty of a misdemeanour and punishable by a fine not exceeding one hundred dollars or by imprisonment for not more than one year.

344. *Unlawful assembly.* Any three or more persons who disturb the peace by assembling together with

an intention to do a thing which, if executed, would make them rioters, and part without actually doing or making any motion towards the doing of any unlawful act, are guilty of a misdemeanour and punishable by a fine not exceeding fifty dollars or by imprisonment for not more than three months.

. . .

347. *Disturbance of religious congregations.* Any person who disturbs any congregation assembled for divine worship at any church, chapel, or meeting house, or any other place for public worship, by interrupting the services by laughing, talking, or making any noise of any kind, and continuing to do so after being requested by the pastor or any officer or person in charge of such meeting to desist or refrain therefrom, is guilty of a misdemeanour and ounishable by a fine not exceeding twenty dollars or by imprisonment in the common jail of the county or the nearest jail for not more than fifteen days.

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Chapter 13. Crimes affecting the General Decency and Good Morals

. . .

364. *Obscene libel.* A person who publishes or exposes to public view or circulates by sale or otherwise any obscene book, photograph, printing or engraving or effigy or any publication or other exhibition tending to corrupt the morals of the people, with intent in so doing to play upon the sexual passions of others, or to corrupt and deprave others, is guilty of obscene libel and punishable by a fine not exceeding one thousand dollars and by imprisonment for not more than three years.

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LIBYA

NOTE

The Labour Act 1957, No. 100 of 1957, assented to on 5 December 1957 (*Al Jaridat al Rasmiyat* No. 4, of 17 March 1958), included provisions concerning the labour inspectorate; the establishment of an employment service; apprenticeship; individual contracts of employment and security of employment; collective agreements; minimum wage fixing; the protection of wages; health, welfare and safety; hours of work (including rest periods and weekly day of rest) and annual leave with pay; the employment of women and children; registration of trade unions and rights of registered trade unions; and industrial disputes. The Act applied to all persons employed under a written or oral contract of employment except: members of a family employed in a family undertaking; certain agricultural workers; domestic servants; certain persons employed in shipping and sea fishing; and civil servants. Hours of work were not to exceed eight daily and 48 weekly, or, for children (persons of not less than twelve nor more than sixteen years of age) five and thirty hours respectively. It was forbidden for an employer to request a worker to refrain from joining a trade union, or to require him to resign from a union, or to dismiss or victimize a worker by reason of membership or participation in the activities of the union outside working hours or, with the employer's consent, during working hours. Trade unions were permitted, for the purpose of defending their common interests, to form federations and confederations, which were themselves permitted, subject to the approval of the competent Minister, to join international workers' organizations. The Act repealed, *inter alia*, the following enactments of Cyrenaica: the Employers and Employees Act (No. 24 of 1951),[1] the Trade Unions Act (No. 25 of 1951)[2] and the Minimum Wages Act (No. 29 of 1951).[3] Translations of the Act into English and French have appeared as International Labour Office, *Legislative Series* 1957 — Libya 2.

The Social Insurance Act 1957, No. 53 of 1957, assented to on 20 February 1957 (*Al Jaridat al Rasmiyat* No. 8, of 25 April 1957), established a National Social Insurance Scheme, providing pensions and medical benefits, to protect employed persons or their families in the event of sickness, employment injury, maternity, death, invalidity, old age and unemployment. With certain exceptions (including homeworkers; the spouse, children and parents of an employer; certain foreign workers; and some domestic servants), all persons gainfully employed under a written or oral contract of employment were to be compulsorily insured in accordance with the Act. Employers and employees were to make weekly contributions to the funds of the National Social Insurance Institution set up to administer the scheme. Provision was made for securing proper respect for the secrecy of information secured in the application of the Act, and for the gradual application of the provisons of the Act to the various regions and localities of Libya. Translations of the Act into English and French have appeared as International Labour Office, *Legislative Series* 1957 — Libya 1.

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[1] See *Yearbook on Human Rights for 1952*, pp. 181-3.

[2] Ibid., pp. 183-4.

[3] Ibid., pp. 185-6.

LUXEMBOURG

NOTE

The Act of 3 September 1956 to Establish an Agricultural Pension Fund (*Mémorial* No. 47, of 13 September 1956) provided for the compulsory insurance of independent agriculturists and certain adult relatives who help such agriculturists in their work. Certain persons of 62 years of age or over were permitted to claim exemption. Benefits accorded under the scheme were to consist principally of old-age pensions, to be paid at the age of 65, invalidity pensions and survivors' (widows' and orphans') pensions. The scheme was to be financed by premiums paid by the insured and constributions made by the State. The Act was to enter into force one month after publication.

The Act of 29 July 1957 on sickness insurance for self-employed persons (*Mémorial* No. 46, of 7 August 1957) provided for the compulsory insurance of the following residents of Luxembourg, when not already compulsorily insured: persons who exercise, legally, continuously and on their own account, an occupation represented in the Chamber of Crafts (Chambre des Métiers) or the Chamber of Commerce (Chambre de Commerce); certain relatives thereof; partners in commercial companies who actively and continuously participate in their affairs and who are excluded from compulsory sickness insurance for employees; and persons receiving pensions resulting from one of the foregoing occupations. Certain members of the families of insured persons were also to receive the benefits of insurance, which were the following: medical and related care; diagnostic and detection measures; the provision of pharmaceutical and orthopaedic supplies; the cure and relief of ailments; the provision of prosthetic appliances; admission to clinics, hospitals and sanatoria; in case of confinement, the services of a midwife or if necessary a doctor; and direct funeral expenses. The scheme was to be financed principally by contributions by the insured. The Act included provisions on the organization and operation of the necessary Pension Fund and provisions on professional secrecy.

MEXICO

NOTE[1]

I. Introduction

In 1957, no changes were made in the Constitution in connexion with the rights proclaimed in the Universal Declaration of Human Rights; however, as has been pointed out in previous reports, the guarantees of the individual rights contained in the Universal Declaration are proclaimed in the Political Constitution of Mexico, which defines some of them even more broadly.

Nevertheless, in the course of the past year, ideas consonant with the spirit which inspired the Universal Declaration of Human Rights were expressed in acts, decrees and international concentions and in judgements pronounced by the Supreme Court of Justice of Mexico.

In this connexion, we may mention that these legal measures include decrees making collective work contracts compulsory in various branches of industry and laying down rules very advantageous to the working class; these measures, which are directly inspired by article 123 of the Constitution,[2] are also linked with the principles of the Universal Declaration of Human Rights. In this connexion, it should be noted that the Mexican Government has spared no effort to promote good labour/management relations based on justice and on the principle that work is not a commodity but an essential element of human dignity.

The cordial labour/management relations which now obtain in Mexico have been a decisive factor of national development in both the rural and the industrial areas.

The workers and employers themselves directly negotiate the collective work contracts, which are later given the force of decrees, the State's action being restricted to merely ensuring that the national interest and the common good shall be paramount.

It may safely be said that, at present, it is thanks to these good relations and to the deep sense of responsibility of the employers' associations and of the workers' trade unions, that labour/management disputes have been settled by negotiation and solutions which satisfied both parties have been found, the State playing the part of mediator.

II. Legislation and International Agreements[3]

The legislation or changes in existing legistation which came into force in 1957 that are closely linked with the Universal Declaration of Human Rights and contribute to the progressive development of human rights are as follows:

1. Decrees establishing the compulsory social security system in the states of Campeche, Durango, Guerrero and Tabasco (published in the *Diario Oficial* of 6 March); Aguascalientes and Queretaro (*Diario Oficial* of 29 March); Coahuila, Colima, Michoacan and Yucatan (*Diario Oficial* of 19 June); and Guanajuato (*Diario Oficial* of 14 August 1957)

Article 1, which is related to article 25 of the Universal Declaration of Human Rights, establishes an insurance scheme for work accidents, occupational diseases, non-occupational diseases, maternity, disablement, old age, retirement and death, for rural workers and for the workers mentioned in article 3 of the Social Security Act — namely, those who give their services to another person under a work contract, the members of producers' co-operatives and those who furnish services under articles of apprenticeship.

2. Decree making collective work contracts compulsory in certain branches of the textile industry (silk, rayon and all types of continuous artificial fibres). Published in the *Diario Oficial* of 28 June 1957

Article 49 of this decree provides that, in factories situated in areas where the Social Security Act does not yet apply, firms and trade unions shall respect the provisons of that Act, without prejudice to the relevant modifications in the work contract.

Article 53 provides that firms shall pay the relatives of deceased workers a sum equivalent to fifty days' wages, calculated on the basis of the last wages paid to the worker; this benefit shall be independent of the payment made by the Mexican Institute of Social Security in respect of funeral expenses.

Article 56 extends the same protection to pregnant women during and after childbirth as does the Social Security Act, in those areas in which the Act has not come into force.

Lastly, article 78 places on firms the obligation to establish a savings fund for their factory workers.

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[1] Note kindly furnished by the Permanent Mission of Mexico to the United Nations. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1946*, pp. 199-201.

[3] See also pp. 306 and 307.

This decree bears a direct relation to article 25 of the Universal Declaration of Human Rights.

3. Decision of the Ministry of Finance and Public Credit regulating the investments of the insurance and guarantee capitalization institutions in low-cost housing. Published in the *Diario Oficial* of 29 August 1957

This decision, which is also linked with article 25 of the Declaration, provides that the investments of institutions of this type in the construction of low-cost housing and the granting of mortgages for the same purpose shall be subject to, *inter alia*, the following conditions: (*a*) the living space shall in no case be less than twenty-seven square metres per dwelling; (*b*) the buildings shall be planned to last for at least twenty years; (*c*) in addition to the bedrooms, they shall comprise a bathroom not less than three square metres in area, equipped with the essential sanitary facilities; (*d*) they shall include a space to be used as a kitchen; (*e*) they shall be provided with drains connecting with sewers or, in default of these, with septic tanks; (*f*) they shall be situated in areas which are provided with municipal services.

4. Ratification of the Convention concerning Customs Facilities for Touring, signed at United Nations headquarters on 11 May 1954. Published in the *Diario Oficial* of 7 November 1957

Article 1, paragraph (*b*), of the Convention gives the following definition of tourist: "Tourist" shall mean any person without distinction as to race, sex, language or religion who enters the territory of a contracting State other than that in which that person normally resides and remains there for not less than twenty-four hours and not more than six months in the course of any twelve-month period, for legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimages or business.

This instrument bears a direct relation to articles 2 and 13 of the Universal Declaration of Human Rights.

5. Decree promulgating the Universal Copyright Convention, signed at Geneva on 6 September 1952,[1] the appended declaration relating to article XVII, the resolution concerning article XI and protocol 2 concerning the application of that convention to the works of certain international organizations. Published in the *Diario Oficial* of 6 June 1957

Under article I of this convention, each contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works and paintings, engravings and sculpture.

Article V provides that copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this convention. This is linked with article 27 of the Universal Declaration of Human Rights.

III. Principal Decisions of the Supreme Court of Justice relating to the Universal Declaration of Human Rights, included in the Report made to the Supreme Court by its Presiding Judge at the End of 1957

1. Basically Military Offences in which Civilians are implicated

In the case of an offence of a military character in which civilians are implicated, the case shall be heard by the judge of the ordinary court, in accordance with article 13 of the Political Constitution,[2] which constitutes a guarantee for the individual, as the military tribunals may in no case and for no cause extend their jurisdiction over persons who do not belong to the army and, if a civilian should be implicated in a crime or offence or a military character, the proper civil authority shall hear the case (decision of competence, No. 31/57, between the judge of first instance of Papantla, Veracruz, and the military judge of the second region of the same state).

2. The Judge must weigh the Evidence submitted in Defence of the Accused

The right of the accused, under article 20, paragraph V,[3] of the Constitution, to offer and produce evidence in his defence implies that all such evidence must be considered and taken into account in the sentence, from which it may be inferred that, if the court did not consider evidence which is reliably proved to have been produced and submitted, the accused shall be allowed to exercise his constitutional right to have a new sentence pronounced in which such evidence is taken into account (application for *amparo* 6048/56).

3. The Remedy of Amparo *cannot be waived*

The objection of the responsible authority that *amparo* proceedings do not lie because during the unofficial part of the hearing the complainant offered to waive the remedy of *amparo*, whatever decision be taken at that stage, is without merit, because, even assuming that the appellant responsible authority is correct, such a waiver would mean that the due process of law, safeguarded by the limitations imposed on the authorities by the Political Constitution, could be derogated or suspended by the mere consent of individuals. (See 3372/957/2(*a*), *amparo* proceedings introduced by Pedro Trejo against the General Directorate of the Post Office for certain of its acts.)

[1] See *Yearbook on Human Rights for 1952*, pp. 398-403.

[2] See *Yearbook on Human Rights for 1946*, pp. 190-191.

[3] See *Yearbook on Human Rights for 1948*, pp. 144-5.

4. Unconstitutionality of Acts empowering Judges in Civil Cases to pronounce Sentence according to Their Best Knowledge and Understanding

Any provision which empowers judges in civil cases to pronounce judgement according to their best knowledge and understanding is unconstitutional, as it is not in accordance with article 14 of the Political Constitution,[1] which provides that judges must pronounce sentence according to the letter or the judicial interpretation of the law and, in the absence of the latter, according to the general principles of the law; consequently, although there are laws in Mexico such as those of the Federal District and Territories, which empower the judge of the ordinary court to act in accordance with his best knowledge and understanding, this authorization applies only to the weighing of evidence and cannot apply to the sentence (Review 1200/955/2 a).

5. The Minimum Salary to be fixed when a Worker is reinstated

When a worker sues for the fulfilment of his work contract and the payment of arrears of wages, if the wage he received at the time of his dismissal was the minimum and he does not specify the amount of wages he claims, the Board of Conciliation and Arbitration shall order the payment of the arrears of wages at the minimum rates obtaining during the period covered by the award, and, if the board orders the worker's reinstatement, it shall fix the wages to be paid to him at the minimum in force, because the provisions laying down the minimum wages are general in application and compulsory and cannot be disregarded by the board, as the community and the State are concerned (application for *amparo* 146/1956).

6. Suspension

The employer may suspend a worker as a punishment or a disciplinary measure only in cases in which he is empowered to do so by a clause in the work contract or by the Internal Labour Regulations; if he is not so empowered, a suspension shall be considered as a dismissal of the worker, because the employer is not legally entitled to prevent the worker from carrying out his obligation to provide service and may not, at his discretion, refuse to comply with the obligation to pay the worker the corresponding wages (application for *amparo* 5611/1956/1a).

[1] See *Yearbook on Human Rights for 1946*, p. 191.

MONACO

NOTE[1]

Sovereign ordinance No. 1595 *bis* of 1 July 1957 (*Journal de Monaco* No. 5207 of July 1957) made applicable to Monaco the following international instruments,[2] to which the Government of Monaco acceded on 29 April 1956:

Convention of Paris, 20 March 1883, for the Protection of Industrial Property, revised at Brussels, 14 December 1900, at Washington, 2 June 1911, at The Hague, 6 November 1925, and at London, 2 June 1934;

Agreement of Madrid of 14 April 1891, for the Prevention of False Indications of Origin on Goods, revised in Washington, at The Hague and at London;

Agreement of Madrid of 14 April 1891, for the International Registration of Commercial and Industrial Trade Marks, revised at Brussels, at Washington, The Hague and London; and the detailed regulations for its application;

Agreement of The Hague of 6 November 1925, for the International Registration of Industrial Designs or Models, revised at London, and the detailed regulations for its application.

[1] Information kindly supplied by Dr. Louis Aureglia, National Councillor, Monte Carlo, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] See also p. 306.

MOROCCO

NOTE[1]

I. LEGISLATION

Status of Germans

In application of the principle that all persons residing in the territory are equal before the law, His Majesty the King has ordered the promulgation of dahir No. 1-56-240 of 14 Joumada I 1376 (17 December 1956) superseding the dahirs of 20 Rabia II 1335 (11 January 1920) and 18 Zu'lkadah 1351 (15 March 1933) concerning the status of persons of German nationality (*Bulletin officiel* No. 2307, of 11 January 1957).

Moroccan Provident Societies

Dahir No. 1-56-153 of 28 Joumada I 1376 (31 December 1956) amending the basic dahir of 9 Shaban 1346 (1 February 1928) defers and simplifies the repayment of farm loans by farmers (*Bulletin officiel* No. 2308, of 18 January 1957).

Rights of Sick Seamen

Under the terms of dahir No. 1-57-094 of 12 Ramadan 1376 (13 April 1957) amending article 190 (*c*) of annex I of the dahir of 28 Joumada II 1337 (31 March 1919) constituting the Maritime Commercial Code (*Bulletin officiel* No. 2323, of 3 May 1957), a seaman who has been set ashore on account of illness is entitled to special allowances and, in the event of any disagreement with the ship owner, he may bring the dispute before the competent court, after first attempting conciliation.

Rights of Workers

The new dahir No. 1-57-127 of 28 Ramadan 1376 (29 April 1957), superseding an old dahir dated 14 Rajab 1348 (16 December 1929), institutes labour courts, responsible throughout the unified territory for settling *by conciliation* such disputes concerning individuals as may arise, in connexion with employment contracts of personnel in commerce, industry, agriculture and the liberal professions, between the employers or their representatives and the salaried employees, manual workers and apprentices *of either sex* employed by them, but excluding employees of the State and of public bodies.

Only when conciliation has failed are cases referred to the labour court, which is presided over by a professional judge who must be assisted by an equal number of employers and of manual workers or salaried employees.

All legal remedies are available against the judgements of the labour courts, including the possibility of appeal to the Moroccan Supreme Court meeting at Rabat.

The dahir of 16 Ramadan 1376 (17 April 1957) on collective agreements governs the conclusion of written agreements concerning conditions of work between the representatives of trade unions and one or more employers or the representatives of one or more employers' organizations.

Occupational Diseases

Dahir No. 1-57-128 of 17 Shawwal 1376 (18 May 1957) extends to occupational diseases the provisions of the legislation respecting workmen's compensation (*Bulletin officiel* No. 2331, of 28 June 1957).

Economic and Social Development

Dahir No. 1-57-183 of 24 Zu'lkadah 1376 (22 June 1957) lays down a plan for the economic and social development of the entire Territory over the period 1960-1964, the principal aims of which are to increase the country's agricultural production and to promote industrial development and the revival of handicrafts, and thereby to raise the level of living of the people and improve social conditions with respect to education, health and housing (*Bulletin officiel* No. 2333, of 12 July 1957).

Industrial Associations

Dahir No. 1-57-119 of 18 Zu'lhijjah 1376 (16 July 1957) superseding the dahir of 24 December 1936 (*Bulletin officiel* No. 2339, of 23 August 1957)[2] authorizes the organization of industrial associations, which may have no other purpose than that of studying and defending the economic, industrial, commercial and agricultural interests of their members.

Public servants are also free to join such associations.

Workers' Medical Services

Dahir No. 1-56-093 of Zu'lhijjah 1376 (8 July 1957) requires the creation by certain undertakings and employers of "workers' medical services" whose

[1] Information kindly furnished by the Ministry of Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

[2] The French text of the dahir and an English translation have been published by the International Labour Office in the *Legislative Series* 1957 — Mor.3.

purpose is to prevent any lowering of workers' health standards.

Dangerous Occupations

Decree No. 2-56-1019 of 10 Safar 1377 (6 September 1957), issued to implement the dahir of 2 July 1947 containing labour regulations,[1] prohibits children under sixteen years and women from engaging in a number of occupations deemed to be dangerous and classified as such.

Extradition

A Moroccan Supreme Court now having been established, article 51 of dahir No. 1-57-223 of 2 Rabia I 1377 (27 September 1957) stipulates that the examination of all requests for extradition shall be undertaken exclusively by the Criminal Chamber of the Supreme Court, which shall be responsible for the *judicial* control of all requests.

A written report must be submitted by a reporting judge (conseiller rapporteur) and the findings recorded by the public prosecutor's office (ministère public). The person concerned may be given a hearing and may request legal aid. The Supreme Court renders its decision in the form of an order on the request for extradition, stating the grounds on which it has been reached; the Court may decide to defer the case for further inquiry.

A judicial basis for extradition therefore exists in Morocco, providing every guarantee of justice in respect of these rights, which require very careful handling.

II. International Instruments[2]

With regard to administrative and technical co-operation, Morocco and France have signed a *convention* dated 6 February 1957, under which both States have undertaken to assist each other with a view to the *organization and development of their respective resources* in the spheres of documentation, research and technical and administrative training (*Bulletin officiel* No. 2330, of 21 June 1957).

Under dahir No. 1-57-189 of 11 Zu'lkadah 1376 (10 June 1957) Mr. Abdelkrim Benjelloun, Minister of Justice, was deputed to initial the text of the *Judicial Convention* concluded between Morocco and France (*Bulletin officiel* No. 2331, of 28 June 1957).

Dahir No. 1-57-271 of 29 Moharram 1377 (26 August 1957) brought into force in Morocco the *Convention relating to the Status of Refugees* signed at Geneva on 28 July 1951, superseding all prior legislative provisions and regulations relating to the same subject.

[1] The French text of the decree, and an English translation, have appeared in International Labour Office: *Legislative Series* 1957 — Mor.4.

[2] See also p. 306.

III. Judicial Decisions

Questions affecting Nationality

In cases of non-registration of birth, Moroccan nationality is established on the presentation of a notarized certificate attesting that the person concerned was born in Moroccan territory of a father himself born in that territory, when various other circumstances, in particular the possession of a Moroccan passport, appear to confirm this information (Oudjda court of first instance, judgement No. 280, of 3 April 1957). Under the French Nationality Code a child, even if born outside of France, whose mother is French and whose father is a naturalized French subject, possesses French nationality and cannot renounce it (Oudjda court of first instance, judgement No. 402, of 22 May 1957). On the other hand, in conformity with the relevant provisions of French law, an applicant of Algerian descent who has settled and married in Morocco and who has, moreover, failed to comply with French military service requirements is presumed to have emigrated without any intention of returning and, therefore, loses French nationality (Oudjda court of first instance, judgement No. 431, of 29 May 1957).

Rights of the Parties with Respect to the Dissolution of Marriage

A Moroccan subject of the Moslem faith, who was married abroad to an alien woman according to local law and then settled at Tangier, took cross-action with respect to the divorce suit brought by his wife before the Tangier Mixed Court. That court and subsequently the Mixed Court of Appeal dismissed the husband's action on the ground that the Mixed Court could not consider questions affecting the personal status of Moroccan subjects of the Moslem faith at Tangier (judgement No. 9573, of 22 May 1953, of the Mixed Court, and judgement No. 2858, of 17 December 1954, of the Court of Appeal). Since the Moslem Cadi Court might have been expected to refuse to dissolve a marriage whose validity it did not recognize, it would seem that there was no court at Tangier competent to hear the applicant's claim. The position does not appear to have been altered by the dahir of 11 April 1957.

Welfare of Children of Divorced or Deceased Parents

The sale by public auction of immovable property belonging to a minor whose father and mother are deceased may be authorized whenever such action is required in the interests of the minor and provided arrangements are made for its withdrawal from auction if the price offered does not reach a predetermined level (Meknès court of first instance, judgement No. 7411/*bis*, of 20 March 1957).

The sale of family immovable property by public auction is lawful, and the widowed mother is authorized to deduct a certain sum from the minor's share of the proceeds of such a sale whenever such action is

essential in order to meet the cost of medical care required by the minor's state of health (Meknès court of first instance, judgement No. 7788, of 28 August 1957).

When the social welfare authorities decide that the two divorced spouses offer equal guarantees with respect to the upbringing and maintenance of their children, it appears preferable, because of their tender years and their attachment to the mother, to entrust them to her care, while granting the father generous visiting rights (Rabat court of appeal, decision No. 480, of 17 April 1957).

NEPAL

NOTE[1]

1. *Lands Act, 1957*

This is one of the most important laws enacted in recent years. It seeks to carry out certain measures of land reform. It fixes the maximum rate of rent which may be recovered in respect of any year by a landholder from a cultivator at whatever was allowed by the local custom, or usage, or express agreement between the parties, or 50 per cent of the gross produce, whichever is lower. It limits the rate of interest chargeable from a cultivator in respect of a loan advanced by the landholder to the cultivator in cash or in kind at 10 per cent, but entitles the landholder to recover 25 per cent or such lower rate as may be customary in the locality in respect of any corn advanced by him on loan to a cultivator for the purpose of being used as seed. It prohibits illegal exactions whether in cash or in kind which the landholders previously used to recover from the cultivators of their land. It casts on the landholder the duty to give a formal receipt in respect of every payment made to him by the cultivator whether in cash or in kind. It also provides that, if the landholder refuses to receive rent when tendered by the cultivator, the cultivator may deposit it in the Mal Adda (Revenue Office) and that this payment will discharge the cultivator's liability.

Every cultivator cultivating any land at the commencement of this Act or a cultivator who thereafter cultivates any land for one full year acquires the status of a "protected cultivator" in respect of the land under his cultivation at that time. The protected cultivator is entitled to hold the land without limit of time on condition of regular payment of rent in accordance with the provisions of this Act, but he may by reasonable prior notice relinquish his tenancy. The right of a protected cultivator in respect of land held by him is hereditable but not transferable without the previous concurrence of the landholder. A protected cultivator cannot be evicted from his land except for specified reasons to be adjudged by a court of law.

2. *Gaon Panchayat Act, 1957*

Gaon Panchayat Act, 1957, seeks to lay the foundation of local self-government.

Under this Act, the district officer of the area will declare as a village, for the purposes of this Act, an area having a population of not more than 2,500. He will also issue an order setting forth the name of the village, and determining its frontiers and population. The adult population of each village, designated a village assembly, is declared a body corporate having perpetual succession. It has power to hold and acquire any movable and immovable property and it is to sue and be sued in its own name. All persons, except aliens or lunatics, who are not less than twenty-one years of age, and who are residents of a particular village for at least one year, or hold houses of their own in the village, may be registered as members of the village assembly. The village assembly is to meet twice a year. But there may be extraordinary sittings of the assembly on the written request of 20 per cent of the registered residents of the village. The village assembly is to have its own fund and have power to levy and realize taxes.

After the establishment of the village assembly the members are to elect an executive committee to be known as a village panchayat (village council) in a prescribed manner.

After the constitution of a village assembly every person living within its area is to pay to it a tax equal to five per cent of the land revenue which he has to pay the Government. The money thus raised is to be spent on various development purposes which the village panchayat is to undertake.

The villaga panchayat, subject to the general control of the District Board, is to construct, clear and repair roads; plant trees on the sides of the roads and paths; provide medical relief to the people within the village; take precautionary measures against epidemics and contagious diseases; keep a record of births and deaths; provide primary education to children; establish and manage schools; look after and maintain common drinking-water ponds; approve plans for building, adding to and altering houses; assist in encouraging agriculture, trade and industry; and provide maternity and child welfare.

Under the Act, His Majesty's Government may authorize from time to time all or any of the village panchayats to hear and dispose of certain classes of cases.

[1] Information kindly furnished by Mr. I. R. Misra, Deputy Secretary, Ministry of Foreign Affairs, Kathmandu.

NETHERLANDS

NOTE ON SOCIAL AND ECONOMIC DEVELOPMENTS[1]

I. LEGISLATION

Public Service

During 1957, measures were taken to allow women to remain in government employment after marriage. The General Government Employees Regulations were amended in this sense by royal decree of 30 November 1957 (*Statutebook* No. 527) and the General Regulations for Employees of the States-General by royal decree of 24 December 1957 (*Statutebook* No. 566).

Industrial Safety and Health

1. The royal decree of 20 March 1957 (*Statutebook* No. 116), adopted under the Safety Act, 1934, contained measures protecting workers against ionizing radiations.

2. The royal decree of 1 June 1957 (*Statutebook* No. 196), adopted under the Labour Act, 1919, fixed new hours of work and resting periods for nursing personnel.

3. The royal decree of 21 June 1957 (*Statutebook* No. 322) modified the Hours of Work in Factories and Workshops Decree, 1936, and, *inter alia*, prohibited from 1 October 1957 onwards all work by young persons outside of normal working hours (i.e., before 7 a.m. and after 6 p.m.).

4. The royal decree of 30 August 1957 (*Statutebook* No. 371) amended the Labour Decree, 1920, and prohibited certain categories of agricultural work for women and young persons.

Education

1. The decree of 5 February 1957 (*Statutebook* No. 42) contained a scheme for bonuses on discharge for technical education personnel.

2. The royal decree of 15 July 1957 (*Statutebook* No. 248) raised salary standards for personnel in primary education and primary agricultural and horticultural education.

3. The decree of 5 August 1957 (*Statutebook* No. 327) amended the Special Elementary Education Decree and created the possibility of subsidizing the education of children who are in sanatoria suffering or recovering from prolonged sickness. This scheme is specially important for polio and asthma patients being cared for in separate parts of children's sanatoria.

4. The Building (Pre-elementary Education) Decree of 6 September 1957 (*Statutebook* No. 361) contained minimum standards regarding construction and furnishing of the school buildings, as well as regarding the foundation and the number of pupils per room.

5. The decree of 10 September 1957 (*Statutebook* No. 370) regulated the grant of half pay and of discharge bonuses to female personnel in pre-elementary education.

Housing

1. The Act of 26 July 1957 (*Statutebook* No. 272) amended the Rent Act, and provided new regulations concerning rents of real property. Rents of houses are increased by 25 per cent, while rents of industrial premises may be increased by 15 per cent at most after agreement between lessor and lessee.

2. The Act of 26 July 1957 (*Statutebook* No. 271) created for the lessor of a house, for which the rent was increased in virtue of the previously mentioned Act, the obligation to deposit annually 50 per cent of the increase for registration in the "ledger for housing improvement". The moneys deposited may be paid back to cover improvements to the houses in question and are eventually returned in any case to the owner with accrued interest.

3. The decree of 25 June 1957 (*Official Gazette* No. 122) of the Minister of Social Work contained new provisions in relation to the Housing Accommodation Act, 1947, sections 3, 7 and 8. In principle, it made possible the exchange of dwellings. The housing accommodation, however, may not be of disproportionate size, for in that case efficient distribution would be interfered with. Nor is the exchange of too small a dwelling allowed, since in the long run this would create an intolerable situation and thus a new problem. The composition and the reasonable social needs of the family concerned are at the same time taken into account. Moreover, the obligation is imposed on the burgomaster and aldermen to try either to bring about an acceptable arrangement for the sharing of a house in which accommodation is voluntarily made available, or to arrive at an acceptable solution by means of removals, thus redistributing the available accommodation.

Another important feature of the decree for many house hunters is section 3. In practice there have been people seeking houses who so far have failed

[1] Information kindly furnished by Dr. A. A. van Rhijn, Secretary of State for Social Affairs, government-appointed correspondent of the *Yearbook on Human Rights*.

to get recognition for their claim. For instance, newly married or engaged couples are referred to the municipality of the wife by the municipality where the husband is working, and to the municipality where the husband is working by the authorities of the municipality where the wife is living. Section 3 solved this difficulty by providing that, in cases where a claim for housing accommodation remains unacknowledged by any municipality, the provincial authorities may request a municipality to assume responsibility for the accommodation of the party concerned. Should the municipalities involved be in different provinces, the Minister of Social Work takes over the task of the provincial authorities.

4. The decree of 19 November 1957 (*Official Gazette* No. 227) was based on the view of the Minister of Social Work that an effective distribution of living space can be served, if not best served, by the voluntary offering of living space. Therefore the decree provided for compensation from the Exchequer for costs incurred by municipalities in making payments to:

1. Those who make alterations to property with the intention of providing or continuing to provide more families with housing accommodation;
2. Those who, with the intention of making available more living space, free living space being used by them and thus incur costs for removal, refurnishing or storage.

II. International Agreements[1]

1. The Interim Labour Agreement between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grand Duchy of Luxembourg of 20 March 1957 (*Treaty Series* 1957, No. 58) in principle created a free labour market between the contracting parties.

2. The Treaty instituting a European Economic Community, signed at Rome on 25 March 1957 (*Treaty Series* 1957, No. 91), was approved of by the Act of 5 December 1957 (*Statutebook* No. 493).

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[1] See also pp. 305 and 306.

NEW ZEALAND

NOTE[1]

I. LEGISLATION

Hospitals Act

Consolidates and amends the Hospitals Act, 1926, and its amendments which contain the statutory provisions governing the administration of hospitals, public and private, and the organization of hospital boards, their powers, duties and proceedings.

The significant change effected by the Act is to place on the Minister of Health the duty of ensuring the provision and maintenance by hospital boards, to such extent as he considers necessary to meet all reasonable requirements throughout New Zealand, of hospitals, hospital accommodation and medical, obstetrical, nursing and other services at or in connexion with hospitals.

Hospital boards, elected by hospital districts, are retained and they are given the statutory duty of providing and at all times maintaining and managing such institutions, hospital accommodation, services and equipment as the Minister from time to time thinks necessary. All the finance for hospitals is provided by the Government.

The Act also establishes a Hospitals Advisory Council of three departmental officers and three hospital board representatives with wide powers to consider and make recommendations to the Minister on matters relating to the provision, control and management of hospitals.

Judicature Amendment Act

Provides for the setting up, as from 1 January 1958, of a separate and permanent court of appeal with the object of improving the structure and the working of the Appeal Court.

Previously, all the judges of the Supreme Court were also judges of the Court of Appeal, which consisted of two divisions sitting from time to time. The Court of Appeal established by this Act will consist of the Chief Justice (ex officio) and three other Supreme Court judges specially appointed as permanent members, whose work will consist solely in hearing appeal cases.

Justices of the Peace Act

Consolidates with some minor alterations the provisions of division I of the Justices of the Peace Act, 1927, and its amendments relating to the appointment of justices of the peace.

The Act makes provision for (1) the Governor-General from time to time to appoint fit and proper persons to be justices of the peace for New Zealand;

(2) The functions and powers of justices to be the taking of oaths and declarations under the provisions of the Oaths and Declarations Act, 1957, or any other enactment, and the carrying out of such functions and the exercising of such powers as are conferred on Justices by the Summary Proceedings Act, 1957, or by any other enactment;

(3) The removal of justices and the attendance of justices, when required, at a magistrate's court.

Mental Health Amendment Act

Amends the Mental Health Act, 1911, which, with its amendments, contains the statutory provisions relating to mental defectives and their reception and care in institutions.

Its more important sections clarify the provisions relating to the adjournment of an application for a reception order, provide for cognizance to be taken by either a magistrate's court or the Supreme Court of a defendant's mental condition at an earlier stage on conviction or indictment than was formerly possible and by the magistrate's court in all summary cases, and provide an easier procedure for the transfer to a mental hospital of the inmates of penal institutions who are mentally defective.

The Act also contains measures concerning homes for intellectually handicapped persons and permits private organizations to obtain licences on certain conditions for the establishment and maintenance of homes for the care and training of intellectually handicapped persons. Previously the issue of licences for such homes was more restricted.

There are also provisions which will enable the administration of the estates of mentally defective persons to be handled in a manner which will prove more equitable both to the donor and to his beneficiaries and willl overcome some legal and technical difficulties that have arisen in the past.

National Provident Fund Amendment Act

Increases the amounts of weekly pensions, widows' and ordinary pensions, and extends the classes of contributors.

Social Security Amendment Act

Increases the amount of the various benefits payable by way of social security.

[1] Note prepared by the New Zealand Government.

Summary Proceedings Act

Combines the various statutory provisions relating to criminal proceedings in magistrates' courts. The Act consolidates the provisions of divisions II to V of the Justices of the Peace Act, 1927, and its many amendments, incorporates the relevant sections of the Inferior Courts Procedure Act, 1909, and of the Magistrates' Courts Act, 1947, and embodies the Summary Penalties Act, 1939, and the Summary Jurisdiction Act, 1952.

The Act makes certain changes in the existing procedures and contains some minor amendments which experience in the courts has shown are desirable. The following amendments may be mentioned:

1. The jurisdiction of justices of the peace is clarified, and justices will have jurisdiction only where they are expressly given it by the statutes creating the offences.

2. The power of the court to exclude the public is extended. The court already had the power to exclude the public where the court was of the opinion that the interests of public morality justified that action. The new provision allows the court to do this where the reputation of the victim of any alleged sexual offence or offence of extortion or blackmail requires that the public should be excluded from the court.

3. A magistrate who has imposed a sentence without jurisdiction or who has omitted to make any order he is required by law to make, may now correct the sentence at any time unless proceedings in relation to the conviction are pending in the Supreme Court.

4. The procedure for criminal appeals from the magistrate's court to the Supreme Court has been changed to conform with all other appeals. Instead of a complete retrial the appeal is now heard on the notes of evidence made in the lower court, unless the Supreme Court directs otherwise. New rights of appeal, with leave, from the Supreme Court to the Court of Appeal on questions of law or on a case stated are created.

5. No action shall be brought against any magistrate or justice for any act done by him, unless he has exceeded his jurisdiction or has acted without jurisdiction. A magistrate is indemnified if he has acted in good faith, and a judge certifies that he ought fairly and reasonably to be excused.

War Pension Amendment Act

Increases the amounts of war pensions and allowances.

II. Regulations

Drug Traffic and Drug Traffic Amendment No. 1

This drug traffic direction and the amendment are a consolidation of earlier directions and set out the drugs, medicines and materials that may be supplied at the cost of the Social Security Fund by chemists and others who have contracted to supply them under the Social Security (Pharmaceutical Supplies) Regulations, 1941.

Educational Bursaries Regulations

These consolidate and amend the regulations relating to the award of bursaries for general purposes of higher education.

Election Petition Rules

These rules re-enact the existing rules with the amendments required to adapt them to the provisions of the Electoral Act, 1956.

Electoral Regulations

These regulations re-enact the existing regulations with the amendments required to bring them into conformity with the Electoral Act, 1956.

Employer's Liability Insurance Regulations

These regulations replace earlier regulations and in particular incorporate further amendments to the rates of premiums.

Quarantine (Ship) Regulations

These regulations are made for the purposes of part IV of the Health Act, 1956, and relate to the quarantine of ships. They are in conformity with the International Sanitary Regulations of the World Health Organization adopted by the Fourth World Health Assembly on 25 May 1951.

III. International Instruments Containing Provisions on Human Rights

Convention concerning the Reduction of Hours of Work to Forty a Week, adopted by the International Labour Conference at Geneva, on 22 June 1935 (No. 47).

Instrument of ratification deposited on 29 March 1938. In force for New Zealand on 3 June 1957.

Agreement for the Continued Operation of a South Pacific Health Service made between the Government of Fiji, the Western Pacific High Commission, the Government of New Zealand, the Government of Tonga, and the Government of Western Samoa.

Signed on behalf of New Zealand on 20 September 1957. In force on 10 January 1958. Applies to the Cook Islands (including Niue), the Tokelau Islands, and the Trust Terriroty of Western Samoa.

NORWAY

NOTE[1]

I. Constitutional Amendments and Statutes

No constitutional amendments were adopted in Norway during 1957. Of statutes enacted, the following may be mentioned:

1. The Act of 6 July 1957 (No. 1) broadened the scope of the Act of 26 February 1932 concerning temperance boards and the *treatment of alcoholics*, so as to include persons given to the misuse of other intoxicants or narcotics. In addition to its earlier authority to order the removal of a person to a sanatorium for a period not exceeding two years, without his consent, the amending act of 1957 empowered the temperance board to require — when deemed necessary by a physician — that a person be hospitalized for examination, treatment or cure for a period not exceeding 30 days. Upon recommendation of the hospital's responsible physician, the board was authorized further to order an extension of this hospitalization for periods not exceeding thirty days at a time, though these must not exceed a total of ninety days in the course of a year. A board's decision as to hospitalization could be brought before the Ministry for review. The amending Act appears in the *Norwegian Law Gazette* (*Norsk Lovtidend*) for 1957, sect. 2, pp. 547-551.

2. The Provisional Act of 26 April 1957 (No. 5) concerning prohibition of *strikes* on the part of civil servants, laid down that, during the period ending 1 January 1958, civil servants would be barred from resorting to partial or complete work stoppages through joint action or through mutual agreement as a means of altering the wages or working conditions stipulated for the position concerned. Certain wage demands, which were the subject of dispute between the State and the civil servants' organizations concerned (involving the upward adjustment of wages for various positions), could be decided by an independent body at the request of either party (compulsory arbitration). The statute was purely provisional in character, pending wage negotiations between the State and the organizations of civil servants concerned. As most civil servants among the police and the state engineers had given notice of resignation effective 1 January 1958 as a means of enforcing their wage demands, work stoppage by these two groups, as defined in the Act of 26 April 1957, was banned by a provisional decree of 20 December 1957 for a period extending from 1 January to 1 April 1958. With this, both the police and engineers brought suit against the State on the grounds that the provisional decree was unconstitutional, but failed to win support for their claim in the court of first instance. (The judgement has been appealed against.) The Provisional Act of 26 April 1957 appears in the *Norwegian Law Gazette* for 1957, sect. 2, pp. 259-260. The provisional decree of 20 December 1957 appears in the same source, p. 844.

3. The Act of 26 April 1957 (No. 1) amending the Act of 11 February 1938 concerning *normal schools* and the examination of elementary-school teachers, provided that persons who have passed examinations abroad corresponding to the Norwegian artium may be admitted to Norwegian normal schools. The statute appears in the *Norwegian Law Gazette* for 1957, sect. 2, p. 251.

4. The Act of 26 April 1957 (No. 3), concerning *child-maintenance payments*, established a general maintenance payment for children. Prior to this Act, there were a number of special provisions for child maintenance payments. These failed, however, to cover all instances where a need for economic support existed. Under the new Act, every child under the age of eighteen and residing in Norway — with certain exceptions — has the right to a maintenance payment of kr. 600 per year when:

(*a*) The child's father is dead, or

(*b*) The child's mother is dead, and she can be regarded as having been its main source of support, or

(*c*) When the child is born in Norway out of wedlock, and the responsibility for its support has not been legally established under the statute concerning children born out of wedlock.

The maintenance payment programme is financed through a portion of the premium paid by each person insured under the Health Insurance Act of 2 March 1956, and through a portion of that part of the premium paid by employers, the municipality and the State. For those not employed, only the portions of the premium paid by the last two apply. The statute appears in the *Norwegian Law Gazette* for 1957, sect. 2, pp. 252-256.

The Act of 26 April 1957 (No. 4), concerning support payments, provided that support payments, under the Act of 21 December 1956 (No. 9) concern-

[1] Note kindly forwarded by the Permanent Representative of Norway to the United Nations.

ing children born in wedlock,[1] fixed under a binding ruling or court judgement or through the decision of the provincial governor or the Ministry, may, with certain exceptions, be made by the public authorities, when the payment has been applied for through the bailiff concerned and has not been paid by the stipulated date of payment. The same applies in the case of support payments fixed under the Act of 21 December 1956 (No. 10) concerning children born out of wedlock,[1] when paternity or responsibility for support has been established through admission, through failure to bring suit within the stipulated period or through legally binding court judgement. Support payments may be made in an amount of kr. 50 per month. The municipality making such payments may demand reimbursement from the responsible party. The statute appears in the *Norwegian Law Gazette* for 1957, sect. 2, pp. 256-259.

5. The following may be noted with respect to the right to *insurance* and *pensions*:

Under the Act of 28 June 1957 (No. 12), a pension programme was established for *fishermen*. The reason for the Act was the fact that fishermen had been found much in need of an arrangement for financial support prior to their attaining the age of seventy, when they are entitled to old-age pensions. (On similar grounds comparable pension programmes had already been set up for seamen, under the Act of 3 December 1948 (No. 7) and for loggers, under the Act of 3 December 1951 (No. 2)). This programme is guaranteed by the State, and is financed in part through premiums paid by the insured on a weekly basis in amounts fixed by the Crown, and in part through a sales and export levy on fish. Those covered by the statute have the right to pensions after having paid premiums for a minimum of 750 weeks and having attained the age of sixty-five years. Yearly pension payments amount to kr. 1.20 for each premium week up to 1,500 weeks. This payment is increased by 50 per cent in instances where the insured has a spouse of sixty years of age or over. For every child under eighteen who is supported by the insured, a supplement amounting to 30 per cent of the basic payment is granted. The insured is covered under this programme until the age of seventy, but under no condition beyond the calender month in which he can claim old-age pension. The Act also contains provisions for a widow's pension. This statute appears in the *Norwegian Law Gazette* for 1957, sect. 2. pp. 463-470.

The Act of 6 July 1957 (No. 16) concerning *old-age pensions*, which enters into force on 1 January 1959, replaces the Old-age Pensions Act of 16 July 1936 (No. 10). Whereas the pension arrangement under the Act of 1936 provided for a reduction or an eventual discontinuance of pension payments when the insured's income, apart from his pension, exceeded a certain amount, the new act establishes basic payments which shall be made regardless of the insured's other income or property. It also provides for supplementary municipal pension payments and the municipal council concerned may decide whether — and to what extent — the insured's other income shall have a bearing upon supplementary pension payments from the municipality. As stipulated under the statute, the basic yearly pension is currently kr. 2,208 per year for single persons and kr. 3,312 for man and wife, but it is expected to be increased (even before the new law goes into force) in the light of the higher cost of living. Recipients of pensions responsible for the support of children under eighteen receive an additional kr. 600 per year for each dependent child. The age of eligibility for old-age pensions is maintained at seventy years. Under the act of 1936, the old-age pension plan is financed through a levy set at a fixed percentage of the tax payer's estimated income — at present 2.1 per cent. The new Act institutes a system involving premiums, plus premium subsidy payments from the employer, the municipality and the State, comparable to that instituted under the Health Insurance Act of 2 March 1956 (No. 2).[2] Calculations indicate that basic pensions plus administration costs will amount to 590 million kroner for 1959. This statute appears in the *Norwegian Law Gazette* for 1957, sect. 2, pp. 628-636.

As the social insurance programme has expanded, and an increasing number of population groups have fallen under arrangements based upon length and place of employment, it has gradually become necessary to effect a co-ordination in instances where one person can claim benefits from more than one pension or insurance arrangement. In the case of employee pensions based on years of employment, it has also been found necessary to open the way for a merging or combining of the employee's years of service under the various pension arrangements of which he might be a member, such that he may receive a pension even though not having worked the minimum number of years entitling him to such under any single one of them. Earlier co-ordination measures included in the various pension and insurance acts have proven insufficient. The Act of 6 July 1957 (No. 26) concerning the *co-ordination of* the various *pension and insurance schemes* now in force covers the following pension and insurance arrangements:

(*a*) Employee pension plans established under statute or decision of the Storting or municipalities covering municipal civil servants and employees. The term "employee pensions" includes old-age, invalidity, widow's and child-maintenance pension benefits to which entitlements have accumulated during service in a given position or job;

[1] See *Yearbook on Human Rights for 1956*, pp. 171-2.

[2] See *Yearbook on Human Rights for 1956*, p. 172.

(*b*) Personal injury insurance fixed under statute;

(*c*) Old-age pensions;

(*d*) Maintenance payments for children.

The Crown is authorized to decide whether the law shall apply in whole or in part in the case of pension arrangements for civil servants or workers in independent state or municipal undertakings, as well as in other institutions of a public character. The Act also covers the adjustment of yield from such private employee-pension plans as are recognized as company pensions under the tax statutes, as long as reduction or increase of benefit is confined solely to such pension or insurance arrangement as are mentioned above. The Crown is empowered to determine whether benefits from a person's private pension arrangements, approved under the tax statutes, shall be placed in whole or in part on an equal footing with company pensions. This statute, which enters into force on 1 January 1959, appears in the *Norwegian Legal Gazette* for 1957, sect. 2, pp. 645-651.

The right to insurance and pensions has been further extended through a number of subsidiary amending and supplementary statutes of only secondary interest in terms of the legal principles involved.

II. Judicial Decision

Supreme Court Judgement of 12 March 1957

The operetta "Flaggermusen" had its premiere in 1874. Its libretto, which was written by two Austrian authors, the one dying in 1876 and the other in 1895, was based on a comedy written by two French authors, one of whom died in 1897 and the other in 1908. The musical score was composed by Johann Strauss, who died in 1899. The Centralteatre in Oslo performed the operetta in 1953, and was obliged to pay royalties to the legal descendants of the French author most recently deceased. Even though both libretto and music are now public domain, the comedy was considered protected until 1958 — in other words, until 50 years after the death of the author most recently deceased. (See Intellectual Creations Act of 6 June 1930, Article 17.) The libretto was regarded merely as an adaption of the comedy and not as an independent intellectual creation. (See article 1, clauses 2 and 3, of the Act.) The court denied that these rights had been relinquished through inaction.

This Supreme Court's judgement appears in *Norwegian Supreme Court Decisions (Norsk Rets Tidende)* for 1957, pp. 275-282.

PAKISTAN

NOTE[1]

I. Legislation

It is laid down in article 4 of the Constitution of Pakistan[2] that laws which are inconsistent with or in derogation of the fundamental rights contained in part II thereof shall be void. In view of this provision, certain amendments were made in 1957 to the Security of Pakistan Act, 1952 (Act No. XXXV of 1952),[3] as given below.

An amendment to sub-section 7 of section 3 of the Act has imposed the restriction that a detention order against an individual cannot be issued for an indefinite period. This amendment has made it obligatory on the part of the Government to issue detention orders for a specific period.

A new section 3A has been added to the Act, which provides for the temporary release of detenus after their entering into a bond with or without sureties.

Section 6 of the Act has been substituted by a fresh section, which provides for the communication of the grounds of the order where an order has been made under sub-section 1 of section 3, or section 10, 11 or 12 of the Act. Previously, the grounds of orders were communicated only where an order was issued under clause (*b*) of sub-section 1 of section 3. Moreover, in the previous section 6, no time-limit was fixed for the communication of the grounds of an order, but under the new section 6, grounds for orders in the case of persons detained are required to be communicated within fifteen days of the issue of orders.

An amendment to section 8 of the Act has empowered the advisory board to hear in person the person affected by an order under the Act, if it thinks fit or if the person concerned so desires. Other amendments in this section provide for a six-monthly review, and the detenu is required to be informed of the result of this review.

Previously, the communication of the grounds of orders was not required where an order was issued under clauses (*c*), (*d*), (*e*), (*f*) and (*h*) of sub-section 1 of section 3 of the Act, but as a result of a judgement announced by the High Court of West Pakistan, it is now necessary to communicate the grounds of orders under the abovementioned clauses.

Previously, it was also not necessary to review the cases of all persons detained under clause (*b*) of sub-section 1 of section 3 of the Act, but as a result of a judgement announced by the High Court of West Pakistan, it is now a statutory responsibility to review the cases every six months, and inform the detenu of the result of this review.

The text of the Security of Pakistan Act, 1952, as amended, appears below.

II. Judicial Decisions

There have been during 1957 a number of judicial decisions by the high courts and Supreme Court of Pakistan upholding personal liberty, freedom to profess religion and freedom of expression as guaranteed by the Constitution of Pakistan. The relevant texts of the judgements holding these freedoms are given below.

A. *Right to Freedom of Expression*

Begum Zeb-Un-Nissa Hamidullah, editor and publisher of *The Mirror*, Karachi — Petitioner *v.* Pakistan through the Secretary, Ministry of Interior, Government of Pakistan, Respondent

Supreme Court of Pakistan

Judgement: Muhammad Munir, C. J. — This petition by Begum Zeb-Un-Nissa Hamidullah for an appropriate order under article 22 of the Constitution[4] challenges the validity of an order of the central Government, made under paragraph (*c*) of clause (i) of sub-section 1 of section 12 of the Security of Pakistan Act (XXXV of 1952),[5] prohibiting for a period of six months the publication of *The Mirror*, an illustrated English monthly, of which the petitioner is the editor and publisher. The order, which was served on the petitioner on 9 November 1957, was in the following terms:

"Whereas the central Government considers it expedient to prohibit for a period of six months the publication of the monthly periodical, *The Mirror*, of Karachi,

"Now, therefore, in exercise of the powers conferred by paragraph (*c*) of clause (i) of sub-section 1 of section 12 of the Security of Pakistan Act, 1952

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[1] Information kindly furnished by the Permanent Representative of Pakistan to the United Nations. See also p. 305.

[2] See *Yearbook on Human Rights for 1956*, p. 177.

[3] See *Yearbook on Human Rights for 1952*, pp. 212-6.

[4] See *Yearbook on Human Rights for 1956*, p. 179.

[5] See *Yearbook on Human Rights for 1952*, p. 215.

(XXXV of 1952), the central Government is pleased to prohibit for a period of six months from the date of this order the publication of the said periodical *The Mirror*, of Karachi."

The order was accompanied by an annexure in which the ground for the action taken was stated to be that the magazine, in its issue of November 1957, had printed under the caption "Matters of moment" an article which "is defamatory in the first place, and in the second trespasses beyond the limits of legitimate comments and is of a nature which tends to bring or attempts to bring the Government into hatred and contempt."

Article 8 of the Constitution declares:

"Every citizen shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

The Security of Pakistan Act, as stated in the preamble, was intended to provide for special measures to deal with persons acting in a manner prejudicial to the defence, external affairs and security of Pakistan, or the maintenance of supplies and services essential for the community, or the maintenance of public order in the federal capital. These measures are stated in different sections of the Act, including section 12. Under section 3, a person may be detained or restrictions on his movement imposed by the central Government "with a view to preventing him from acting in any manner prejudicial to the defence or the external affairs or the security of Pakistan, or any part thereof, or for the maintenance of public order." Under section 10(1), "if the central Government is satisfied with respect to any association that there is danger that the association may act in a manner or be used for purposes prejudicial to the defence or external affairs or the security of Pakistan or any part thereof or to the maintenance of public order in the federal capital it may, by written or notified order, direct the winding up of the association. . . ." And under section 11 where, in the opinion of the central Government, any document made, printed or published contains any news report or information likely to endanger the defence or external affairs or security of Pakistan or any part thereof or the maintenance of public order in the federal capital, it may take certain action against the editor, printer or publisher or person in possession of such document. It will be noticed that the condition precedent for the taking of action against a person under these sections is that he should be likely to endanger the defence, or external affairs, or security of Pakistan or any part thereof, or the maintenance of public order in the federal capital. But when we come to section 12, we find it laying down:

"The central Government or any authority empowered by it in this behalf may, if it considers necessary or expedient:

"By order addressed to a printer, publisher or editor or printers, publishers and editors generally

"(*c*) Prohibit for a specified period the publication of any newspaper, periodical, leaflet or other publication."

Unlike the other provisions of the Act to which we have referred, section 12 does not require, to the making of any order under this section, the condition precedent that the person against whom action is to be taken should be likely to endanger the defence, or external affairs, or security of Pakistan or any part thereof, or the maintenance of public order in the federal capital. The powers of the central Government, when it acts under section 12, are circumscribed by no qualifications, limitations or conditions, except that it should "consider it necessary or expedient to make the order". On this construction, the section clearly comes in conflict with article 8 of the Constitution, which guarantees to every citizen the freedom of speech and expression "subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence". It is obvious that if the restriction imposed by law be that a person is not to use words or any other form of expression which may be prejudicial to the defence, external affairs and security of Pakistan, the restriction imposed on the freedom of speech and expression will be a reasonable restriction falling within the meaning and terms of article 8 of the Constitution, because a person who prejudices the defence, external affairs or security of Pakistan must be held to have acted against "the interest of the security of Pakistan". But section 12 of the Act, on its plain terms, permits the central Government or any authority empowered by it to act under that section merely if it considers it necessary or expedient so to act, irrespective of any specific consideration. From a perusal of the order challenged in this case, it seems to be perfectly clear that the authority or officer who made that order had not the faintest idea of article 8 of the Constitution or of the objects stated in the preamble of the Act. The order makes no reference to the defence, or external affairs, or security of Pakistan, or the maintenance of public order in the federal capital, and not the remotest allusion to any of the objects mentioned in the preamble of the Act is to be found in the annexure in which the grounds for the action taken are recited. The reasons given in that annexure are defamation, trespassing beyond the limits of legitimate comments, and bringing or attempting to bring the Government into hatred and contempt. None of these grounds, however, is to be found in the preamble of the Act, and it seems to be perfectly clear to us that the authority taking the impugned action never thought that its powers were limited

by the objects which are mentioned in the preamble. He seems to have construed section 12 as giving an unqualified power to the Government to prohibit a publication if the Government or the authority empowered by it just considers it to be expedient or necessary to stop the publication. The Security of Pakistan Act is a pre-constitution Act, having been passed in May 1952 when no basic rights had been guaranteed by the Constitution, and the Government had absolute authority to restrict the freedom of speech and expression by securing legislation to enable it to act in the manner it considered expedient. After the Constitution, however, these powers no longer exist, and neither the legislature nor the Government can impose any restriction on freedom of speech and expression except for the purposes mentioned in article 8. In the present case, defamatory character of the publication is alleged, but neither that ground nor the ground "exceeding the limits of legitimate comment", nor the ground "bringing or attempting to bring the Government into hatred or contempt" is to be found in the Act under which action was taken. It is, therefore, obvious that this action was taken by the Government in complete ignorance of the constitutional right to freedom of speech and expression and was therefore in excess of the authority possessed by the Government. By so holding we should not be taken to mean as laying down that the freedom of speech and expression guaranteed by the Constitution of Pakistan implies a freedom for her citizens to publish such attacks on the head of the State, and that if he be so vilified the only course open to him to vindicate himself is to appear as an ordinary plaintiff or a prosecutor in a court of law. The Constitution expressly provides that the freedom of speech and expression is subject to reasonable restrictions to be imposed by law and it can never be contended that the right to free speech includes the right to defame or the right of the press to undermine the security of the State. All that we say in this case is that section 12 of the Security of Pakistan Act, in so far as it permits the Government to prohibit the publication of a newspaper for any reason whatsoever, has, after the Constitution, become unenforceable, and that accordingly action under that section could not be taken in the present case. There may perhaps be some other law under which action might have been possible in respect of the publication in question, and the legislature can certainly make a law imposing restrictions against publications of this nature.

We accept this petition, and set aside the order of the Government as being illegal and unconstitutional. The petitioner will have her costs of the petition. Petition accepted.

B. *Observations of the judges of various courts of Pakistan*, which have significance with regard to human rights, are reproduced below:

1. Amin Ahmad, J., in *Jibendra Kishore* v. *Province of East Pakistan*:

"This much is clear, that the Constitution has no retrospective effect and even if the provisions of certain laws be discriminatory in view of article 5 or any other article, they must be held to be valid for all past transactions and for the enforcement of rights and liabilities accrued before the coming into force of the Constitution. Indeed in so far as the fundamental rights are concerned they were created and not merely recognized by the Constitution; consequently, a citizen had no fundamental rights in the sense in which they are now understood. If these fundamental rights came into existence as such on the coming into force of the Constitution, nothing done before the 23rd of March 1956 can be said to have infringed any fundamental right." (PLD January, 1957, Dacca 16)

2. Rahman, C. J., in *Bayal Ahmed Ayyubi* v. *West Pakistan Province*:

"It is clear that the provisions of the Criminal Procedure Code are subject to legislative amendment, but fundamental rights guaranteed by the Constitution cannot be taken away by any enactment of the legislature. The scope of the fundamental rights guaranteed by the Constitution should not, therefore, be cut down by the consideration that similar rights are conferred by the ordinary law." (PLD May, 1957, Lahore 396)

3. Rahman, C. J., in *Rao Mahroz Akhtar* v. *District Magistrate Dera Ghazi Khan, etc.*:

"Notice was issued in this case to the respondents only in respect of the prayer that the persons named be released from illegal custody. A *habeas corpus* petition, it is well settled, can be moved even by a friend of the person detained illegally and, therefore, the objection with regard to the *locus standi* of the petitioner cannot be regarded as well-founded." (PLD August, 1957, Lahore 679)

4. Mohammad Munir, C. J., in *Jibendra Kishore, etc.* v. *Province of East Pakistan*:

"The very conception of a fundamental right is that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is not only technically inartistic but a fraud on the citizens for the makers of a constitution to say that a right is fundamental but that it may be taken away by the law." (PLD 1957 S. Court Pak. 41)

5. Mohammad Munir, C. J., in *Jibendra Kishore etc.* v. *Province of East Pakistan*:

"In the light of these rules of construction of constitutional instruments it seems to me that what article 18[1] means is that every citizen has the right to profess, practise and propagate his religion and every sect of a religious denomination has the right to establish, maintain and manage its religious institutions, though the law may regulate the manner in

[1] Article 18 of the Constitution of Pakistan is quoted in *Yearbook on Human Rights for 1956*, p. 179.

which religion is to be professed, practised and propagated and religious institutions are to be established, maintained and managed. The words 'The right to establish, subject to law, religious institutions' cannot and do not mean that such institutions may be abolished altogether by the law." (PLD 1957 S. Court Pak. 42)

6. Mohammad Munir, C. J., in *Remington Rand of Pakistan* v. *Islamic Republic of Pakistan*:

"With regard to the first point, we are unable to share the tribunal's views that in all cases where the strike is legal the employer's right to dismiss a striking employee is taken away even though the strike be unjustified. In the present case the tribunal itself has found that the strike resorted to by the workmen was not justified. In view of that finding the employer had under the general law the right to dismiss the striking employees and such dismissal, in the absence of any provision in the Act to the contrary, could not be held to be wrongful." (PLD 1957 S. Court Pak. 180)

7. Amin Ahmad, C. J., in *Jibendre Kishore* v. *Province of East Pakistan*:

"We cannot accept the view that 'equality before law and equal protection of law' have no application so far as the law relating to property is concerned as it has been expressly provided for in article 15 [of the Constitution].[1] Although sub-articles 1 and 2 of article 5 [of the Constitution][2] do not mention a word about property, in our opinion, sub-article 1 of article 5 is wide enough to protect all persons in respect of all laws whether they relate to life, liberty or property or anything else. It will be giving too narrow an interpretation to article 5 to say that sub-article 2 qualifies sub-article 1, and therefore article 5 has application only in a case where a person is deprived of his life or liberty. Whether we call it 'equality before law' or 'rule of law', as Dicey describes it, there cannot be any doubt that the underlying principle of sub-article 1 of article 5 is to protect all citizens, and that all citizens equally circumstanced or equally situated shall be treated as equals in the eye of law and as such they shall enjoy equal protection of the laws of the land." (PLD 1957 Dacca 51)

8. Amin Ahmad, C. J., in *Jubendra Kishore* v. *Province of East Pakistan*:

"So, on reading the Constitution as a whole, particularly the articles of part II, in our opinion it is inconceivable that the framers of the Constitution intended to enjoin protection of law or equality before law only in respect of life and liberty of citizens and not in respect of their property." (PLD 1957 Dacca 55)

9. Rahman, J., in *Nur-ud-din Ahmad* v. *Masuda Khanum*:

"We are unable to agree with the contention of the learned advocate, for he overlooks the fact that the right to prompt dowry given to a wife is a right which cannot be defeated by the husband even on the ground of his being denied the society of his wife. The wife is, under the Mohammedan law, entitled to refuse herself to her husband until and unless the prompt dowry is paid to her. This right she can exercise even when residing in the house of her husband. Indeed, all authorities on Mohammedan law are unanimous on the point that the right to maintenance cannot be defeated if the wife has demanded her prompt dowry and the husband has not paid it to her." (PLD 1957 Dacca 248)

10. Kaikaus, J., in *Fazal Hussain* v. *Noor Khan*:

"A co-sharer has a right to possession of every inch of the land as against the rest of the world and when he sues for possession against a trespasser, the trespasser has to be ejected." (PLD 1957 Lahore 44)

11. Kaikaus, J., in *Mushaf Hussain Shah* v. *Hamida Begum*:

"It may be mentioned here that the parties are Shias, and that under the Shia law the father is entitled to the custody of a male child when it attains the age of two years." (PLD 1957 Lahore 222)

12. Rahman, C. J., in *Bazal Ahmad Ayyubi* v. *West Pakistan Province*:

"*Prima facie* section 6(1)(*c*) of the Act appears to be in direct conflict with article 7 of our Constitution.[3] That enables the district tribunal, for reasons to be stated in the order, to exclude the person complained of and his counsel, while recording evidence of any witness. It will be noticed that the fundamental right guaranteed by article 7 extends not merely to defence by a legal practitioner of one's choice but also to the right to consult him at the proper stage. How such a right can be exercised when the person concerned is kept in the dark about the evidence against him and the character, antecedents and demeanour of a witness, is difficult to understand." (PLD 1957 Lahore 395)

13. Kayani J. in *Ghulam Muhammad Khan Loondhawar* v. *The State*:

"The district magistrate did not communicate to the detenus the grounds on which the order of detention was based. The constitutional guarantee contained in clause 5 of article 7 was thus violated.[4] Thus detention between the 23rd December 1956 and the 4th January 1957, when the order of the Goverment was served, was illegal, and if the second order had been a continuation of the first that also would have become illegal." (PLD 1957 Lahore 501)

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[1] See *Yearbook on Human Rights for 1956*, p. 178.

[2] Ibid., p. 177.

[3] Ibid., p. 177.

[4] Ibid., p. 177.

THE SECURITY OF PAKISTAN ACT, 1952

(Act No. XXXV of 1952)

As amended up to 8 January 1958[1]

An Act to provide for special measures to deal with persons acting in a manner prejudicial to the defence, external affairs and the security of Pakistan or for the maintenance of public order in the federal capital.

Whereas it is expedient to provide for special measures to deal with persons acting in a manner prejudicial to the defence, external affairs and security of Pakistan or for the maintenance of public order in the federal capital,

It is hereby enacted as follows:

1. (1) This Act may be called the Security of Pakistan Act, 1952.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once, and shall remain in force until the thirtieth day of June 1959.

2. (1) In this Act, unless there is anything repugnant in the subject or context,

(i) "The Code" means the Code of Criminal Procedure, 1898;

(ii) "Document" includes gramophone records, sound tracks and any other articles on which sounds have been recorded with a view to their subsequent reproduction.

(2) Reference in this Act to essential supplies or services shall be construed as reference to essential commodities within the meaning of the Essential Supplies Act, 1957, or, as the case may be, to essential services to which the Pakistan Essential Services (Maintenance) Act, 1952, applies.

3. (1) The central Government, if satisfied with respect to any particular person that, with a view to preventing him from acting in any manner prejudicial to the defence or the external affairs or the security of Pakistan, or any part thereof, or for the maintenance of public order in the federal capital or of the maintenance therein of essential supplies or services, it is necessary so to do, may make an order:

(*a*) Directing such person to remove himself from Pakistan in such manner, before such time, and by such route, as may be specified in the order;

(*b*) Directing that he be detained;

(*c*) Directing that, except in so far as may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place as may be specified in the order;

(*d*) Requiring him to reside and remain in such place or within such area in Pakistan as may be specified in the order, and if he is not already there, to proceed to that place or area within such time as may be specified in the order;

(*e*) Requiring him to notify his movements or to report himself or both to notify his movements and report himself in such manner, at such times, and to such authority or person, as may be specified in the order;

(*f*) Requiring him to conduct himself in such manner, abstain from such acts, or take such order with any property in his possession or under his control, as may be specified in the order;

(*g*) [Omitted, by Act XIII of 1958];

(*h*) Prohibiting or restricting the use by him of any such article or articles as may be specified in the order:

Provided that no order shall be made under clause (*a*) of this sub-section in respect of any person who is or is deemed to be a citizen of Pakistan under the law for the time being in force.

(2) An order made under sub-section 1 may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due performance of, or as an alternative to the enforcement of, such restrictions or conditions made in the order as may be specified in the order.

(3) If any person is in any area or place in contravention of an order made under sub-section 1, or fails to leave any area or place in accordance with the requirements of such an order, then, without prejudice to the provisions of sub-section 5 of this section, he may be removed from such area or place by any police officer or by any person authorized by the central Government in this behalf.

(4) So long as there is in force in respect of any person an order under clause (*b*) of sub-section 1 directing that he be detained, he shall be liable to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment of offences and breaches of discipline, as the central Government may from time to time specify.

(5) If the central or provincial government has reason to believe that a person in respect of whom an order as aforesaid has been made directing that he be detained, has absconded or is concealing himself so that such order cannot be executed, that government may:

(*a*) Make a report in writing to a magistrate of the first class having jusrisdiction in the place where

[1] Text kindly furnished by the Permanent Representative of Pakistan to the United Nations.

the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the magistrate;

(*b*) By order notified in the *Official Gazette* direct the said person to appear before such officer, at such place, and within such period, as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(6) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if such person has entered into a bond in pursuance of the provisions of sub-section 2, his bond shall be forfeited.

(7) An order made under this section subject to the provisions of sub-section 8 shall remain in force for such period as may be specified in the order.

(8) No order of detention made under clause (*b*) of sub-section 1 shall remain in force for more than three months from the date on which it was made unless, before the expiration of that period, an advisory board set up in pursuance of clause 4 of article 7 of the Constitution has reported that there is, in its opinion, sufficient cause for such detention.

(9) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under clause (*b*) of sub-section 1 against the same person in any case where fresh grounds have arisen after the date of revocation or expiry, on which the central Government is satisfied that such an order shall be made.

3 A. (1) The central Government may at any time direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may at any time cancel his release.

(2) In directing the release of any person under sub-section 1, the central Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section 1 shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section 3, he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

(5) If any person released under sub-section 1 fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

3B. A detention order may be executed at any place in Pakistan in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1898.

3C. No detention order shall be invalid or inoperative merely by reason:

(*a*) That the person to be detained thereunder is outside the limits of the territorial jusrisdiction of the government or officer making the order, or

(*b*) That the place of detention of such person is outside the said limits.

4. (1) The central Government or the provincial government may, by order, direct that any person, in respect of whom an order has been made under sub-section 1 of section 3, shall:

(*a*) Allow himself to be photographed and allow his finger and thumb impression to be taken by an officer specified in the order;

(*b*) Furnish specimens of his handwriting and signature; and

(*c*) Attend at such time and place before such authority or person as may be specified in the order for all or any of the purposes mentioned in this sub-section.

(2) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

5. (1) The central Government shall, whenever necessary, constitute one or more advisory boards, for the purposes of this Act other than the purposes of clause (*b*) of sub-section 1 of section 3.

(2) Every such board shall consist of two persons, who are or have been qualified to be judges of a high court, and such persons shall be appointed by the central Government.

6. Communication of grounds of order: In every case where an order has been made under sub-section 1 of section 3 or under section 10, section 11 or section 12, the authority making the order shall, as soon as may be, but not later than fifteen days from the date of detention, communicate to the person or association affected thereby the grounds on which the order has been made to enable him or it to make representation in writing against the order, and it shall be the duty of such authority to inform such person or association of his or its right to making such representation and to afford him or it the earliest opportunity of doing so:

Provided that nothing in this section shall require the authority to disclose the facts which it considers to be against the public interest to disclose.

7. In every case where an order has been passed under section 10, 11 or 12, the authority making the order shall, within three months of the issue of the order, place before the advisory board constituted by the central Government under section 5 the grounds on which the order has been made and the representation, if any, made by the person or persons affected by the order.

8. (1) The advisory board shall, after considering the materials placed before it and calling for such further information as it may require from the central Government or the person concerned and, if it thinks fit or if the person concerned so requests, after hearing him in person, submit its report to the central Government.

(2) The report of the advisory board shall specify in a separate part thereof the opinion of the advisory board as to whether or not there is sufficient cause for the passing of the order, and except for that part of the report in which such opinion of the advisory board is specified the report shall be confidential.

(3) Nothing in this section shall entitle any person against whom an order under clause (*b*) of sub-section 1 of section 3 or under section 10, 11 or 12 has been made or who is affected by such an order to appear by any legal practitioner in any matter connected with the reference to the advisory board and the proceedings of the advisory board shall be confidential.

(4) On receipt of the report of the advisory board, the central Government shall consider the same and shall pass such order thereon as appears to the central Government just and proper:

Provided that the central Government shall review all such orders every six months from the date of the order, unless revoked earlier and shall, in the case of an order under clause (*b*) of sub-section 1 of section 3, inform any person affected by the order of the result of the review.

Explanation: In this section, "advisory board" means, so far as affects cases in which an order under clause (*b*) of sub-section 1 of section 3 has been made, the advisory board set up in pursuance of clause 4 of article 7 of the Constitution, and in all other cases, the advisory board constituted under section 5.

9. [Omitted by President's Order No. 8 of 1956.]

10. (1) If the central Government is satisfied with respect to any association that there is danger that the association may act in a manner or be used for purposes prejudicial to the defence or external affairs or the security of Pakistan or any part thereof or to the maintenance of public order in the federal capital, or of the maintenance therein of essential supplies or services, it may, by written or notified order, direct the winding up of the association and thereupon the association shall be disbanded and wound up.

(2) Where in pursuance of sub-section 1 an association has been directed to be wound up, the central or provincial government may, by written order, authorize any officer to take possession of any land or building or any other property or documents belonging to or in the custody of the association, for such period as may be specified in the order.

(3) If the central Government is satisfied that any association is engaged, in succession to a former association disbanded and wound up under sub-section 1, in activities substantially similar to those carried on by that former association, it may, by written or notified order, direct that this section shall apply to the association so engaged.

(4) No person shall:

(*a*) Manage or assist in managing any association to which this section applies;

(*b*) Promote or assist in promoting a meeting of any members of such an association, or attend any such meeting in any capacity;

(*c*) Publish any notice or advertisement relating to any such meeting;

(*d*) Invite persons to support such an association; or

(*e*) Otherwise in any way assist the operations of such an association.

(5) The provisions of sections 17A to 17E of the Criminal Law Amendment Act, 1908, shall apply in relation to an association to which this section applies, as they apply in relation to an unlawful association:

Provided that all powers and functions exercisable by the provincial government under the said sections as so applied shall be deemed to be exercisable by the central Government.

(6) If any person contravenes any of the provisions of this section, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

11. (1) Where, in the opinion of the central Government, any document made, printed or published contains any news, report or information likely to endanger the defence or external affairs or security of Pakistan or any part thereof or the maintenance of public order in the federal capital or of the maintenance therein of essential supplies or services, it may, by written order:

(*a*) Require the editor, printer, publisher or person in possession of such document to inform the authority specified in the order of the name and address of any person concerned in the supply and communication of such news, report or information, as the case may be;

(*b*) Require the delivery to an authority specified in the order of any document connected with the news, report or information referred to in clause (*a*);

(*c*) Prohibit the further publication of such news, report or information, and the sale and distribution of such document;

(*d*) Declare such document and every copy or translation thereof or extract therefrom to be forfeited to the Government.

(2) Where, in pursuance of clause (*b*) of sub-section 1, any document is required to be delivered to a specified authority, that authority or any police officer may enter upon and search any premises whereon or wherein such document or any copy thereof is or is believed to be.

(3) Where, in pursuance of clause (*d*) of sub-section 1, any document has been declared to be forfeited to the Government, any police officer may seize any copy thereof wherever found in Paskistan, and any magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search any premises whereon or wherein such document, or any copy thereof is or is believed to be.

12. (1) Where the central Government is satisfied that in the interest of the defence, the external affairs or the security of Pakistan, or the maintenance of public order within the federal capital or of the maintenance therein of essential supplies or services, it is necessary so to do, the central Government or any authority empowered by it in this behalf may:

(i) By order addressed to a printer, publisher or editor, or printers, publishers and editors generally:

(*a*) Require that all matter relating to a particular subject or class of subjects affecting the defence, the external affairs or the security of Pakistan or the maintenance of the public order within the federal capital or of the maintenance therein of essential supplies or services shall before being published in any document or class of documents, be submitted for scrunity to any authority specified in the order;

(*b*) Impose reasonable restrictions on the making or publishing of any document or class of documents or any matter relating to a particular subject or class of subjects affecting the defence, the external affairs, or the security of Pakistan, or the maintenance of public order within the Federal Capital or of the maintenance therein of essential supplies or services; or

(ii) Refuse to permit on reasonable grounds any person to make a declaration under sub-section 2 of section 5 of the Press and Registration of Books Act, 1867.

(2) If any person contravenes any order made under sub-section 1, then, without prejudice to any other proceedings which may be taken against such person, the central Government may declare to be forfeited to the Government every copy of any document published or made in contravention of such order and any press as defined in the Press (Emergency) Powers Act, 1931, used in the making of such document.

13. If anyone contravenes any of the provisions of section 11 or 12, he shall be punishable with im prisonment for a term which may extend to three years, or with fine, or with both.

14. (1) No court shall take cognizance of any offence under this Act, except on a report in writing by a public servant as defined in section 21 of the Pakistan Penal Code.

(2) Proceedings in respect of an offence under this Act alleged to have been committed by any person may be taken before the appropriate court having jurisdiction in the place where that person is for the time being or where the offence or any part thereof was committed.

(3) Notwithstanding anything contained in the Code, an offence under this Act shall be triable by a magistrate of the first class.

15. Subject to the provisions of the next succeeding section, all offences punishable under this Act shall be tried in accordance with the procedure prescribed for the trial of summons cases by chapter XX of the Code.

16. Notwithstanding anything contained in the Code, all offences punishable under this Act shall be cognizable and non-bailable; and no person accused or convicted of any offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless:

(1) The prosecution has had an opportunity of being heard in respect of the application for such release; and

(2) Where the prosecution opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence.

17. Except as provided in this Act, no order made, direction issued, or proceeding taken under this Act, shall be called in question in any court, and no suit, prosecution, or other legal proceedings shall lie against any person for anything done or in good faith intended to be done under this Act, or for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act: Provided that an appeal shall lie against every conviction and sentence passed under sections 3(5)(*b*), 3(6), 4(2) and 13 of this Act, in the same manner and subject to the same limitations as against a conviction and sentence passed by a first class magistrate, under the Code.

18. The central Government may, by order, direct that any power which by or under any of the provisions of this Act is conferred on the central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised in respect of the federal capital by the Chief Commissioner of Karachi or by such other officer subordinate to him and not below the rank of district magistrate as he may, by order, direct.

19. (1) The central Government may make rules, not inconsistent with the provisions of this Act, to carry into effect the purposes thereof.

(2) All rules made under this section shall be laid before the National Assembly as soon as may be after they are made.

20. (1) The Pakistan Public Safety Ordinance, 1952, is hereby repealed.

(2) Any order or rule made or deemed to have been made under the Pakistan Public Safety Ordinance, 1952, and in force or having effect accordingly immediately before the commencement of this Act shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been made under the provisions of this Act, and shall have effect accordingly subject to the provisions of this Act.

(3) No suit, prosecution or other legal proceeding whether by way of petition or otherwise shall lie against or to Pakistan or any person or authority for anything which has been in good faith done or intended to be done in pursuance of or in exercise of the powers conferred or in good faith believed to have been conferred by or under the Pakistan Public Safety Ordinance, 1949, or the Pakistan Public Safety Ordinance, 1952.

PHILIPPINES

NOTE[1]

I. LEGISLATION

1. *Right to Security in the Event of Unemployment, Sickness, Disability and Old Age*

(*a*) *Republic Act No. 1792*, approved on 21 June 1957, amends certain provisions of Republic Act No. 1161 which created "a social security system providing sickness, unemployment, retirement, disability and death benefits for employees".[2] The benefits provided may be briefly described as follows:

(1) *Retirement benefit.* Upon retirement, an employee is entitled to a pension credit for each year of membership between the date of coverage and the retirement age equivalent to one-half of one per cent of his average monthly compensation during such year of membership, which pension shall be paid to him as long as he lives. The monthly pension at retirement age is the sum of such yearly credits, with a minimum of twenty-five pesos, provided he has been a member of the system for at least two years. (Sec. 12 (*a*))

Upon reaching the age of sixty years and after having rendered at least two years of service in an employment, a covered employee has the option to retire. (Sec. 12 (*c*))

(2) *Death and disability benefits.* Upon the covered employee's death, or total and permanent disability before becoming eligible for retirement, he or, in case of his death, his beneficiaries as recorded by his employer, is entitled to a benefit equivalent to 100 per cent of the average monthly compensation he has received during the year multiplied by twelve if he has been a member of the system for at least one year, or multiplied by six if he has been a member of the system for less than one year. (Sec. 13 (*a*))

If the disability is partial but permanent, the amount of benefit is such percentage of the benefit above-described as may be determined, with due regard to the degree of disability. (Sec. 13 (*b*))

(3) *Sickness benefit.* Any covered employee who, after one year at least from the date of his coverage, and on account of sickness or bodily injury, is confined in a hospital or elsewhere is, for each day of such confinement, paid by his employer or by the system an allowance equivalent to 20 per cent of his daily rate of compensation, plus 5 per cent thereof for every dependant if he has any. (Sec. 14 (*a*))

(4) *Unemployment benefit.* Any covered employee who after one year at least from the date of his coverage becomes unemployed for any reason other than his misconduct, voluntary resignation without sufficient cause attributable to his employer, or an act of God, is entitled, for each day except holidays, to an allowance equivalent to 20 per cent of his daily rate of compensation plus five per cent thereof for every dependant if he has any. (Sec. 15 (*a*))

(*b*) *Republic Act No. 1616*, approved on 31 May 1957, amends section 12 of Commonwealth Act No. 186, as amended, which established a Government Service Insurance System, by prescribing two other modes of retirement of an employee who is a member thereof. The modes of retirement under the law as amended are as follows:

(1) Upon completion of thirty years of total service and attainment of the age of fifty-seven years, a member has the option to retire. (Sec. 12 (*a*))

(2) A member is allowed to retire after rendering a total service of thirty years, regardless of age, the retiring employee to receive a monthly annuity for life. (Sec. 12 (*b*))

(3) Retirement is also allowed to a member, regardless of age, who has rendered at least twenty years of service. The benefit is, in addition to the return of his personal contributions plus interest, only a gratuity equivalent to one month's salary for every year of service, based on the highest rate received, but not to exceed twenty-four months. (Sec. 12 (*c*))

(4) Retirement is automatic and compulsory at the age of sixty-five years, if the employee has completed fifteen years of service and if he has not been separated from the service during the last three years of service prior to retirement. (Sec. 12 (*d*))

(*c*) *Republic Act No. 1920*, approved on 22 June 1957, amends section 9 of Republic Act No. 65, which provides for "a bill of rights for officers and enlisted men of the Philippine Army and of recognized or deserving guerilla organizations and veterans of the Philippine revolution", by increasing from fifty to one hundred pesos a month the life pension of permanently incapacitated Philippine veterans, owing to sickness, disease, or injuries sustained in the line of duty. As amended, the provision now reads:

"Sec. 9. The persons mentioned in sections one and two hereof who are permanently incapacitated

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[1] Note kindly furnished by the Secretary of Foreign Affairs of the Philippines.

[2] The text of Republic Act No. 1792 and a translation into French have appeared as International Labour Office: *Legislative Series* 1957 — Phi.1.

from work owing to sickness, disease, or injuries sustained in line of duty, shall be given a life pension of one hundred pesos a month, and ten pesos a month for each of his unmarried minor children below eighteen years of age, unless they are actually receiving a similar pension from other government funds, and shall receive, in addition, the necessary hospitalization and medical care."

2. *Right to be Equal with Others in Dignity and Rights*

Republic Act No. 1888, approved on 22 June 1957, was enacted for the purpose of effectuating "in a more rapid and complete manner the economic, social and political advancement of the non-Christian Filipinos or national cultural minorities into the body politic". To achieve its aims and objectives, the Act creates a Commission on National Integration, vested with, among others, the following functions:

(*a*) To engage in industrial and agricultural enterprises and establish processing plants and cottage industries to lead communities of the national cultural minorities in engaging in such pursuits and, upon the attainment of this objective, to sell such enterprises or industries to them at cost;

(*b*) To effectuate the settlement of all landless members of the national cultural miniorities by procuring homesteads for them or by resettling them in resettlement projects of the National Resettlement and Rehabilitation Administration.

(*c*) To cause the establishment of more public schools in the regions inhabited by the national cultural minorities and encourage them to attend them;

(*d*) To promote community life among the national cultural minorities by the establishment of civic centres, undertaking of civic activities, organization of athletic clubs, holding of agricultural and industrial fairs, and dissemination of useful information by radio or otherwise on important local, national and international subjects;

(*e*) To assist in the training of national cultural minorities in the different fields of education and to help them to secure employment in private establishments or offices or in the civil service;

(*f*) To grant and promote scholarships locally or abroad for national cultural minorities;

(*g*) In general, to further the agricultural, industrial and social development of the national cultural minorities and their progress in civilization. (Sec. 4)

II. Judicial Decisions

1. *Care and Assistance to Childhood*

Zuzuarregui v. *Zuzuarregui*, G.R. No. L-10010, decision of 31 October 1957

The facts: Antonio Zuzuarregui died without a will on 22 February 1953. He was married to Pilar Ibañez, with whom he had no issue. During the existence of this marriage, Antonio begot one child with his tenant, and three children with the cousin of his wife. These children had been staying with the couple and had been given the surname of Antonio, and support and recognition. Upon Antonio's death, they, together with the widow, Pilar Ibañez, claimed to be the heirs of the deceased. Antonio's collateral relatives were excluded from the inheritance by the lower court. These relatives, on appeal to the Supreme Court, maintained that spurious children are entitled to support only; that, supposing they are entitled to successional rights, they must have been recognized by their putative father or must bring an action for recognition during his lifetime.

Held: Under the new civil code, illegitimate (spurious) children are not only given support but are also entitled to "a certain share of the inheritance, the law according to them the same liberal attitude accorded to natural children". There was nothing in the said code from which it could be inferred that, in order that an illegitimate child may enjoy his successional right, he must first bring an action for recognition during the lifetime of the putative father. Neither was there any provision which requires that he be recognized as such before he can be accorded his successional right. The reason for this liberal treatment was that, "because they are spurious or offsprings of illicit relations, it would be obnoxious to oblige them to bring an action for recognition during the lifetime of their putative parents, let alone the embarrassment and scandal that such action would bring to all parties concerned".

2. *Right of Labourer or Employee to Receive Just Remuneration*

Luzon Stevedoring Co., Inc. v. *Luzon Marine Department Union*, G.R. No. 1-9265, decision of 29 April 1957

The facts: The members of a union brought action to recover compensation for overtime work. The employers claimed exemption from payment on the ground that respondents had acquiesced to working overtime without pay.

Held: It is of common occurrence that a workingman has already rendered services in excess of the statutory period of eight hours for some time before he can be led or he can muster enough courage to confront his employer with the demand for payment therefor. "Fear of possible unemployment sometimes is a very strong factor that gags the working-man from asserting his right under the law and it may take him months or years before he could be made to present a claim against his employer." To allow the working-man to be compensated only from the date of the filing of the petition with the court would penalize him for his acquiescence or silence, which is beyond the intent of the law. It was not just and humane that he should be deprived of what was lawfully his under the law, for the true intendment of Com-

monwealth Act No. 444 was to compensate the worker for services rendered beyond the statutory period and this should be made retroactive to the date when such services were actually performed.

3. *Right to a Fair Hearing before an Impartial Tribunal*

(*a*) *Associated Watchmen and Security Union* v. *United States Lines*, G.R. No. L-10333, decision of 25 July 1957

The facts: Upon complaint filed by the respondents that the petitioners were picketing the respondents' vessels docked at the piers, for the purpose of intimidating and coercing them to accede to their demands, the Court of First Instance issued a writ of preliminary injunction enjoining the petitioners from their acts. The petitioners brought this petition for *certiorari* in the Supreme Court to set aside the preliminary injunction issued by the lower court.

Held: The lower court abused its discretion in issuing the injunction without hearing the parties and receiving evidence on the main issue. The necessity of a hearing "is demanded by the fact that the existence or non-existence of a labour dispute determines the nature of the proceedings that must be followed in the issuance of the injunction." If a labour dispute existed, then the provisions of the Magna Carta of Labor (R.A. No. 875) should be strictly followed; and on the other hand, if no labour dispute existed then the court could issue an ordinary injunction in accordance with the rules of the court. "The policy of social justice guaranteed by the Constitution demands that when cases appear to involve labour disputes courts should take care in the exercise of their prerogatives and discretion. Only in that way can the policy enunciated in the Constitution be carried out." It is evident that the lower court "abused its discretion when it granted the writ of preliminary injunction without previous investigation as to whether or not a labour dispute exists within the meaning of the Magna Carta of Labor."

(*b*) *Bautista* v. *Barcelona*, G.R. No. L-11885, decision of 29 March 1957

The facts: Upon verified complaint filed by the respondents that the closing of a passageway by the petitioners would cause them not only great inconvenience but irreparable injury, the Court of First Instance issued an *ex parte* writ of preliminary mandatory injunction commanding the petitioners to desist from closing the passageway. The petitioners brought this petition for *certiorari* in the Supreme Court to set aside the said writ.

Held: Considering that a mandatory injunction "tends to do more than to maintain the *status quo*, it has been generally held that it should not issue prior to *final hearing* except only in cases of extreme urgency". The respondent judge "committed an abuse of discretion" in granting the writ without even giving petitioners the right to be heard before issuing it.

(*c*) *People* v. *Nabaluna*, G.R. No. L-9638, decision of 30 April 1957

The facts: The accused was charged with inducing a minor to abandon his home. On the day of the hearing, it was postponed due to the fact that Nabaluna had no lawyer. It was reset for another date with a warning that no further postponement would be granted. On the morning of the day for the trial, a lawyer was contacted, and during the trial the lawyer asked for postponement under section 7, rule 114, of the rules of court, but the court refused.

Held: There was no dispute that the services of defence counsel were secured only on the morning of the trial, and that the accused was compelled to proceed therewith despite vigorous objection and proper motion for continuance on the part of defence counsel who pleaded for at least two days to prepare. "The requirements of section 7 of rule 114 of the rules of court, allowing the accused as a matter of right at least two days to prepare for trial is mandatory and a denial thereof is a ground for new trial."

(*d*) *Magalona and Company* v. *Workmen's Compensation Commissioner*, G.R. No. L-10338, decision of 30 April 1957

The facts: On 16 May 1954, while Jorge Geronica was working in a shop operated by the petitioner, hammering the spindle pin of a truck, a piece of steel flew off, pierced his left eye and became imbedded in his posterior eyeball. He was hospitalized, and while recovering from the operation on his eye, he developed a psychosis, and had to be confined in a psychopathic hospital. On 21 April 1955, the petitioner company received from the respondent a letter-computation wherein he was held liable for compensation under sections 14 and 15 of the Workmen's Compensation Act for the labourer's permanent total disability (insanity resulting from his injury), and ordered to pay the labourer the amount of P2,995.20. The petitioner contended that the respondent erred in adjudicating the labourer's claim on the basis of insanity without holding a hearing thereon.

Held: Under Philippine laws and the policies of the Philippine Government, the labour laws "should be construed liberally in favour of the labourer; but, on the other hand, the fundamental principle of due process of law should be sternly applied alike on both the poor and the rich in order to attain proper justice". A hearing should have been had on the disputed facts about causality of the injury on the eye of Jorge Geronica and his alleged insanity arising therefrom.

4. *Freedom of Religious Worship*

American Bible Society v. *City of Manila*,
G.R. No. L-9637, decision of 30 April 1957

The facts: In the course of its ministry, the plaintiff had been distributing and selling bibles throughout the Philippines. On 29 May 1953, the City Treasurer of the city of Manila informed the plaintiff that it was conducting the business of general merchandise without providing itself with the necessary mayor's permit and municipal license in violation of ordinance No. 3000 and ordinances Nos. 2529, 3028 and 3364, and required the plaintiff to secure the corresponding permit and licence fees. The plaintiff claimed that the ordinances in question were unconstitutional and illegal, because they provided for religious censorship and restrained the free exercise and enjoyment of its religious profession — the distribution and sale of bibles and other religious literature to the people of the Philippines.

Held: Ordinance No. 2529 was not applicable to the plaintiff, and the defendant was powerless to license or tax the business of plaintiff for it "would impair plaintiff's right to the free exercise and enjoyment of its religious profession and worship, as well as its rights of dissemination of religious beliefs". Ordinance No. 3000 was also inapplicable to the business, trade or occupation of plaintiff.

PORTUGAL

LEGISLATION AND JURISPRUDENCE RELATING TO HUMAN RIGHTS[1]

I. LEGISLATION

Legislative Decree No. 40980, of 16 January 1957

Art. 1. A person who, for a continuous period of more than twenty-five years, up to the date of publication of this legislative decree, has enjoyed Portuguese protection as a result of consular registration as a Portuguese national, shall be considered a Portuguese national even though he has not given proof thereof.

(1) A descendant of such a person shall also be considered a Portuguese national if he was registered as such at the time of birth, or if he subsequently opted for Portuguese nationality within the prescribed time-limit.

(2) Where the widow of a person as referred to in this article has so far been considered a Portuguese national, she shall retain such nationality on condition that she lost her original nationality as a result of her marriage, and has not subsequently recovered it.

Art. 2. A presumption of nationality as provided for in the foregoing article shall be null and void if the person concerned is proved to have another nationality or to be engaged in activities prejudicial to the internal or external security, the prestige or the national interests of the Portuguese State.

Art. 3. A person as referred to in article 1 must, within one year from the publication of this legislative decree, apply to the Minister of Justice for confirmation of nationality.

Sole paragraph. — The application, completed in due form, shall be delivered to the Central Record Office or to the consulate in the area where the applicant is domiciled, which shall forward it to the Central Record Office after examination by the consul.

Art. 4. The application must be officially certified, and shall state the name to be used by the applicant, as provided in article 262, paragraph 1, of the Civil Register Code as reproduced in legislative decree No. 39923 of 23 November 1954, the applicant's present domicile, all former domiciles and the record office or consulate where the application is filed or was registered or entered.

(1) The application of a married man having marital authority or of a father having paternal authority shall include a request for confirmation of the nationality of his wife and of minor children who have been registered as Portuguese nationals, and shall, in respect of each such person, furnish the particulars referred to in the main part of this article.

(2) The application shall also indicate any children who are not registered as Portuguese nationals and shall state their nationality.

(3) Children not registered as Portuguese nationals may opt for Portuguese nationality within the same time-limit as children born abroad of a Portuguese father.

Art. 5. In the event of an applicant being an orphan or a minor, the application shall be submitted by his legal representative or by the person having custody of him.

Sole paragraph. — A person over fourteen years of age may make his own application direct without need for authorization.

Art. 6. The application shall be accompanied by documents in support of the particulars referred to in article 1 and, where necessary, by the marriage certificate of the applicant and the birth certificates of his wife and children.

(1) Where the documents referred to in the main part of this article are in a language other than Portuguese, they shall be accompanied by a duly certified translation.

(2) Photostatic copies of the aforementioned documents, when made by the government authorities to which the originals were entrusted, shall have the same legal force as in the place where they were made.

Art. 7. Decisions to grant or refuse requests for confirmation of nationality shall be registered for purposes of information at the Central Record Office within a period of ten days.

Sole paragraph. — Within ten days of the date of such registration, the record office or consulate where the applicant is known to be registered or entered shall be informed by the Central Record Office whether or not the application has been granted so that the confirmation of nationality may be recorded, or the register or entry cancelled, as the case may be.

Art. 8. Where a person, at birth, has been entered or registered at a consulate or record office as a Portuguese national, such entry or registration shall be cancelled and cease to have effect if that person is

[1] Information kindly furnished by the Permanent Mission of Portugal to the United Nations. Translation by the United Nations Secretariat.

unable to furnish proof of his nationality and if, in addition:

(*a*) He does not fulfil the conditions set forth in article 1;

(*b*) The confirmation of nationality has, for the aforementioned reason or on the basis of the provisions of article 2, been refused;

(*c*) He has failed to apply for the confirmation of nationality within the prescribed time-limit.

(1) An application for the confirmation of nationality submitted after the time-limit may be deemed by the Minister of Justice to have been submitted on time if the applicant can prove that his failure to submit the application within the time-limit was due to circumstances beyond his control.

(2) A minor as referred to in article 5 may avail himself of the provisions of the sole paragraph of that article within six months after attaining the age of fourteen years if an application for the confirmation of his nationality has not been made by his legal representative.

Order No. 16205 of 12 March 1957

This order gives approval to the special regulations concerning assistance under the Provident Fund of the Association of Licensed Customs Brokers.

Decree No. 41042 of 25 March 1957

This decree gives approval to the new statue of the Provident Fund of the Officers and Men of the Revenue Police.

Legislative Decree No. 41051 of 1 April 1957

This legislative decree lays down provisions regarding the attendance of minors at public entertainments. It supersedes legislative decree No. 38964 of 27 October 1952.

Art. 1. For purposes of authorization and of attendance by minors, public entertainments shall be classified as follows:

(1) Entertainments "for children", which may take the form of a "children's theatre";

(2) Entertainments "for general patronage";

(3) Entertainments "for persons over twelve years of age";

(4) Entertainments "for adults".

Art. 2. Attendance by minors at entertainments shall be governed by the following rules:

(1) Minors up to the age of four years may not attend any public entertainment whatsoever;

(2) Minors from four to six years of age may only attend entertainments classified as "children's theatre";

(3) Minors from six to twelve years of age may only attend entertainments classified as "for children" or "for general patronage";

(4) Minors up to the age of seventeen years may not attend entertainments classified as "for adults".

The succeeding articles lay down the standards by which entertainments are to be classified and the characteristics of the different groups set forth in article 1.

These articles also prescribe the penalties for offences against the provisions of this legislative decree.

Articles 19 and 20 deal with the membership and terms of reference of the Commission for the Review and Classification of Entertainments. *Article 20, paragraph 1*, provides as follows:

"A representative of the Commission for Literature and Entertainments for Minors shall always take part in the work of classification, and his favourable vote shall be essential for the inclusion of a particular type of entertainment (film, play, musical show, etc.) in category 1, 2 or 3, as set out in article 1."

Article 21 specifies the membership of the Commission for Literature and Entertainments for Minors, and article 22 lays down its terms of reference.

Article 23 provides that "the Commission for Literature and Entertainments for Minors, in co-operation with the Union of Entertainment Guilds and member guilds, shall promote the provision of entertainments for children on a regular basis in the cities and towns of Portugal or wherever this is found to be practicable".

Article 24 provides that all domestic and foreign periodical and other publications clearly intended for children or young persons, or from their appearance or contents capable of being so regarded, shall by virtue of that fact be subject to the provisions of legislative decrees No. 22469, of 11 April 1933, and No. 26589, of 14 May 1936, and may not be placed on sale without first having been cleared by the Commission for Literature and Entertainments for Minors.

Legislative Decree No. 41075 of 17 April 1957

This legislative decree modifies various provisions of the Code of Penal Procedure and of the Code of Judicial Costs.

Art. 1. Articles 298, 389, 588, 589, 590, 593 and 633 of the Code of Penal Procedure shall be amended to read as follows:

Art. 298. If the defendant finds it impossible to give bail or has great difficulty or inconvenience in so doing, the judge, of his own motion or on the proposal of the Public Prosecutor's Office (Ministério Público) or at the request of the defendant, shall substitute therefor the obligation on the part of the defendant to appear before the court or before an authority designated by the court either on specified days and at specified hours or at such times as the judge sees fit. The defendant shall give the judge an undertaking that he will fulfil the obligation and shall

at the same time state where he can be found and undertake to give prior notice to the court of any change of address. A record shall be made of all such proceedings.

(1) If failure to fulfil the obligation set forth in this article is not duly justified within forty-eight hours, the judge may, according to the seriousness of such failure: reimpose the bail; place the defendant under the regime of conditional release, with or without supervision as the circumstances require; commit the defendant to prison, where he may be kept until trial; or punish the defendant for disobedience, imposing in such circumstances whatever immediate measures appear necessary.

(2) The substitution for bail of the obligation provided for in this article shall not apply where the defendant, by reason of bad conduct, does not deserve the confidence of the court, nor where there is reason to fear that the defendant may commit further offences, attempt to avoid the process of justice or be in a position to interfere with the preparation of the case for trial.

(3) If facts that would have prevented the substitution aforesaid subsequently come to light, the judge shall at all times be free to reverse the decision concerning such substitution.

(4) The Public Prosecutor's Office shall be consulted beforehand concerning the substitution aforesaid in all cases where such substitution has not been proposed by that office.

. . .

Legislative Decree No. 41381 of 21 November 1957

This legislative decree provides, in respect of agricultural training, for supplementary apprenticeship courses, basic improvement courses and vocational training. It deals in a particular way with staff and salary matters as they affect the D. Dinis and Conde de S. Bento Agricultural Training Schools.

Art. 1. Agricultural training as referred to in sections XVII and XVIII of Act No. 2025 shall include supplementary apprenticeship courses, basic improvement courses and vocational training courses.

(1) Supplementary apprenticeship courses in agriculture shall be established gradually in rural parishes as an extension of primary education in order to provide young people of both sexes, who have successfully completed the fourth year of primary education and are already engaged in agricultural or similar activities, with cultural and technical training that will fit them for the profitable exercise of those activities.

(2) The purpose of the basic improvement courses shall be to raise the level of training and specialized knowledge of adult rural workers with an adequate general education and to promote activities likely to contribute to the welfare of agricultural families through the intensive use of improved cultivation techniques and working methods and the dissemination of the scientific knowledge required in that regard.

(3) The purpose of the training provided in the agricultural training schools shall be to give students who have successfully completed four years of primary education general and technical training of secondary-school level sufficient for them to become independent farmers, to engage in skilled rural activities connected with agriculture, to exercise auxiliary functions in large agricultural or stock-breeding undertakings or to obtain employment in the specialized agricultural activities of the Government.

Decree No. 41382 of 21 November 1957

This decree promulgates the regulations regarding agricultural training schools.

Art. 1. 1. Agricultural training schools, in their function as technical vocational training establishments, shall have as their special purpose the provision of general and technical training of secondary-school level to students who have successfully completed four years of primary education, such training to be sufficient to enable them to become independent farmers, to engage in skilled rural activities connected with agriculture, to exercise auxiliary functions in large agricultural or stock-breeding undertakings or to obtain employment in the specialized agricultural activities of the Government.

2. These schools shall, in addition:

(*a*) Provide students who intend to go on to agricultural teacher-training colleges with full training for that purpose;

(*b*) Organize short and intensive practical courses for the purpose of training adult rural workers in desirable types of rural activities as provided in legislative decree No. 41381, of 21 November 1957, and of meeting other needs relevant to the welfare of agricultural families.

3. As official agricultural establishments, these schools shall also:

(*a*) Contribute to the technical improvement of agriculture through the research work and agricultural-extension activities of their teaching staff;

(*b*) Promote the progress of regional farming by making available, in co-operation, where possible, with other government agencies and other corporate bodies, high quality seed and plants, good breeding animals, farm machinery and technical assistance.

II. Judgements of the Supreme Court of Justice

Judgement of 30 January 1957

A chairman of a municipal council, being empowered to arrest, or to cause the arrest of, any person, shall be guilty of an offence under article 291, paragraph 2, of the Penal Code (abuse of authority — improper and unlawful detention) if he acts with the intent to punish by imprisonment a person not

apprehended in the commission of an offence or not covered by any of the cases provided for in article 254 of the Code of Penal Procedure.

Judgement of 1 February 1957

The right to live in peace is guaranteed by various provisions of the law and expressly by article 8, paragraph 1, of the Political Constitution, and articles 359, paragraph 1, 360 and 368 of the Civil Code. It accordingly appears necessary as a precautionary measure to order the suspension, during every night between the hours of midnight and 7 a.m., of the work being undertaken in one of the streets in Lisbon in connexion with the construction of the underground railway inasmuch as such work, which entails the use of powerful and extremely noisy machinery, prevents the inhabitants of the neighbourhood from resting and sleeping and thus constitutes a serious menace not only to their welfare, but also to their health.

LEGISLATIVE DECREE No. 40610, GOVERNING THE ENTRY AND SETTLEMENT OF PORTUGUESE AND FOREIGN NATIONALS IN ANY OF THE PORTUGUESE OVERSEAS TERRITORIES

of 25 May 1956[1]

1. Division LXXI, No. II, of the Organic Overseas Act, establishes the principle that ease of movement of persons anywhere within Portuguese territory shall be promoted.

Accordingly, steps have been taken to revise the basic instrument dealing with the subject, decree No. 37196 of 27 November 1948, which will in turn involve revision of the supplementary provincial instruments.

2. By virtue of the present legislative decree, all Portuguese citizens who are capable of occupying a useful place in the local community may enter and establish residence in any of the Portuguese territories. The few restrictions are designed merely to ensure that persons admitted will in fact be useful citizens and not persons without an occupation or means of support, who would not only be exposed to increased discomfort by moving to strange surroundings but would not contribute in any way to the advancement of the provinces.

3. It is hoped that these provisons will lead to the increased movement of persons throughout the Portuguese territories and encourage the settlement of certain territories, thus fulfilling the injunction of the basic laws and the purpose of all who are genuinely interested in the future of our overseas territories.

In view of the foregoing:

By virtue of the authority conferred upon it by article 109, No. 2, first part, of the Constitution, the Government has enacted the following legislative decree, which I hereby promulgate:

Art. 1. A Portuguese citizen shall be free to enter any Portuguese territory, provided he can prove that he satisfies any of the following conditions:

1. He has his domicile in the territory of destination;

2. He is a relative in dependency status, of a person having a permanent residence in that territory;

3. He is a graduate of a higher institution of learning;

4. He is a merchant registered in Portuguese territory;

5. He is the owner, director or manager of a commercial or industrial enterprise having its headquarters in Portuguese territory;

6. He is the owner of immovable property situated in Portuguese territory, of a registered value of 50,000 escudos or more;

7. He is assessed for supplementary tax or its equivalent;

8. The purpose of his travel is recreation, study or business;

9. He is in the employ of a third party, in business or in industry, within the meaning of article 4;

10. He furnishes a bond within the meaning of article 5.

Art. 2. For the purpose of this decree, permanent residence in an overseas province shall be defined as residence over a period of two years.

However, persons under contract to work in the territory in question in the employ of a third party for a period of not less than two years shall be classed as residents during the period of their contract.

. . .

Art. 3. Permission to reside in a province for purposes of recreation, study or business shall be limited to six months, and any further stay shall be subject to authorization, unless any of the other conditions listed in article 1 are fulfilled.

. . .

Art. 4. For the purposes of article 1, No. 9,

[1] Text published in *Diario do Governo*, Series 1, No. 106, of 25 May 1956, and kindly made available by the Permanent Representative of Portugal to the United Nations. Translation by the United Nations Secretariat.

gainful employment on behalf of a third party shall be regarded as valid only if the person in question:

(*a*) Was registered more than two years previously in a trade union or the Fishermen's Guild;

(*b*) Has paid the professional tax or tax as a person employed on behalf of a third party for the previous two years, if the occupation in question has not been organized in a trade union.

Art. 5. The bond referred to in article 1, No. 10, shall be furnished by a Portuguese bank or trust company and shall guarantee, for a period of one year, that at his request or upon an order being issued by the appropriate authority, payment shall be made to the person concerned covering the cost of the return passage plus an amount not less than 12,000 escudos for an isolated person or the head of a family and 3,000 escudos for each dependant accompanying him.

Para. 1. — The civil administration authorities shall require fulfilment of the bond where they find that the person concerned is without means of support or where they order him to return to his territory of origin.

Para. 2. — Payment of the return passage shall cease to be payable only when the person is regarded as legally resident.

Art. 6. A person who enters a province in accordance with article 1, Nos. 9 and 10, and who at the end of one year has not obtained work on his own account or in the employ of a third party enabling him to support himself and the members of his family living with him may be ordered by the government of the province to return to the territory from which he came.

Para. 1. — The person concerned may be ordered to return after a period of six months if it is shown that he is completely wanting the means of support.

Para. 2. — If a person has furnished a bond, as provided for in article 5, he shall not, as a rule, be ordered to return until payment of the bond has been required.

Art. 7. The Portuguese authorities shall not require passports from Portuguese citizens who move from one place to another within Portuguese territory, provided that:

(*a*) They travel in a Portuguese vessel, regardless of whether the latter stops at a foreign port or not;

(*b*) They travel in a Portuguese aircraft which does not land at a foreign airport, unless for technical reasons.

Sole paragraph. — If a regular passport is required for movements between Portuguese territories, it may be granted to persons referred to in article 16 of decree No. 39794, of 28 August 1954, provided they satisfy any of the conditions listed in article 1 of this decree.

. . .

FEDERATION OF RHODESIA AND NYASALAND

CONSTITUTION AMENDMENT ACT, 1957

Act No. 16 of 1957, entered into force on 16 December 1957[1]

INTRODUCTORY NOTE

Section 2

This increases the membership of the Federal Assembly from 35 to 59 and, in so doing, increases the number of African members from 6 to 12 and the number of ordinary members, that is to say members whose qualifications do not include race, from 26 to 44. The section also provides for the eventual elimination of special representation, as Africans are elected as ordinary members. This alteration in composition of the Federal Assembly will not affect the total number of members of the Federal Assembly, since a reduction in the number of special representatives is offset by a corresponding increase in the number of ordinary members. The reasons for the increase in the number of members of the Federal Assembly are:

(*a*) A desire to remedy the anomalous position created by the disparity between membership of the Federal Assembly and the combined membership of the Territorial Legislatures, which consisted of 78 members as opposed to 35 members of the Federal Assembly;

(*b*) The desirability of reducing the size of constituencies so as to enable members effectively to represent their constituents;

(*c*) To facilitate the delimination of electoral districts;

(*d*) To facilitate the formation of an adequately sized cabinet while leaving sufficient representatives of government backbenchers;

(*e*) To meet the difficulty experienced in the smaller House of finding the necessary personnel to do justice to Select Committee work.

Section 7

The amendment made by this section is consequential on the amendment of article 10 of the Constitution. The effect of the amendment to article 10 which is made by section 3 of the Act is that instead of the specially elected European member for Southern Rhodesia being elected in accordance with regulations made by the Governor of Southern Rhodesia, as read with article 14 of the Constitution, he is elected in accordance with the law of the Federal Legislature made by virtue of the powers conferred by article 10 of the Constitution.

Section 10

The amendment made by this section enables any African member of the Federal Assembly to be elected to the African Affairs Board, and also confers the right on all African members to have a voice in the election of African members to the board.

2. (1) Article 9 of the Constitution[2] is repealed and the following article is substituted therefor.

9. (1) Subject to the provisons of paragraph 2 of this article, the Federal Assembly shall consist of a speaker and fifty-nine members, made up as follows — that is to say:

(*a*) Forty-four members (in this constitution referred to as "elected members"), of whom twenty-four shall be elected in Southern Rhodesia, fourteen in Northern Rhodesia and six in Nyasaland;

(*b*) Eight African members (in this constitution referred to as "elected African members"), of whom four shall be elected in Southern Rhodesia, two in Northern Rhodesia and two in Nyasaland;

(*c*) Four African members (in this constitution referred to as "specially elected African members"), of whom two shall be elected in Northern Rhodesia and two in Nyasaland;

(*d*) Three European members charged with special responsibilities for African interests, of whom one shall be elected in Southern Rhodesia (in this constitution referred to as "the specially elected European member") and two shall be appointed, one by the Governor of Northern Rhodesia and the other by the Governor of Nyasaland (in this constitution referred to as "the specially appointed European members").

(2) If at any general election one or more Africans

[1] Published in *The Statute Law of the Federation of Rhodesia and Nyasaland 1957*, printed on the authority of the Government Printer, Salisbury, Southern Rhodesia. The introductory note was prepared by the Federal Government of Rhodesia and Nyasaland.

[2] See *Yearbook on Human Rights for 1953*, p. 237.

are returned as elected members for any territory, the composition of the Federal Assembly shall, with effect from its next dissolution, be altered

(*a*) By increasing the number of elected members for that territory by the number of Africans who were so returned as elected members for that territory:

Provided that:

(i) After any increase in the number of elected members of a territory has been so made, no further increase in the number of elected members for that territory shall be made after any subsequent dissolution of the Federal Assembly unless the number of Africans who were returned as elected members for that territory at the general election immediately preceding such subsequent dissolution exceeds the number of Africans who were returned as elected members for that territory at any earlier general election nor by more than the number by which the number of Africans who were returned as elected members for that territory at the general election immediately preceding such subsequent dissolution exceeds the number of Africans who were returned as elected members for that territory at any earlier general election;

(ii) The number of elected members shall in no circumstances be increased to more than twenty-nine in Southern Rhodesia, nineteen in Northern Rhodesia and eleven in Nyasaland;

(iii) If an African is returned as an elected member and is subsequently unseated on the ground of undue return or undue election, he shall not be deemed to have been returned as an elected member at that election and the person, if any, found by the Federal Supreme Court to be entitled to be returned at that election shall be deemed to have been so returned;

(*b*) By reducing the number of other members for that territory by the increase in the number of elected members for that territory made in terms of sub-paragraph (*a*) of this paragraph, the reduction being made first from the elected African members, then from the specially elected African members, if any, and finally from the specially elected European member or the specially appointed European member, as the case may be.

(3) For the purposes of this constitution, the expression "member" in relation to the Federal Assembly shall not include the speaker.

(2) Until the dissolution of the first Federal Assembly, the Federal Assembly shall, notwithstanding anything contained in sub-section 1, be as constituted under article 9 of the Constitution before its repeal by sub-section 1.

. . .

7. Article 14 of the Constitution[1] is amended

(*a*) By the repeal of paragraph 1, and by the substitution therefor of the following paragraph:

"(1) Subject to the next following paragraph, a person shall be qualified to be elected as a specially elected African member or to be appointed as a specially appointed European member if, and shall not be qualified unless, he is a British subject or a British protected person."

(*b*) In paragraph 2, by the omission of "as the specially elected European member or";

(*c*) In sub-paragraph (*a*) of paragraph 3, by the omission of "as the specially elected European member or".

. . .

10. With effect from the date when the Federal Assembly first meets after the dissolution of the first Federal Assembly, article 67 of the Constitution[2] is amended by the repeal of sub-paragraph (*b*) of paragraph 1, and by the substitution therefor of the following sub-paragraph:

"(*b*) One African member of the Federal Assembly from each of the three territories, to be selected by a majority vote of all the African members of the Federal Assembly and the members referred to in sub-paragraph (*a*) of this paragraph acting together."

. . .

[1] See *Yearbook on Human Rights for 1953*, p. 237.

[2] See *Yearbook on Human Rights for 1953*, p. 238.

THE CITIZENSHIP OF RHODESIA AND NYASALAND AND BRITISH NATIONALITY ACT, 1957

Act No. 12 of 1957[1]

PRELIMINARY

1. This Act may be cited as the Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957, and shall come into operation on a date to be fixed by the Governor-General by notice in the *Federal Gazette*.

2. (1) In this Act, unless inconsistent with the context,

"Alien" means a person who is not a British subject, a British protected person or a citizen of the Republic of Ireland;

"Australia" includes Norfolk Island and the Territory of Papua;

"British protected person" means a person who is a member of a class of persons which Her Majesty has declared by Order in Council made under the

[1] Published in *The Statute Law of the Federation of Rhodesia and Nyasaland 1957*, printed on the authority of the Government Printer, Salisbury, Southern Rhodesia. The Act entered into force on 1 March 1958.

British Nationality Act, 1948, of the United Kingdom in relation to a protectorate, protected state, mandated territory or trust territory, to be British protected persons by virtue of their connexion with the protectorate, state or territory;

"Certificate of naturalization" includes a certificate conferring the citizenship of a specified country upon an alien or British protected person;

"Child" means a legitimate child, and "father" shall be construed accordingly;

"Citizen" means a citizen of Rhodesia and Nyasaland, and "citizenship" shall be construed accordingly.

. . .

"External polygamous marriage" means a marriage solemnized outside the Federation under a system permitting polygamy;

. . .

"Foreign country" means a country other than

(*a*) The Federation or a territory;

(*b*) A specified country;

(*c*) The Republic of Ireland;

(*d*) A protectorate;

(*e*) A protected state;

(*f*) A mandated territory;

(*g*) A trust territory;

"Mandated territory" means a territory administered by the government of any part of Her Majesty' dominions in accordance with a mandate from the League of Nations;

"Minister" means the Minister of Home Affairs;

"Minor" means a person who has not attained the age of twenty-one years;

"Naturalized person" means a person who has become a British subject or a citizen of the Republic of Ireland by virtue of a certificate of naturalization granted to him or in which his name was included;

"Oath of allegiance" means an oath of allegiance in the form specified in the First Schedule;

"Person naturalized in the Federation" means

(*a*) A person to whom a certificate of naturalization has been granted in terms of this Act; or

(*b*) A person naturalized in terms of or deemed to be naturalized by virtue of the provisions of a territorial law relating to naturalization in force before the date of commencement of this Act; or

(*c*) A person to whom or with respect to whom a certificate of naturalization or other document conferring naturalization was granted by an authority of a territory in terms of an enactment, other than a territorial law, relating to naturalization in force in the territory before the date of commencement of this Act; or

(*d*) A person deemed, by virtue of the provisions of an enactment referred to in paragraph (*c*) of this definition, to be a person to whom or with respect to whom a certificate or other document referred to in that paragraph was granted;

"Protected state" means a state or territory under the protection of Her Majesty through her Government in the United Kingdom which has been declared by Order in Council made under the British Nationality Act, 1948, of the United Kingdom to be a protected state for the purposes of that Act, and includes the New Hebrides and Canton Island;

"Protectorate" means a State or territory under the protection of Her Majesty through her Government in the United Kingdom which has been declared by Order in Council made under the British Nationality Act, 1948, of the United Kingdom to be a protectorate for the purposes of that Act;

. . .

"Responsible parent", in relation to a child, means the father of the child or, if the father is dead or the mother has been given the custody of the child by order of a court or the child was born out of wedlock and resides with the mother, means the mother of the child;

"Specified country" means a country specified in the Second Schedule;

"Trust territory" means a territory administered by the government of any part of Her Majesty's dominions under the trusteeship system of the United Nations;

"Voter" means a person whose name on the date of commencement of this Act was on a roll of voters entitled to vote at the election of an elected member of the Federal Assembly.

. . .

(4) For the purposes of this Act:

(*a*) A person born aboard a registered ship or aircraft shall be deemed to have been born in the place in which the ship or aircraft was registered, and a person born aboard an unregistered ship or aircraft of the government of any country shall be deemed to have been born in the country to the government of which the ship or aircraft belonged at the date of his birth.

(*b*) A person shall be of full age if he has attained the age of twenty-one years and of full capacity if he is not of unsound mind;

. . .

(*d*) The United Kingdom and colonies shall be deemed to constitute one country, shall include the Channel Islands and the Isle of Man, and shall exclude Southern Rhodesia.

Part I

BRITISH NATIONALITY

3. A person who in terms of this Act is a citizen or who in terms of an enactment for the time being in force in a specified country is a citizen of the specified

country shall by virtue of that citizenship be a British subject.

4. (1) No citizen of the Republic of Ireland who immediately before the date of commencement of this Act was also a British subject shall by virtue of the provisions of section three be deemed to have ceased to be a British subject if at any time he gives notice in writing to the registrar claiming to remain a British subject on all or any of the following grounds:

(*a*) That he is or has been in Crown service under the Government of the Federation or of a territory;

(*b*) That he is the holder of a British passport issued by the Government of the Federation or of a territory;

(*c*) That he has associations by way of descent, residence or otherwise with the Federation.

(2) A claim in terms of sub-section 1 may be made on behalf of a child who has not attained the age of sixteen years by a person who satisfies the registrar that he is the responsible parent or the guardian of the child.

(3) If by an enactment for the time being in force in a specified country provision, corresponding to that made in this section, is made for enabling citizens of the Republic of Ireland to claim to remain British subjects, a person who by virtue of that enactment remains a British subject shall be deemed also to be a British subject by virtue of the provisions of this section.

. . .

Part II

PERSONS WHO ARE CITIZENS BY VIRTUE OF BIRTH, DESCENT, MARRIAGE OR OTHER CIRCUMSTANCE

6. A person born in the Federation before, on or after the date of commencement of this Act shall, as the case may be, become a citizen by birth on that date or be a citizen by birth unless:

(*a*) At the time of the person's birth, his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Her Majesty and was not a citizen; or

(*b*) At the time of the person's birth, his father was an enemy alien and

(i) His mother was interned in a place set aside for the internment of enemy aliens; or

(ii) The place of the person's birth was under occupation by the enemy; or

(*c*) The place of the person's birth was in Northern Rhodesia or Nyasaland and

(i) The person was born out of wedlock; or

(ii) At the time of the person's birth, his father was not a British subject.

7. (1) A person born outside the Federation before the date of commencement of this Act who was a British subject immediately before that date shall, subject to the provisions of sub-section 3, on that date become a citizen by descent if the person's father was, at the time of the person's birth, a British subject and

(*a*) A person born in the Federation who would have been a citizen had the provisions of section six been in force at the date of his birth; or

(*b*) A person naturalized in the Federation; or

(*c*) A Southern Rhodesian citizen otherwise than by descent; or

(*d*) A person registered in a territory as a citizen of the United Kingdom and colonies; or

(*e*) A voter.

(2) A person born outside the Federation on or after the date of commencement of this Act shall, subject to the provisions of sub-section 3, be a citizen by descent if:

(*a*) At the time of the person's birth, his father was a citizen otherwise than by descent; and

(*b*) The person's birth is registered in the manner prescribed either at the office of the registrar or at a federal consulate within one year of its occurrence or, with the permission of the Minister, later.

(3) The provisions of this section shall not apply to a person who is the child of an external polygamous marriage.

(4) If the Minister so directs, a birth shall be deemed, for the purposes of paragraph (*b*) of sub-section 2, to be registered with his permission, notwithstanding that his permission was not obtained before registration.

8. (1) A person who immediately before the date of commencement of this Act was:

(*a*) A British subject and a voter; or

(*b*) A Southern Rhodesian citizen; or

(*c*) Registered in a territory as a citizen of the United Kingdom and colonies;

shall, if he does not on that date become a citizen by virtue of any other provision of this part or by virtue of the provisions of section twenty-four, become on that date a citizen.

(2) A person who becomes a citizen by virtue of the provisions of sub-section 1 shall be treated, for the purposes of this Act, as a citizen by registration.

9. (1) A woman who

(*a*) Was a British subject immediately before the date of commencement of this Act; and

(*b*) Was, on the date of commencement of this Act, the wife of a person who becomes or the widow of a person who would, if this Act had come into operation immediately before his death, have become a citizen by virtue of the provisions of this part or of section twenty-four; and

(*c*) Does not herself in her own right become a citizen by virtue of any other provision of this part or by virtue of the provisions of section twenty-four;

shall, subject to the provisions of sub-section 3, on the date of commencement of this Act herself become a citizen.

(2) For the purposes of this Act, a woman who becomes a citizen by virtue of the provisions of sub-section 1 shall be treated:

(*a*) If she is the wife of a person who becomes or the widow of a person who would, if this Act had come into operation immediately before his death, have become a citizen by virtue of the provisions of section twenty-four, as a citizen by naturalization;

(*b*) If she is not the wife or widow of such a person as is referred to in paragraph (*a*), as a citizen by registration.

(3) The provisions of sub-section 1 shall not apply to:

(*a*) A married woman who is a party to an external polygamous marriage; or

(*b*) A widow who was a party to an external polygamous marriage.

10. (1) If an order is made in terms of a federal or territorial law relating to the adoption of children for the adoption of a person who is a minor and who is not a citizen, the person shall become a citizen on the date of the order if the adopter or, in the case of a joint adoption, the male adopter is a citizen.

(2) A person who becomes a citizen by virtue of the provisions of sub-section 1 shall be treated, for the purposes of this Act, as a citizen by birth.

11. (1) If after the date of commencement of this Act a territory becomes a part of the Federation, the Minister may by notice in the *Federal Gazette* specify the classes of persons who shall become citizens by reason of their connexion with the territory.

(2) All persons who are members of a class of persons specified in a notice referred to in sub-section 1 shall, on a date to be fixed by the Minister in the notice, become citizens by incorporation of territory.

Part III

PERSONS ENTITLED TO BE REGISTERED AS CITIZENS

12. (1) A person of full age and capacity who

(*a*) Is a British protected person by virtue of his connexion with Northern Rhodesia or Nyasaland; and

(*b*) Makes application in the manner prescribed;

shall, subject to the provisions of sub-section 2 and section eighteen, be entitled to be registered as a citizen.

(2) The provisions of this section shall not apply to a person who is the child of an external polygamous marriage.

13. (1) A citizen of a specified country or of the Republic of Ireland of full age and capacity who

(*a*) Makes application in the manner prescribed; and

(*b*) Satisfies the Minister that he possesses the required qualifications;

shall, subject to the provisions of section eighteen, be entitled to be registered as a citizen.

(2) The qualifications required for the registration of a person referred to in sub-section (1) are:

(*a*) That he is ordinarily resident in the Federation and has been so resident

(i) During the period of two years immediately preceding the date of his application; or

(ii) If he has resided in the Federation at any time before the date of his application for periods which in the aggregate amount to not less than five years, during such shorter period as the Minister may fix in this case; and

(*b*) That he is of a good character; and

(*c*) That he has an adequate knowledge of the English language; and

(*d*) That he intends, if his application is granted, to continue, subject to the exigencies of his employment, to reside in the Federation or to enter or continue in Crown service under the Government of the Federation or of a territory.

(3) No period during which a person who applies for registration as a citizen in terms of this section was confined in or was an inmate of a prison, gaol, reformatory or mental hospital or institution in the Federation shall be counted, for the purposes of sub-section 2, as a period of residence in the Federation.

(4) No period during which a person who applies for registration as a citizen in terms of this section resided in the Federation as a visitor or in terms of a permit, pass or other document issued under a federal or territorial law permitting conditional or temporary residence in the Federation or, as the case may be, a territory, shall be counted, for the purposes of sub-section 2, as a period of residence in the Federation unless the person is entitled, at the time of his application, to reside in the Federation otherwise than as a visitor or in terms of any such permit, pass or other document.

14. (1) A woman, whether or not of full age, who

(*a*) Is a British protected person by virtue of her connexion with Northern Rhodesia or Nyasaland or a citizen of a specified country or of the Republic of Ireland; and

(*b*) Is the wife of a citizen; and

(*c*) Makes application in the manner prescribed;

shall, subject to the provisions of sub-section 2 and section eighteen, be entitled to be registered as a citizen.

(2) The provisions of sub-section 1 shall not apply to a woman who is a party to an external polygamous marriage.

Part IV

PERSONS WHO MAY BE REGISTERED AS CITIZENS

15. (1) The Minister may, subject to the provisions of sub-section 2 and paragraph (*a*) of section eighteen, authorize the registration as a citizen of a woman, whether or not of full age, who

(*a*) Is a British protected person otherwise than by virtue of connexion with Northern Rhodesia or Nyasaland or an alien; and

(*b*) Is the wife of a citizen; and

(*c*) Makes application in the manner prescribed.

(2) The provisions of sub-section 1 shall not apply to a woman who is a party to an external polygamous marriage.

16. (1) The Minister may, upon the application in the manner prescribed of the responsible parent or the guardian of a child who is a minor, cause the child to be registered as a citizen, whether or not the child is the child of a citizen.

(2) A child registered as a citizen in terms of sub-section 1 shall become a citizen by registration on the date on which he is registered.

Part V

REGISTRATION OF CITIZENS

. . .

18. No person referred to in part III or in section fifteen shall be entitled to be or be registered as a citizen

(*a*) Until he has taken an oath of allegiance; and

(*b*) If he has previously been a citizen and has been deprived of or has renounced his citizenship, unless he has obtained the written authority of the Minister.

. . .

Part VI

CITIZENSHIP BY NATURALIZATION

21. (1) In this section,

"Protected person" means a person who is a British protected person otherwise than by virtue of connexion with Northern Rhodesia or Nyasaland.

(2) The Minister may grant a certificate of naturalization to an alien or protected person of full age and capacity who

(*a*) Makes application in the manner prescribed; and

(*b*) Satisfies the Minister that he

(i) Is a fit and proper person to be naturalized; and

(ii) Possesses the required qualifications.

(3) Before the Minister considers an application for the grant of a certificate of naturalization made in terms of sub-section 2, he shall obtain and consider a report on the application from a committee appointed by him for the purpose of considering applications for the grant of certificates of naturalization.

(4) Subject to the provisions of sub-section 5, the qualifications required for the naturalization of an alien or protected person are:

(*a*) That he has filed in the office of the registrar in the manner prescribed, not less than twelve months before the date of his application, a written declaration of his intention to become a citizen; and

(*b*) That he is ordinarily resident in the Federation and

(i) Has been ordinarily resident in the Federation during the period of twelve months immediately preceding the date of his application; and

(ii) Has resided in the Federation during the period of seven years immediately preceding the period of twelve months referred to in sub-paragraph (i) for periods amounting in the aggregate to not less than four years; and

(*c*) That he is of good character; and

(*d*) That he has an adequate knowledge of the English language; and

(*e*) That he intends, if his application is granted, to continue to reside in the Federation or to enter or continue in Crown service under the Government of the Federation or of a territory.

(5) In addition to the qualifications required for the naturalization of an alien specified in sub-section 4, an alien is required to satisfy the Minister that he was lawfully admitted to the Federation for permanent residence therein.

(6) No period during which a person who applies for the grant of a certificate of naturalization in terms of this section was confined in or was an inmate of a prison, gaol, reformatory or mental hospital or institution in the Federation shall be counted, for the purposes of sub-section 4, as a period of residence in the Federation.

(7) No period during which a person who applies for the grant of a certificate of naturalization in terms of this section resided in the Federation as a visitor or in terms of a permit, pass or other document issued under a federal or territorial law permitting conditional or temporary residence in the Federation or, as the case may be, a territory, shall be counted, for the purposes of sub-section 4, as a period of residence in the Federation unless the person is entitled, at the time of his application, to reside in the Federation otherwise than as a visitor or in terms of any such permit, pass or other document.

(8) A written declaration of an alien of his intention to become a Southern Rhodesian citizen, which, at the date of commencement of this Act, had been filed by him in terms of section 9 of the Southern Rhodesia Citizenship and British Nationality Act, 1949, of Southern Rhodesia, shall, at his request, be treated, for the purposes of this section, as a written declaration of his intention to become a citizen filed by him in terms of paragraph (*a*) of sub-section 4.

22. . . .

(2) If the Minister has rejected an application for the grant of a certificate of naturalization, he shall not consider another application from the applicant until a period of two years from the date of rejection of the previous application has expired.

23. (1) No certificate of naturalization granted to a person in terms of this part shall be of force or effect or shall be delivered to the person until he has taken an oath of allegiance.

. . .

24. A person

(*a*) Naturalized in terms of or deemed to be naturalized by virtue of the provisions of a territorial law relating to naturalization in force before the date of commencement of this Act; or

(*b*) To whom or with respect to whom a certificate of naturalization or other document conferring naturalization was granted by an authority of a territory in terms of an enactment, other than a territorial law, relating to naturalization in force in the territory before the date of commencement of this Act; or

(*c*) Deemed by virtue of the provisions of an enactment referred to in paragraph (*b*) to be a person to whom or with respect to whom a certificate or other document referred to in that paragraph was granted;

shall, if immediately before the date of commencement of this Act he was a British subject, become on that date a citizen by naturalization.

Part VII

RENUNCIATION, DEPRIVATION AND LOSS OF CITIZENSHIP

25. (1) Subject to the provisions of sub-section 3, a citizen of full age and capacity who is also a citizen of a specified country or of the Republic of Ireland or a national of a foreign country may make a declaration of renunciation of his citizenship.

(2) A declaration made in terms of sub-section 1 shall not be of force or effect unless it is made and registered in the manner prescribed.

(3) No declaration made by a citizen in terms of sub-section 1 shall be registered:

(*a*) If he is a citizen of a specified country or of the Republic of Ireland and is ordinarily resident in the Federation; or

(*b*) If he is a national of a foreign country, and Her Majesty is engaged in any war;

without the written authority of the Minister.

(4) Upon registration of a declaration made in terms of this section, the person by whom the declaration is made shall thereupon cease to be a citizen.

(5) For the purposes of this section, a woman who has been married shall be deemed to be of full age notwithstanding that she has not attained the age of twenty-one years.

26. A person shall cease to be a citizen if he is deprived of his citizenship by an order made by the Minister in terms of section twenty-seven, twenty-eight, twenty-nine or thirty on a date to be specified in the order.

27. (1) Subject to the provisions of this section, the Minister may by order deprive of his citizenship a citizen by registration or a person naturalized in the Federation if the Minister is satisfied that his registration or naturalization was obtained by means of fraud, false representation or the concealment of a material fact or it is discovered that, at the time he became or, as the case may be, was registered as a citizen or application was made for the grant of a certificate of naturalization, he was not qualified to become a citizen or, as the case may be, to be registered as a citizen or to be naturalized.

(2) Subject to the provisions of this section, the Minister may by order deprive of his citizenship a citizen who:

(*a*) Is a person naturalized in the Federation; or

(*b*) Was an alien and became a citizen by registration by virtue of the provisions of section fifteen;

if he is satisfied

(i) That he has shown himself by actor speech to be disloyal or disaffected towards Her Majesty; or

(ii) That he has, during a war in which Her Majesty is or has been engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with a business that was to his knowledge carried on in such manner as to assist an enemy in war; or

(iii) That he has, within five years after becoming naturalized or, as the case may be, registered as a citizen, been sentenced in any country to imprisonment for a term of not less than twelve months.

(3) The Minister shall not deprive a person of his citizenship by order made in terms of sub-section 1 or 2 unless he is satisfied that it is not conducive to the public good that the person should continue to be a citizen.

(4) Before making an order in terms of sub-section 1 or 2, the Minister shall cause to be served on the person against whom the order is proposed to be made a notice in writing informing him of the ground on which it is proposed to be made and of his right to have his case referred for inquiry as in sub-section 5 is provided.

(5) Whenever it is proposed to make an order in terms of sub-section 1 or 2, the Minister shall, if the person against whom the order is proposed to be made so requests, refer the case for inquiry and report to a commissioner appointed by him for the purpose, who shall be a person who holds or has held the office of judge of the Federal Supreme Court or of a high court or who is an advocate or barrister of not less than ten years' standing.

(6) The powers, rights and privileges of a commissioner appointed in terms of sub-section 5 shall be the same as those conferred upon a commissioner by the Federal Commissions of Inquiry Act, 1955, and the provisions of sub-section 3 of section 2 and of sections 9 to 18 of that Act and so much of the regulations made thereunder as are applicable shall, *mutatis mutandis*, apply in relation to an inquiry under this section and to a person summoned to give evidence or giving evidence at the inquiry.

28. The Minister may by order deprive of his citizenship a citizen who is declared to be a prohibited immigrant in terms of the Immigration Act, 1954, or who is removed from the Federation under a warrant for removal issued in terms of the Deportation Act, 1954.

29. (1) If a naturalized person who was a citizen of a specified country or of the Republic of Ireland has in terms of a provision of the law in force in the country of which he was such a citizen been deprived of that citizenship on grounds which, in the opinion of the Minister, are substantially similar to any of the grounds specified in section twenty-seven, then, if the naturalized person is also a citizen, the Minister may by order deprive him of his citizenship if he is satisfied that it is not conducive to the public good that he should continue to be a citizen.

(2) The provisions of sub-sections 4, 5 and 6 of section twenty-seven shall, *mutatis mutandis*, apply in relation to an order which it is proposed to make in terms of sub-section 1.

30. (1) If a person is deprived of his citizenship in terms of section twenty-seven, twenty-eight or twenty-nine, the Minister may by order deprive all or any of the children of whom the person is the responsible parent who are not of full age or citizens by birth of citizenship.

(2) A person who has been deprived of citizenship by order made in terms of sub-section 1 may, within one year after attaining the age of twenty-one years or within such longer period as the Minister may permit, make application to the Minister to resume citizenship.

(3) If the Minister approves an application made in terms of sub-section 2, the applicant shall file in the office of the registrar, in the manner prescribed, a written declaration of his intention to resume citizenship, and upon the registration of the declaration, in the manner prescribed, and upon his taking an oath of allegiance, he shall again become a citizen.

31. (1) Subject to the provisions of this section, a citizen of full age and capacity who is a citizen by registration or by naturalization shall lose his citizenship and cease to be a citizen if, after he has become of full age and while he is of full capacity, he is absent from the Federation after the date of commencement of this Act for a continuous period of three years or such longer period as the Minister at his request may, before the expiration of the period of three years, fix.

(2) No period

(*a*) Occupied in the discharge of his duties outside the Federation by a person who is in Crown service under the Government of the Federation or of a territory; or

(*b*) During which a person resides outside the Federation by reason of his service

(i) With an international organization of which the Federal Government is a member; or

(ii) In the employment of

A. A person resident in the Federation; or

B. A society, body of persons or company, the central control and management of which are in the Federation; or

C. A body incorporated directly by a federal or territorial law; or

(*c*) During which a person resides outside the Federation on account of ill-health or disability; or

(*d*) During which a person attends an educational institution outside the Federation; or

(*e*) During which a person, who is the spouse of a person referred to in paragraph (*a*), (*b*), (*c*) or (*d*) or the spouse of a citizen by birth, descent or incorporation of territory, is absent from the Federation for the purpose of being with him;

shall be taken into account for the purpose of determining the length of the person's absence from the Federation.

(3) The provisions of sub-section 1 shall not apply to

(*a*) A citizen by registration or by naturalization who has served in the armed forces of the Crown in time of war, and who has been honourably discharged therefrom; or

(*b*) The wife of a citizen referred to in paragraph (*a*).

(4) A request made in terms of sub-section 3 of section 3 of the Immigration Act, 1954, by such a citizen as is referred to in sub-section 1 shall, for the purposes of this Act, be treated as request made to the Minister in terms of this section.

Part VIII

Special Provisions with Respect to Married Women and Children

32. (1) If before the date of commencement of this Act a woman ceased to be a British subject because:

(*a*) On her marriage to an alien she acquired the nationality of her husband; or

(*b*) Her husband, being a British subject, acquired a new nationality during the continuance of the marriage and, by reason of her husband acquiring that new nationality, she also acquired that nationality;

she shall, subject to the provisions of sub-section 2, be deemed, for the purposes of this Act, to have been a British subject immediately before the date of commencement of this Act.

(2) The provisions of sub-section 1 shall not apply to a woman who is a party to an external polygamous marriage.

33. (1) Subject of the provisions of this Act, a married woman shall be capable of acquiring and divesting herself and being deprived of citizenship in all respects as if she were an unmarried woman or a widow.

(2) No woman shall acquire or lose citizenship by reason of marriage only.

34. (1) A person born out of wedlock and legitimated, before the date of commencement of this Act, by the subsequent marriage of his parents, shall be treated, for the purpose of determining whether he was a British subject immediately before that date, as if he had been born legitimate.

(2) A person born out of wedlock before, on or after the date of commencement of this Act and legitimated, on or after the date of commencement of this Act, by the subsequent marriage of his parents, shall, from the date of the marriage, be treated, for the purpose of determining whether he is a citizen, as if he had been born legitimate.

(3) A person shall be deemed, for the purposes of this section, to have been legitimated by the subsequent marriage of his parents only if by the law of the place in which his father was domiciled at the time of the marriage, the marriage operated, either immediately or subsequently, to legitimate him.

35. A reference in this Act to the status or description of the father of a person at the time of the person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death, and if the death occurred before and the birth occurs on or after the date of commencement of this Act, the status or description which would have been applicable to the father had he died after that date shall be deemed to be the status or description applicable to him at the time of his death.

Part IX

MISCELLANEOUS PROVISIONS

36. (1) If by an enactment for the time being in force in a specified country provision is made for enabling persons to remain or to become British subjects without citizenship, a person who by virtue of the enactment is a British subject without citizenship shall be deemed also to be a British subject without citizenship by virtue of this section.

(2) The enactments relating to British nationality in force in the Federation before the 1st January, 1949, shall continue to apply to a person while he remains a British subject without citizenship as in sub-section 1 is provided:

Provided that:

(i) If the person is a male, nothing in this subsection shall confer British nationality on a woman whom he marries during the period during which he is a British subject without citizenship or on a child born to him during that period; and

(ii) He shall not, by becoming naturalized in a foreign state, be deemed to have ceased to be a British subject by virtue of section 13 of the British Nationality and Status of Aliens Act, 1914, of the United Kingdom; and

(iii) So long as a woman remains a British subject without citizenship as in sub-section 1 is provided, she shall not, on marriage to an alien, cease to be a British subject.

(3) So long as a person remains a British subject without citizenship as in sub-section 1 is provided, he shall be treated, for the purpose of an application made by him for registration as a citizen in terms of this Act, as if he were a citizen of a specified country or of the Republic of Ireland.

. . .

41. If the Governor-General is notified by one of Her Majesty's Principal Secretaries of State that a country which is not specified in the Second Schedule has enacted a law whereby citizens of the country are declared to be British subjects or Commonwealth citizens, he may, by notice in the *Federal Gazette*, amend the Schedule by inserting the name of the country in the Schedule.

. . .

SECOND SCHEDULE (Sections 2 and 41)

Specified Countries

Australia	New Zealand
Canada	Pakistan
Ceylon	Union of South Africa
India	United Kingdom and Colonies

SPAIN

NOTE

The decree of 26 July 1957 approving the revised text of the Act on the Legal Organization of the State Administration (*Boletín Oficial* No. 195, of 31 July 1957) included provisions concerning the responsibility of the State, and of state authorities and civil servants, in respect of infringements of the property and other rights of individuals.

An Act of 20 July 1957 (*Boletín Oficial* No. 187, of 22 July 1957) dealt with the organization of technical education in both state and private institutions.

A decree of 26 July 1957 (*Boletín Oficial* No. 217, of 26 August 1957. Corrigenda in *Boletín Oficial* No. 226, of 5 September 1957) set out the industries and occupations which, on account of their dangerous or unhealthy nature, were in general to be prohibited to males under eighteen years of age and to all females, and those which, for the same reason, were normally to be prohibited to males under eighteen years and females ander twenty-one. Translations of the decree into English und French have appeared as International Labour Office: *Legislative Series* 1957—Sp.1.

REGULATION OF THE SPANISH CORTES of 26 December 1957[1]

Part XII

RIGHT OF PETITION TO THE CORTES

Art. 80. In accordance with the provisions of article 21 of the Charter of the Spanish People,[2] any individual or corporation may address petitions to the Cortes, on matters within its competence, through its president.

Art. 81. The President shall submit these petitions to the Standing Committee, which shall decide on their relevance and shall, where appropriate, agree on the appointment of a body to study whether a draft law shall be prepared or a written question submitted to the Government, or whether the matter is of sufficient importance to warrant an oral interpellation, to be made by one of the members of the Cortes whom it shall designate for that purpose. In any event, the president shall acknowledge receipt of the petition to the party concerned and shall inform him of the decision taken by the Standing Committee of the Cortes.

. . .

[1] Published in *Boletín Oficial* of 28 December 1957. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1947*, p. 287.

THE SUDAN

SUDANESE NATIONALITY ACT, 1957

Act No. 22 of 1957, signed on 25 June 1957[1]

Part I

PRELIMINARY

. . .

3. In this Act, unless the contrary intention appears:

"Alien" means a person who is not a Sudanese;

"Certificate of Naturalization" means a certificate of naturalization granted or deemed to have been granted under this Act;

"Child" means a legitimate child, and includes an adopted child and a stepchild;

"Council" means the Council of Ministers;

"Disability" means the incapacity attached to any person by reason of minority or unsoundness of mind;

"Domicile" means the place in which a person has his home or in which he resides and to which he returns as his place of permanent abode, and does not mean the place where he resides for a special or temporary purpose only;

"Father" in regard to a person born out of wedlock or not legitimated includes the mother of the person;

"Minister" means the Minister of the Interior;

"Minor" means a person who has not attained the age of twenty-one years;

"Prescribed" means prescribed by regulations made under this Act;

"Responsible parent" in relation to a child means the father of that child or, where the mother has been given the custody of the child by the order of a competent court, or the father is dead, or the child was born out of wedlock and resides with the mother, means the mother of that child.

. . .

4. A person shall, for the purposes of this Act, be of full age, if he has attained the age of eighteen years, and of full capacity if he is not of unsound mind.

Part II

NATIONALITY BY DESCENT

5. (1) A person born before the commencement of this Act shall be a Sudanese by descent, if:

(*a*) (i) He was born in the Sudan, or his father was born in the Sudan; and

(ii) He, at the coming into force of this Act, is domiciled in the Sudan, and has been so domiciled since 31 December 1897, or else whose ancestors in the direct male line since that date have all been so domiciled; or

(*b*) Has acquired and maintained the status of a Sudanese by domicile under section 3 (*a*) of the Definition of Sudanese Ordinance, 1948.

(2) A person born after the commencement of this Act shall be a Sudanese if his father is a Sudanese at the time of his birth.

6. A person who is or was first found as a deserted infant of unknown parents shall, until the contrary is proved, be deemed to be a Sudanese by descent.

. . .

Part III

NATURALIZATION

8. (1) The Minister may, in his discretion, grant a certificate of naturalization as a Sudanese to an alien who makes an application in the prescribed form and satisfies the Minister that:

(*a*) He is of full age and capacity;

(*b*) He has been domiciled in the Sudan for a period of ten years immediately preceding the date of the application;

(*c*) He has an adequate knowledge of the Arabic language or, if he has not such adequate knowledge, he has resided continuously in the Sudan for more than twenty years;

(*d*) He is of good character;

(*e*) He intends, if naturalized, to continue to reside permanently in the Sudan; and

(*f*) If he is a national of any foreign country under any law in force in that country, he has formally renounced the nationality of that country.

(2) No certificate of naturalization shall be granted to any person under the preceding sub-section, until the applicant has taken the oath of allegiance in the form set out in the schedule hereto.

(3) A person to whom a certificate of naturalization has been granted under this section shall have the status of a Sudanese by naturalization as from the date of that certificate.

[1] Published in *Special Legislative Supplement to the Republic of the Sudan Gazette No. 910, dated 25th July, 1957, Supplement No. 1: General Legislation.*

(4) The Minister may, upon application in that behalf, include in a certificate of naturalization the names of any minor children of whom the grantee is the responsible parent; such minor shall, as from the date of such inclusion, have the status of a Sudanese by naturalization.

(5) A grant made under section 4 of the Definition of Sudanese Ordinance, 1948, shall be deemed to be a certificate of naturalization granted under subsection 1.

9. The Minister shall grant a certificate of naturalization as a Sudanese to an alien woman who makes an application in the prescribed form and satisfies the Minister that:

(*a*) She is the wife of a Sudanese;

(*b*) She has resided with her husband in the Sudan for a continuous period of not less than one year immediately preceding the application; and

(*c*) She has renounced her foreign nationality.

10. The Minister's refusal to grant a certificate of naturalization as a Sudanese shall be final and shall not be contested in any court, but the Minister may at any subsequent time grant such certificate.

. . .

Part IV

LOSS OF NATIONALITY

12. Where the Council is satisfied that a Sudanese of full age and capacity —

(*a*) Has acquired the nationality of a foreign country by any voluntary and formal act other than marriage; or

(*b*) Has made a declaration renouncing his Sudanese nationality: Provided, however, that the Council may refuse to accept such declaration if it is made during the continuance of any war in which the Sudan is engaged; or

(*c*) Has, after the commencement of this Act, taken or made an oath, affirmation or other declaration of allegiance to a foreign country; or

(*d*) Has entered or continued in the service of a foreign country, in contravention of any express provision of any law in that behalf;

the Council may order that such person shall cease to be a Sudanese.

13. (1) Where the Council is satisfied that a Sudanese by naturalization —

(*a*) Has obtained his certificate of naturalization by fraud, false representation or the concealment of any material fact, or

(*b*) Has, during any war in which the Sudan is or has been engaged, unlawfully traded or communicated with the enemy or with a subject of any enemy state or has been engaged in, or associated with, any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(*c*) Has, within five years after the date on which he was naturalized, been sentenced in any country to imprisonment for a term not less than one year; or

(*d*) If out of the Sudan, has shown himself by act or speech to be disloyal or disaffected towards the Sudan; or

(*e*) If in the Sudan, has been convicted of any offence involving disloyalty or disaffection to the Sudan; or

(*f*) Has resided outside the Sudan for a continuous period of five years unless

(i) He has so resided by reason of his service under the Sudan Government or of his service with an international organization of which the Sudan is a member; or

(ii) He has so resided as the representative or employee of a person, company or firm resident or established in the Sudan; or

(iii) In the case of a wife or minor child of a person referred to in paragraphs (i) or (ii), such wife or child has so resided with such person; or

(iv) He has, at least once in every year during that period, given notice to the Minister in the prescribed form of his intention to retain his Sudanese nationality;

the Council may, by order, deprive that person of his Sudanese nationality.

(2) Before making an order under this section, the Council shall give to the person in respect of whom the order is proposed to be made, notice in writing informing him of the ground on which the order is proposed to be made, and that he may apply to have the case referred to a committee of inquiry.

(3) If in accordance with the provisions of the preceding sub-section, and within a period of six months of the date of the notice, such person so applies, the Council shall refer the case to a committee for inquiry as hereinafter provided.

(4) An inquiry under this section shall be held by a committee constituted for the purpose by the Council, and the chairman shall be a person who holds or had held a judicial office not below the status of a province judge.

(5) The person in respect of whom an order is proposed to be made under this section shall be entitled to appear before the committee of inquiry personally or by an advocate or a duly authorized agent on his behalf.

(6) The committee appointed under this section shall have all such powers, rights and privileges as are vested in a court of a district judge of the first grade in respect of:

(*a*) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise, and the issue of a commission or request to take evidence abroad; and

(*b*) Compelling the production of documents.

(7) The committee of inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Council, and the Council shall act upon the decision of the committee.

14. Where the Council orders that any person shall cease to be a Sudanese, or be deprived of his Sudanese nationality, the order shall have effect from such date as the Council may direct, and thereupon the said person shall cease to be a Sudanese.

15. When a person ceases to be a Sudanese or has been deprived of his Sudanese nationality, he shall not thereby be discharged from any obligation, duty or liability in respect of any act or thing done or omitted before he has ceased to be a Sudanese or been deprived of the Sudanese nationality.

16. (1) When the responsible parent of a minor ceases to be a Sudanese under section 12 of this Act, that minor shall cease to be a Sudanese only if he is or thereupon becomes under the law of any country, other than the Sudan, a national of that country.

(2) Where a person is deprived of his Sudanese nationality under section 13 of this Act, the Minister may, by order, direct that all or any of the minor children of whom that person is the responsible parent shall cease to be Sudanese: Provided that such minor may, within one year after attaining majority, make a declaration that he wishes to resume the Sudanese nationality, and thereupon he shall again become a Sudanese.

. . .

Part V

MISCELLANEOUS

18. Any references in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where the death occurred before, and the birth after, the commencement of this Act, the status or description which would have been applicable to the father and had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

. . .

PARLIAMENTARY ELECTIONS ACT, 1957

Act No. 23 of 1957, signed on 29 June 1957[1]

. . .

2. In this Act, unless the context otherwise requires:

. . .

"Ordinarily resident in a constituency" means a person who ordinarily resides in that constituency, or who is the owner or lessee of a dwelling house therein.

. . .

5. A person shall be qualified to vote in a constituency for the House of Representatives if he:

(i) Is a Sudanese, and

(ii) Is a male, and

(iii) Is not less than twenty-one years of age, and

(iv) Is of sound mind, and

(v) Has been ordinarily resident in the constituency for a period of not less than six months immediately before the closing of the electoral roll.

. . .

7. A person shall be qualified to vote in a constituency for the Senate if he:

(i) Is a Sudanese, and

(ii) Is a male, and

(iii) Is not less than thirty years of age, and

(iv) Is of sound mind, and

(v) Has been ordinarily resident in the constituency for a period of not less than six months, immediately before the closing of the electoral roll.

. . .

9. The elections to both the Houses of Parliament shall be direct.

. . .

11. (1) Any person who is qualified under the law for the time being in force to be elected as a member of either House of Parliament for a constituency, and who is willing to stand, may be nominated as a candidate for that constituency.

(2) No person may be nominated as a candidate for either House of Parliament in more than one constituency.

. . .

16. (1) Voting shall be secret, and votes shall be cast by means of a ballot paper or a voting token issued direct to the voter in the polling station. Such ballot paper or voting token shall not be signed, or in any other manner marked so as to identify the voter.

(2) A voter shall cast his vote in person: Provided that, subject to such conditions as may be prescribed, this requirement may be waived in the case of a voter present at the polling station and who by reason

[1] Published in *Special Legislative Supplement to the Republic of the Sudan Gazette No. 910, dated 25th July, 1957, Supplement No. 1: General Legislation.*

of blindness or other incapacity is unable to mark his ballot paper or cast his token.

17. (1) Every employer shall, on the polling day, allow to every voter in his employ a reasonable period of absence for voting, and no employer shall make any deductions from the pay or other remuneration of any such voter or impose upon or exact from him any penalty by reason of his absence during such period.

(2) An employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any voter in his employ of a reasonable period of absence for voting, as in this section provided, shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period which may extend to three months or to a fine not exceeding £S. 50 or both.

18. No person shall, during any legal proceedings or otherwise, be required to disclose the name of the person for whom he voted at an election held under this Act.

. . .

SWEDEN

NOTE[1]

I. Legislation

1. In 1957, Parliament, on the proposal of the Government, adopted a new Act on the extradition of criminals, which took effect on 1 January 1958. The new Act replaced a law of 1913, which had become obsolescent in several respects. The main reason for the new legislation, however, was to provide better guarantees than those hitherto existing for public security and humanitarian treatment. The Act contains several new features. Thus, it prescribes that extradition of a person must not take place if he is to be sent to a country where he runs the risk of political persecution. Further, extradition of a person cannot be executed if on account of his youth, health or other personal circumstances the extradition would appear to be clearly inconsistent with humanitarian requirements. If need be, it is to be made a condition for extradition that the person will not suffer capital punishment.

Furthermore, the procedure in matters of extradition has been subjected to a thorough review. The legislators' aim has been to follow, to as large an extent as possible, the general principles for legal procedure in ordinary criminal cases. For example, legal defence is to be provided for in matters of extradition in the same way as in criminal cases.

2. According to Swedish law, crimes committed on board a Swedish ship, even outside of Swedish territorial waters, fall under Swedish jurisdiction. New legislation of 1957 has extended Swedish jurisdiction to include also crimes committed under similar circumstances on board Swedish aircraft.

Swedish criminal jurisdiction has also been enlarged in another field by legislation during the year 1957. A crime committed abroad by a non-Swedish subject used to fall under Swedish jurisdiction only in cases where the crime was committed against Sweden or a Swedish citizen. Under the new legislation crimes committed against other objects are to fall under Swedish jurisdiction if (1) under Swedish law, a sentence of hard labour may ensue from the act, and (2) under the law of the country where the act took place, no penalty can ensue from it. It is considered that this new provision will be important mainly in cases where a non-Swedish subject, after having committed a crime outside Sweden, takes refuge in Sweden and extradition for some reason does not occur. The idea underlying the new legislation is that, in a situation of that nature, it would seem most objectionable if a gross crime were not brought before the courts.

3. Legislation of 1957 has repealed a provision in the Swedish Criminal Law on corporal punishment. According to this provision, no penalty was inflicted on a person who, in exercising a legal right to administer corporal punishment on someone under his jurisdiction, inflicted a minor injury on him. Since the way in which this provision has been interpreted was felt to have prevented also cases of rather serious battery against children from being brought before the courts, the provision has now been repealed. Abuse of the right to administer corporal punishment will therefore be taken care of, even if the ensuing injury is minor.

II. International Agreements

1. On 30 April 1957, the Convention on Social Security of 9 June 1956 between Sweden and the United Kingdom of Great Britain and Northern Ireland was ratified.

2. On 6 May 1957, Sweden signed the Convention on the Nationality of Married Women, adopted by the General Assembly of the United Nations on 29 January 1957.

3. On 26 June 1957, Sweden signed in Copenhagen a protocol on mutual assistance in judicial matters between Sweden, Denmark and Norway.

4. On 12 July 1957, a convention between Sweden, Denmark, Finland and Norway concerning the waiver of passport control at the Intra-Nordic frontiers was signed in Copenhagen.

5. On 13 December 1957, Sweden signed the European Convention on Extradition, drafted within the Council of Europe.

[1] Information kindly furnished by the Permanent Representative of Sweden to the United Nations.

SWITZERLAND

NOTE[1]

I. CONFEDERATION

A. LEGISLATION

Social Security

A Federal Act of 21 December 1956 amending that of 20 December 1946, on old-age and survivors' insurance, lowered the pensionable age for women, raised the lower age limit for liability to pay contributions and increased rates of old-age and survivors' pensions. The Act entered into force on 1 January 1957.

Standard of Living in Mountainous Regions

By a federal order (arrêté fédéral) of 20 September 1957, the Federal Assembly permitted the granting of subsidies for the transport of foodstuffs to mountainous areas provided that the same delivery prices and retail prices were charged as on the plains. A federal Act of 20 December 1957 increased the family allowances paid under the Act of 20 June 1952 to agricultural workers and agriculturists in mountain areas. An order of 20 December 1957 of the Federal Council amended the General Ordinance on Agriculture of 21 December 1953 so as to require the granting of aid to communes and co-operatives aimed at placing technical equipment at the disposal of agriculturists in the mountains so as to lighten their work and enable them to rationalize their methods of cultivation.

Public Health

Among developments affecting public health particular mention may be made of the Federal Ordinance on meat control of 11 October 1957, and an ordinance of the Department of the Interior on the adding of vitamins to foodstuffs and on advertisements relative thereto.

B. INTERNATIONAL AGREEMENTS

By a federal order of 5 March 1957, the Federal Assembly approved the Revised International Convention on Civil Procedure of 1 March 1954 and the Statute of The Hague Conference on Private International Law of 31 October 1951. The convention entered into force for Switzerland on 5 July 1957, and the statute on 6 May 1957. The convention concerns the position of nationals of one contracting party on the territory of another in relation to aspects of civil procedure, including bodily restraint and free legal aid.

The convention between Switzerland and Luxembourg on social insurance concluded in Berne on 14 November 1955 entered into force on 1 April 1957.

II. CANTONS

Political Rights

In Vaud, an Act of 9 September 1957 amending that of 17 November 1948, on the exercise of political rights, concerned the right of persons unable to vote at the polling booths in elections in cantons and communes to vote by correspondence or during the ten days preceding the election.

Matters relating to Parenthood

In Neuchâtel, an Act amending the Code of Civil Procedure, of 20 November 1957, enabled the judge, in an action concerning proof or denial of paternity, to order blood tests to be taken by a party or by a witness.

Conditions of Work and Vocational Training

Three further standard contracts were adopted under article 324 of the Obligations Code (Code des obligations):[2] for workers in agriculture and open-air market-gardening in Aargau, by an order of 16 March 1957; for domestic workers in Aargau, by an order of 11 October 1957; and for the personnel of téléphériques, télésièges, téléskis and similar means of transport in Valais, by an order of 22 July 1957.

A federal Act of 28 September 1956 permitted the cantons to extend the scope of collective agreements.[3] Acting under this enactment, Valais adopted two orders of 25 June 1957 making generally binding, with some qualifications, two collective agreements of 23 January 1957, affecting cabinet-makers, joiners and carpenters and plasterers and painters. In Vaud, an order of 1 November 1957 made generally binding an agreement governing the technical training of cinema projectionists, while an order of 11 March 1957 extended the scope of a collective agreement of 1 January 1957 affecting horticulturists.

An ordinance of 6 December 1957 of Berne concerned the organization of vocational training in

[1] This note is based upon texts received through the courtesy of the Permanent Observer of Switzerland to the United Nations.

[2] See *Yearbook on Human Rights for 1955*, p. 224.

[3] See also *Yearbook on Human Rights for 1956*, pp. 211 and 212, and previous *Yearbook* references mentioned in footnote 1 to p. 212.

agriculture. In Vaud, an Act of 13 November 1957 amending that of 23 May 1950, on vocational training, required the annual holidays of apprentices to be at least eighteen working days, consecutively if possible.

Social Security

In relation to social security, mention may be made of the Act of 17 October 1957 of Basle-Town, on the making of grants towards the house-rent of large families, the Act of 24 June 1957 of Neuchâtel, on supplementary old-age and survivors' assistance, and a decree of 10 December 1957 of Vaud, granting family allowances to agriculturists and viticulturists with low incomes. In Basle-Town, an Act of 28 March 1957 amending the Education Act of 4 April 1929 set up a system of obligatory accident insurance for pupils in public schools; the State was to pay two-thirds of the premiums for each child, except that insurance was to be free for parents not having a certain minimum income.

THAILAND

NOTE[1]

I. General Observations

No new constitutional provisions were promulgated in Thailand during 1957.

Elections to the Assembly of the People's Representatives took place in December 1957 under the conditions prescribed by the Constitution and the Electoral Law, without disturbance. The Assembly of Representatives has still a complement of members appointed by the Government according to a temporary provision of the Constitution. But this provision is to have no application after the completion of the transitional period of ten years. Women, who have electoral rights under the same conditions as men, have shown interest in the matter by the election to the Assembly of several women.

Freedoms such as the freedom of speech and freedom of public meeting, provided for also in the Constitution, continue to be exercised in public places. Weekly meetings in such places have become popular under the name of "Hyde Park meetings", in imitation of a practice long followed in England. They have been used freely by candidates during the electoral period.

II. Legislation

Socially speaking, the year 1957 was very important in Thailand, because it was the 2,500th anniversary of the establishment of the Buddhist religion, which is the state religion, and is deeply cherished by the people of the country. Many celebrations took place to observe the occasion. In accordance with the spirit of leniency and friendship for living creatures which is one of the characteristics of Buddhist teaching, the Government marked the occasion by issuing an Act of Amnesty and an Act abolishing Blemish (January 1957), and reducing periods of imprisonment. The Amnesty Act applied only to certain crimes. For others, the policy adopted was to "abolish blemish", the effect of which is not that the sanction is entirely forgotten (as in "amnesty"), but that it shall no longer hinder the guilty person from benefiting from administrative or social measures (such as appointment as official and benefits of certain civil privileges).

A Department of Public Welfare in the Ministry of Interior was organized by a decree of 15 January 1957.

III. Judicial Decisions on Questions of Nationality

1. *Judgement of the Dika Court No. 723-737/2500*

The defendants, women born of Chinese fathers in Thailand, acquired Thai nationality according to the Nationality Act, B.E. 2456. They later married Chinese men, and possessed alien identity cards issued under the Aliens Registration Act. They were arrested and prosecuted for failing to renew their alien identity cards in violation of the Aliens Registration Act.

The Dika Court based its judgement upon the Nationality Act, B.E. 2456, section 4 of which provides that Thai women who marry aliens shall lose Thai nationality, provided that according to the law of the country of their husbands they may acquire the nationality of their husbands. The prosecutor could not show to the court that there was a law in China allowing the defendants to acquire the nationality of their husbands. The defendants, therefore, did not lose their Thai nationality, and did not therefore need alien identity cards.

2. *Judgement of the Dika Court No. 1696/2500*

The defendant was born of Chinese parents in Thailand. He therefore acquired Thai nationality. He had gone to live in China for some years, and returned to Thailand in the year B.E. 2492. He was arrested and charged of possessing a radio transmitter and receiver without licence, and having sent news by means of radio communication by using the said apparatus; it was alleged that such a deed might endanger the safety of the nation.

The Dika Court ruled the defendant guilty, and found it suitable that he have his Thai nationality revoked under section 16 of the Nationality Act, B.E. 2495.

[1] Information kindly furnished by the Minister for Foreign Affairs of Thailand.

TUNISIA

NOTE

Workmen's Compensation

Act No. 57-73 of 11 December 1957 (*Journal officiel de la République tunisienne* No. 43, of 20 December 1957. Corrigenda in *Journal officiel* No. 3, of 10 January 1958) provided for a system of compensation for occupational injuries and diseases. The French text of the Act and an English translation have appeared as International Labour Office: *Legislative Series* 1957 — Tun.1.

ACT No. 57-59 CONCERNING CIVIC INFAMY (INDIGNITÉ NATIONALE) of 19 November 1957 (25 Rabia II 1377)

AMENDED BY ACT NO. 57-63 OF 3 DECEMBER 1957 (10 Jumada I 1377)[1]

Art. 1 (new). Any Tunisian who, between 18 January 1952 and 31 January 1954, deliberately obstructed or attempted to obstruct, in the manner described in article 2 below, the struggle for Tunisian independence, is guilty of civic infamy, and is liable to the criminal penalties prescribed in article 4 below, without prejudice to the penalties prescribed in Act No. 57-13, of 17 August 1957 (20 Muharram 1377), mentioned above.[2]

Art. 2. (new). The fact of having deliberately, during the period specified in article 1 above, given direct or indirect assistance to the authorities of the protectorate, or to the puppet governments which exercised authority in Tunisia, constitutes civic infamy.

Art. 3. Cases of civic infamy are tried and judged by the High Court of Justice in accordance with the procedure prescribed in the decree of 19 April 1956 (8 Ramadan 1375) mentioned above.[3]

Art. 4. Civic infamy is punishable by suspension of civic and political rights (dégradation nationale)

This penalty shall comprise:

1. Loss of the right to vote, to elect and be elected, and of all civic and political rights and the right to wear decorations;

2. Dismissal and exclusion of convicted persons from public office and employment in the government service or in any official body;

3. Dismissal and exclusion of convicted persons from all posts as administrators, directors, general secretaries and managers in companies holding concessions or receiving subsidies or aid from the State or the public authorities;

4. Disqualification from serving as member of a jury, an expert, an arbitrator or a guardian, or from witnessing documents or making statements before a court, except for purposes of information;

5. Dismissal and exclusion of convicted persons from all organizations, associations and trade unions representing various trades and professions and preserving discipline within them;

6. Loss of the right to run a school, to teach or to be employed in any educational institution as a teacher, master or supervisor;

7. Loss of the right to operate a publishing press or radio or cinematographic undertaking or to be employed regularly by any such undertaking;

8. Loss of the right to possess or to carry arms;

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[1] Act No. 57-59 was published in the *Journal officiel de la République tunisienne* No. 35, of 22 November 1957, and Act No. 57-63 in the *Journal officiel* No. 38, of 3 December 1957. Translation by the United Nations Secretariat.

[2] Act No. 57-13 concerning the confiscation of illegally acquired property.

[3] Decree of 19 April 1956 establishing the High Court of Justice.

9. Prohibition from acting as director or manager of a firm.

Suspension of civic and political rights shall continue over a period prescribed by order of the High Court of Justice.

Art. 5. The High Court of Justice, on finding an accused person guilty of civic infamy, may decide that the person convicted of the offence shall be prohibited from residence in one or more areas of the republic.

. . .

TURKEY

NOTE

Protection of Children[1]

Act No. 6972 on the protection of children (*Official Gazette* No. 9615 of 24 May 1957) was adopted on 24 May 1957 in order to protect orphans or children whose parents are not known, abandoned or neglected children and those who are in danger of becoming prostitutes, beggars, alcoholics or drug addicts. This law defines such children "as children in need of protection". Important duties fall on government authorities regarding these children.

Such children are taken care of by "organizations", founded under the special authority of provinces or municipalities, and entrusted with the task of raising and educating them and teaching them a trade or profession. The Ministry of Education and the Ministry of Health and Social Services are empowered to give these organizations all the help they need. The organizations have to build children's homes and institutions for their care. If it is not possible to build such homes and institutions in one province, they are to be built in neighbouring provinces with the mutual consent of the provinces concerned. Children who have not reached school age are sent to homes for child care and those of school age to rehabilitation centres. As younger children grow up, they are transferred from the homes to the centres.

Whenever a child in need of rehabilitation is located by the police, a government or municipal official, they must advise the highest civil official of their locality. The children who need rehabilitation are separated from the rest, and, pending a court order, are lodged in the homes or centres or charitable institutions, and, if these are not available, in private homes, the expenses to be met by the organizations. In cases which do not require immediate attention, all the documents pertaining to the child's case are sent to the civil court. The court then rules that such children be sent to homes and centres for rehabilitation until they are of age. This ruling can be reversed upon the application of the interested parties either before or after the child has come of age.

The organizations establish centres for vocational training and workshops, according to local conditions, with rotating capital, to take care of children who need rehabilitation, to provide for the upkeep, shelter, education and training of such children who are either of school age or older and to teach them a trade which will meet local needs in the future, in the field of administration, agriculture and industry.

Social Security

The Invalidity Old Age and Survivors' Insurance Act, No. 6900 of 9 February 1957 (*Official Gazette* No. 9534, of 13 February 1957), amended and codified the law relating to the types of insurance in question. Translations of the Act into English and French have appeared as International Labour Office: *Legislative Series* 1957 — Tur.1.

[1] Information kindly furnished by the Government of Turkey.

ACT OF 11 SEPTEMBER 1957[1] AMENDING ARTICLES 35 AND 109 OF THE ELECTION OF NATIONAL DEPUTIES ACT,[2] AND ADDING A PROVISIONAL ARTICLE

Art. 1. The first paragraph of article 35, as amended, of the Election of National Deputies Act, No. 5545, is hereby amended as follows:

"Any citizen eligible for election may be a candidate for the office of national deputy. The competent organs of central committess of political parties may submit nominations for the electoral districts in which their party organizations are active. Political parties taking part in an election shall, moreover, do so in each individual electoral district in which they have provincial and district organizations and shall nominate as many candidates as the number of national deputies who are to be returned from each such district.

"Where, for any reason, the number of candidates nominated is less than the number of national deputies to be returned from an electoral district, the Central Electoral Board or the Provincial Electoral Board shall immediately communicate with the party organization drawing up lists of candidates and call upon it to complete the number of nominations. The party organization concerned shall make up the

[1] This Act was published in *Official Gazette* No. 9705, of 13 September 1957. Translation by the United Nations Secretariat.

[2] Extracts from this Act were published in the *Yearbook on Human Rights for 1950*, pp. 288-290.

deficiency within twenty-four hours of the receipt of such a communication.

"Political parties which fail to comply with the above requirements shall forfeit their right to participate in the election in all electoral districts"

Art. 2. The third paragraph of article 35 of the Election of National Deputies Act, No. 5545, is hereby amended as follows:

"A person who has requested a political party to support his candidacy may not stand as an independent candidate or be nominated or elected by another party in any electoral district."

Art. 3. The following paragraphs shall be inserted after the third paragraph of article 35, as amended, of the Election of National Deputies Act, No. 5545:

"In the case of regular elections, a member of a political party who has not resigned from that party at least six months before the date of such elections may not be nominated by another political party.

"In the event of the Turkish Grand National Assembly deciding to hold an election again, the same provision shall apply to a member of a political party who has resigned from that party within two months of the date of the decision or who has resigned from it thereafter.

"Any person who gives false information with regard to the matters referred to in the sixth and seventh paragraphs of this article or who connives at or is a party to such action may be sentenced to a term of imprisonment of from one to three years."

"A member of one political party may not be nominated by another political party even with his consent."

. . .

Art. 6. This Act shall enter into force on the date of publication.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

ACTS SUPPLEMENTING AND AMENDING THE CONSTITUTION OF THE UKRAINIAN SSR AND THE LEGISLATION IN FORCE IN THE UKRAINIAN SSR ADOPTED AT THE THIRD SESSION OF THE SUPREME SOVIET OF THE UKRAINIAN SSR, FOURTH CONVOCATION[1]

1. In view of the introduction in the Ukrainian SSR of universal seven-year education in urban and rural communities and of the abolition of fees for tuition in the upper classes of secondary schools, in specialized secondary schools and in higher educational establishments, the Supreme Soviet of the Ukrainian Soviet Socialist Republic hereby resolves:

To amend article 101 of the Constitution of the Ukrainian SSR to read as follows:

"*Art. 101.* Citizens of the Ukrainian SSR have the right to education.

"This right is ensured by universal and compulsory seven-year education; by extensive development of secondary education; by free education in all schools, higher as well as secondary; by a system of state grants for students of higher schools who excel in their studies; by instruction in schools being conducted in the native language; and by the organization in the factories, state farms, machine and tractor stations and collective farms of free vocational, technical and agronomic training for the working people." (*Vedomosti Verkhovnovo Soveta Ukrainskoy SSR*, No. 2, 30 March 1957, p. 56, Act. No. 49)

2. On 15 March 1957, the Supreme Soviet of the Ukrainian SSR passed an Act confirming decrees No. 67, of 3 May 1956, and No. 70 of 14 May 1956, of the Presidium of the Supreme Soviet of the Ukrainian SSR, to amend articles 282 and 286 of the Code of Criminal Procedure of the Ukrainian SSR. As amended, these articles provide that "the courts shall not have the right to impose any time-limit on statements by the parties". (*Vedomosti Verkhovnovo Soveta Ukrainskoy SSR*, No. 5, 15 July 1956, Act No. 67)

3. The Presidium of the Supreme Soviet of thd Ukrainian SSR, by a decree of 31 May 1957, amendee articles 61, 75, 114, 135 and 136 of the Labour Code of the Ukrainian SSR, which regulate the working conditions of minors, so as to read as follows:

"61. Young persons shall be paid for a reduced working day at the same rate as workers in the same category for a full working day."

"75. Young persons of sixteen to eighteen years of age who are permitted to do piece-work shall be paid for such work at the same rate as adult workers and shall, in addition, receive overtime at the applicable rates for the period by which the full working day fixed for adults exceeds the reduced working day for young persons."

"114. After eleven months' uninterrupted employment in an undertaking or establishment, manual and non-manual workers shall be granted regular paid annual leave of not less than twelve working days. Manual and non-manual workers under eighteen years of age shall be granted leave of one calendar month."

"135. The employment of young persons under sixteen years of age is prohibited.

"In exceptional cases, young persons who have reached the age of fifteen years may be employed by agreement with factory, plant or local trade union committees."

"136. The working day for apprentices of fifteen to sixteen years of age who are undergoing individual or group training and for manual and non-manual workers of fifteen to sixteen years of age shall be fixed at four hours, and the working day for manual and non-manual workers of sixteen to eighteen years of age at six hours." (*Vedomosti Verkhovnovo Soveta Ukrainskoy SSR*, No. 14, 31 May 1957, pp. 100-101, decree No. 83)

[1] Texts and information kindly furnished by the Minister for Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translation by the United States Secretariat.

ACT CONCERNING THE STATE BUDGET OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC FOR 1957[1]

Art. 3. The total sum of 20,250,802,000 roubles shall be appropriated for social and cultural activities

[1] Published in the verbatim record of the third session of the Supreme Soviet of the Ukrainian Soviet Socialist Republic, fourth convocation, page 280, and kindly made available by the Minister for Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translation by the United Nations Secretariat.

in the State Budget of the Ukrainian Soviet Socialist Republic for 1957.

Expenditure on the different branches of social and cultural activity shall be apportioned as follows:

(*a*) Education and culture: expenditure on primary, seven-year and general secondary schools; technical and other specialized secondary educational establishments; higher educational and scientific-research establishments; workshop and factory apprenticeship schools, courses and other activities designed to raise the qualifications of workers, collective farm workers and engineering and technical workers; libraries, palaces and houses of culture, clubs, theatres, the press and other educational and cultural activities: a total of 10,110,074,000 roubles;

(*b*) Public health and physical culture: expenditure on hospitals and dispensaries, crèches, sanatoria and other establishments for the medical care of the population; sport and physical culture: a total of 5,835,713,000 roubles;

(*c*) Social security and social insurance: expenditure on pensions and allowances; the maintenance of homes for the disabled and other measures: a total of 4,305,015,000 roubles.

. . .

EXTRACTS FROM A DECISION OF THE COUNCIL OF MINISTERS OF THE UKRAINIAN SSR AND THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE UKRAINE "ON THE DEVELOPMENT OF HOUSING CONSTRUCTION IN THE UKRAINIAN SSR" [1]

Together with the whole Soviet people, the Ukrainian people are undertaking extensive housing construction. At state expense, 12.7 million square metres of housing were brought into occupancy in the republic during the first and second five-year plans, and 30.4 million square metres were constructed during the fourth and fifth five-year plans.

The housing inventory in city and urban-type settlements of the republic has not only been fully restored, but is now considerably larger than before the war. Thus, at Kiev the housing inventory at the beginning of 1956 was more than 1.5 times as large as in 1926 and 20 per cent as large as in 1940. In 1956 alone, 202,000 square metres of housing were constructed at Kiev and in 1957, the builders, workers of industrial enterprises and individual inhabitants of the city will make 280,000 square metres of new housing available for occupancy. The housing inventory of other cities of the republic has also considerably increased. Thus, the housing inventory of Kharkov is now 1.8 times as large as in 1926, and that of Stalino 5.7 times as large.

There has also been an extensive development of housing construction in rural areas. In the period 1951-1955 alone collective farm workers and members of the rural intelligentsia built 460,000 individual dwelling houses.

The further development of housing construction is one of the prime tasks of all party, Soviet, trade union and economic organizations of the republic and of the whole Ukrainian people.

The reorganization of the system of administration of industry and construction, the growth of state capital investment in housing and the steady rise in the workers' material welfare create favourable conditions for the intensive development of housing construction, for the display of local initiative, the use of available reserve and the enlistment of the workers themselves for direct participation in housing construction.

The Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR resolve as follows:

To require the State Planning Organization of the Ukrainian SSR, the economic councils of the economic administrative districts, the ministries and departments of the Ukrainian SSR, the Executive Committees of the Councils of Workers Deputies of regions and the cities of Kiev and Sevastopol, when fixing the volume of housing construction under state plans for the development of the national economy, to be guided by the need to eliminate the shortage of housing for workers within the next ten to twelve years.

To set the target for state housing construction for the period 1956-1960 at a total area of 29.5 million square metres, of which 5.2 million square metres are to be brought into occupancy in 1957, 5.8 million square metres in 1958, 7.1 million square metres in 1959 and 8.4 million square metres in 1960.

To set the target for housing to be constructed by the population at its own expense with the aid of state loans in the period 1956-1960 in cities and urban-type settlements, machine and tractor stations, state farms and industrial forestry undertakings at 21.4 million square metres, of which 2.5 million square metres are to be constructed in 1957, 4 million square metres in 1958, 5.9 million square metres in 1959 and 7.7 million square metres in 1960.

To increase the volume of housing construction in

[1] Published in *Rabochaya Gazeta* of 4 September 1957 and kindly made available by the Minister for Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translation by the United Nations Secretariat.

collective farms by collective farm workers and members of the rural intelligentsia from 460,000 houses in the period 1951-1955 to 860,000 houses in the period 1956-1960, of which 141,000 houses are to be constructed in 1957, 174,000 houses in 1958, 200,000 houses in 1959 and 234,000 houses in 1960.

EXTRACTS FROM THE REPORT OF THE STATISTICAL BOARD OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UKRAINIAN SSR IN 1957[1].

In 1957, a further improvement was achieved in the level of living and cultural level of the workers of the republic.

During the past year, the Party and the State carried out a series of important measures to increase the material prosperity and raise the cultural level of the Soviet people.

From 1 January 1957, the wages of lower-paid manual and non-manual workers were raised and, from the same date, manual and non-manual workers and students receiving wages or scholarships not exceeding 370 roubles a month were exempted from taxation.

Further progress was made during 1957 with the change-over to a shorter working day for industrial workers. In the last quarter of 1956, underground workers in the coal-mines of the Donbas and the Lvov-Volynsky coal basin switched to a shorter six- or seven-hour working day, and in 1957 a shorter working day was introduced for manual and non-manual workers in the extractive, metallurgical and coal-tar chemical undertakings of the iron and steel industry and in certain undertakings of other branches of industry. The change-over to a shorter working day does not entail any reduction in wages.

At the end of 1957, the numbers of manual and non-manual workers employed in the national economy of the Ukrainian SSR was 9,200,000, nearly 400,000 more than at the end of 1956.

In 1957, 146,000 young skilled workers graduated from the labour reserve schools and colleges, 57,000 of them as agricultural mechanics. All graduates were directed to work in industry, construction, transport or agriculture.

An important factor in the growth of national prosperity was the new State Pensions Act.

During 1957 the people of the Ukrainian SSR received over 4,000 million roubles more in pension benefits than in 1956.

In addition, as in previous years, they received various other payments and privileges at state expense such as free medical care, accommodation in sanatoria and rest homes, free of charge or at reduced rates, free education and further vocational training, and scholarships for students.

By decision of the Party and the Government, compulsory deliveries to the State of agricultural products from the holdings of collective farmers and manual and non-manual workers were abolished as from 1958.

As a result of the increased output of goods and of the higher prices paid by the State both for compulsory and for supplementary deliveries of agricultural products between 1953 and 1957, the cash income of collective farms and collective farmers greatly increased.

As compared with 1956, the income of collective farms showed an increase of 13 per cent per household.

In 1957, there was a further improvement in the supplies of foodstuffs and industrial consumer goods available to the population.

The total volume of state and co-operative retail trade in 1957 (not including the commission trade of consumer co-operatives) amounted to 104,500 million roubles, representing an increase of 17 per cent over 1956 in terms of comparable prices, the increase in the turn-over of consumer co-operatives trading in rural areas being 20 per cent.

Further successes were achieved in all branches of culture.

As a result of measures for the introduction of universal secondary education in urban and rural areas, there was a further expansion of the secondary-school system.

There were 218 more general secondary schools, including schools for workers, young people in rural areas and adults, than in 1956.

Seventy-four secondary boarding schools were established under the Ministry of Education of the Ukrainian SSR, and are being attended by more than 17,000 children and young people.

About 365,000 students were studying at higher educational establishments (including correspondence schools). Of the students enrolled in day courses in higher educational establishments during 1957, 33 per cent were young people who had undertaken a period of practical work after the completion of their secondary-school courses.

[1] Published in *Pravda Ukrainy* of 2 February 1958, and kindly made available by the Minister for Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translation by the United Nations Secretariat.

More than 356,000 persons were studying at technical and other specialized secondary educational establishments (including correspondence schools).

In 1957, the number of students taking evening and correspondence courses, without separation from production, at higher educational establishments was more than 260,000, 11 per cent greater than in 1956. In 1957, about 150,000 specialists graduated from higher and secondary specialized educational establishments.

The total number of scientific workers in the republic increased by 7 per cent as compared with 1956 and at the end of 1957 stood at 34,000, of whom over 13,000 hold the degree of Doctor or Candidate of Science.

The number of cinema installations was more than 11,000 at the end of 1957, an increase of 11 per cent over 1956. The number of attendances at film shows in 1957 was 8 per cent greater than in 1956.

In 1957, the medical services provided for the people of the Ukrainian SSR were further improved and extended.

About 19,000 more hospital beds were available in 1957 than in 1956 and there were nearly 12,000 more places in permanent crèches. The number of doctors rose by approximately 3,000 in 1957.

The number of kindergartens increased during 1957. During the summer of that year, more than 1,200,000 children and young people stayed in pioneer camps, children's sanatoria and excursion and tourist centres or spent the summer in the country with their kindergartens, children's homes or crèches.

The volume of construction of cultural, social and educational facilities greatly increased and there was a particularly large expansion of housing construction.

The target set for 1957 by the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR called for the construction, both by the State (through capital investment) and by the people with their own resources and with the help of state loans, of a total area of 7,700,000 square metres of housing in towns, urban settlements, machine and tractor stations, collective farms and lumber camps.

This plan was overfulfilled by the building organizations with the active participation of the broad masses of the workers, a total of 7,800,000 square metres of housing have been built and brought into occupancy during 1957; in addition, through the method of construction by the people, dwellings with a total area of more than 600,000 square metres were constructed and brought into use.

More than 160,000 dwellings were also constructed by collective farmers and the rural intelligentsia during that year.

Capital investment in the construction of schools, hospitals and children's establishments in 1957 was 13 per cent greater than in 1956. A large number of schools of general education, hospitals and polyclinics, kindergartens and creches, cinemas, clubs and other cultural, social and educational facilities were put into operation during the year.

Work continued during the year on the improvement of towns, settlements and regional centres, on the expansion of existing and the construction of new communal facilities — water supplies, sewage systems, public baths, laundries, tram, trolley-bus and omnibus lines, and the supply of gas and heat to residential buildings.

During the year gas mains were constructed in seven towns in the republic, and began to supply gas to the population. The number of dwelling units supplied with gas increased by 21 per cent and the output of gas to consumers by 83 per cent.

UNION OF SOUTH AFRICA

NOTE[1]

1. The General Law Amendment Act, 1957 (Act No. 68 of 1957, assented to on 24 June 1957) amended the Criminal Procedure Act, 1955, in the following ways, among others:

(i) By substituting the following for section 65:[2]

"65. If after a preparatory examination has commenced, the court is, upon application made in person by an accused or his representative, satisfied —

(*a*) That the physical condition of that accused is such that he is unable to attend or that it is undesirable that he should attend the examination; or

(*b*) That circumstances in connexion with the illness or death of a member of that accused's family have arisen which make his presence elsewhere necessary or expedient,

the court may, if in its opinion the examination cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend, authorize the absence of that accused from the examination for a period fixed by the court and subject to such conditions as it deems fit to impose.

"65 *bis*. (1) If after a preparatory examination has commenced, an accused —

(*a*) Absconds; or

(*b*) Conducts himself in such a manner that his removal from the court is desirable and is ordered by the court; or

(*c*) Is granted leave of absence under section sixty-five; or

(*d*) Is absent for any other reason,

the court may direct that the preparatory examination be proceeded with in his absence, and thereafter the said examination shall, except to the extent to which a special procedure is in this chapter directed to be observed in the case of an absent accused, be proceeded with in all respects as if that absent accused were present.

"(2) A direction referred to in sub-section 1 shall not be made if the court is of opinion that a postponement of the examination can be granted without undue prejudice, inconvenience or embarrassment to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend.

"(3) A preparatory examination in regard to which a direction is made that it be proceeded with in the absence of an accused, shall in respect of that accused, unless he is charged under the provisions of sub-section 3 of section sixty-eight, be postponed if he is not in attendance at the stage at which the provisions of section sixty-six come into operation and be proceeded with, subject to the provisions of sub-sections 4 and 5, from that stage when the accused is again in attendance.

"(4) If an accused in respect of whom the court has directed that a preparatory examination be proceeded with in his absence again attends at such examination, the evidence recorded in his absence shall not be required to be read over to him but, if he was not represented during his absence, the court shall briefly inform him if the nature and purport of that evidence and permit him to inspect the record and to make or cause copies thereof to be made at all reasonable times under the supervision of the clerk of the court.

"(5) If an accused in whose absence a preparatory examination was directed to be proceeded with again attends the examination, the court may, unless such accused was legally represented during his absence, upon the application of that accused or his representative recall for further examination any witness who testified at the examination during that accused's absence.

"65 *ter*. Whenever a court has in the course of a preparatory examination against two or more accused made a direction under sub-section 1 of section sixty-five *bis*, and is unable to conclude the said examination in respect of an absent accused by reason of the provisions of sub-section 3 of the said section, the preparatory examination may be concluded against the accused then present in all respects as if he were the only accused appearing thereat."

(ii) By deleting in section 66 (1)[3] the words "in the presence of the accused" and inserting after the words "ask the accused" the words "then present".

(iii) By substituting in section 156 (1)[4] for the word "Every" the words "Subject to the provisions of section one hundred and fifty-six *ter*, every".

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[1] The legislation dealt with in this note appears in *Statutes of the Union of South Africa 1957*, published by the authority of the Government of the Union.

[2] See *Yearbook on Human Rights for 1955*, p. 240.

[3] See *Yearbook on Human Rights for 1955*, p. 240.

[4] Ibid., p. 242.

(iv) By inserting the following sections after section 156:

"156 *bis*. If two or more accused, after a preparatory examination, are charged jointly at a trial before a court of any regional division established under section two of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), or at a trial without a jury before a superior court, with any offence, whether the same or different offences, referred to in section one hundred and eleven or sub-section 1 of section one hundred and twelve,[1] and the court is, at any time after the commencement of the trial, satisfied upon application made in person by any such accused or his representative —

"(*a*) That the physical condition of that accused is such that he is unable to attend or that it is undesirable that he should attend the trial; or

"(*b*) That circumstances in connexion with the illness or death of a member of that accused's family have arisen which make his presence elsewhere necessary or expedient,

the court may, if in its opinion the trial cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend, authorize the absence of that accused from the trial for a period fixed by the court and subject to such conditions as it deems fit to impose.

"156. *ter*. (1) If an accused at a trial referred to in section one hundred and fifty-six *bis* —

(*a*) Absconds; or

(*b*) Is removed from the court as provided in sub-section 1 of section one hundred and fifty-six; or

(*c*) Is granted leave of absence under section one hundred and fifty-six *bis*; or

(*d*) Is absent for any other reason,

the court before which the trial takes place may at any time during the trial direct that the trial be proceeded with in the absence of that accused if he has pleaded to the charge or if it appears by the return of the proper officer or by other sufficient proof that a copy of the charge and, in the case of a superior court, of the notice of trial have been duly served.

"(2) A direction referred to in sub-section 1 shall not be made if the court is of opinion that a postponement of the trial can be granted without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend.

"(3) When the accused are called upon to plead to the charge, the court shall order a plea of not guilty to be entered on behalf of an absent accused in respect of whom the court has directed that the trial be proceeded with in his absence, and a plea so entered shall for all purposes have the same effect at if it had been actually pleaded.

"(4) If an accused in respect of whom a court has made a direction under sub-section 1 attends or again attends the trial, he may, unless he was legally represented during his absence, examine any witness who gave evidence during his absence, and inspect the record of the proceedings or require the court to have such record read over to him.

"(5) If the examination referred to in sub-section 4 takes place after the close of the evidence for the prosecution or any co-accused, the prosecution or such co-accused may, in respect of any issue raised by the examination, lead evidence in rebuttal of any evidence relating to the issue so raised.

"(6)(*a*) When the evidence in respect of all the accused present has been closed and the evidence in respect of any absent accused has not been closed, the court shall, subject to the provisions of paragraph (*b*), postpone the proceedings until such absent accused is in attendance and, if necessary, further postpone the proceedings until the evidence in respect of that accused has been closed.

"(*b*) If it appears to the court that the presence of such an absent accused cannot reasonably be obtained, the court may direct that the proceedings in respect of the accused present be concluded as if his trial had been separate from the trial of the absent accused at the stage at which that accused became absent from the trial and when such absent accused is again in attendance, his trial shall continue from that stage of the proceedings at which he became absent and the court shall not be required to be differently constituted merely by reason of such separation.

"(*c*) When the evidence in respect of all the accused at the trial has been closed and any accused is absent when the verdict is to be delivered, the verdict may be delivered in respect of all the accused or be withheld until all the accused are present or be delivered in respect of any accused present and withheld in respect of the absent accused until he is again in attendance."

2. Section 5(1) of the General Law Amendment Act, 1957, provided as follows:

"5. (1) No person shall publish or make known in any manner the name, address, school, place of employment or any other information likely to reveal the identity of any person under the age of nineteen years who is or has been a party to any civil proceedings or a witness in any legal proceedings of whatever nature, unless the judge, magistrate or other officer who presides or presided at such proceedings, after having consulted any parent or guardian, if any, of such person, consents in writing to such publication or making known."

3. The Native Laws Further Amendment Act, 1957 (Act No. 79 of 1957, assented to on 24 June 1957) contained a number of amendments to, among other

[1] See *Yearbook on Human Rights for 1955*, p. 241 and *Yearbook on Human Rights for 1956*, p. 238.

enactments, the Natives (Abolition of Passes and Co-ordination of Documents Act) 1952.[1] The Native Laws Amendment Act, 1957 (Act No. 36 of 1957, assented to on 24 May 1957) amended the Natives (Urban Areas) Consolidation Act, 1945, in the following ways, among others:

(i) By the addition to section 9, sub-section 7 of the following paragraphs:

"(*b*) The Minister may by notice in the *Gazette* direct that the attendance by natives at any church or other religious service or church function on premises situated within any urban area outside a native residential area shall cease from a date specified in that notice, if in his opinion —

(i) The presence of natives on such premises or in any area traversed by natives for the purpose of attending at such premises is causing a nuisance to residents in the vicinity of those premises or in such area; or

(ii) It is undesirable, having regard to the locality in which the premises are situated, that natives should be present on such premises in the numbers in which they ordinarily attend a service or function conducted thereat,

and any native who in contravention of a direction issued under this paragraph attends any church or other religious service or church function, shall be guilty of an offence and liable to the penalties prescribed by section forty-four: Provided that no notice shall be issued under this paragraph except with the concurrence of the urban local authority concerned, and that the Minister shall, before he issues any such notice, advise the person who conducts the church or other religious service or church function of his intention to issue such notice and allow that person a reasonable time, which shall be stated in that advice, to make representations to him in regard to his proposed action; and provided further that in considering the imposition of a direction against the attendance by natives at any such service or function, the Minister shall have due regard to the availability or otherwise of facilities for the holding of such service or function within a native residential area.

"(*c*) Except with the approval of the Minister given with the concurrence of the urban local authority concerned, and subject to such conditions as the Minister may deem fit, which approval may at any time after consultation with the urban local authority concerned be withdrawn by the Minister, no person shall on premises situated within any urban area outside a native residential area, conduct any school, hospital, club or similar institution which is attended by a native or to which a native is admitted, other than a native attending in the capacity of an employee thereat, unless such school, hospital, club or institution was being so conducted on those premises at the commencement of the Native Amendment Act, 1937 (Act No. 46 of 1937), or if the number of natives attending or admitted to such school, hospital, club or institution at any time exceeds the number of natives who attended or were admitted to that school, hospital, club or institution immediately prior to the commencement of that Act: Provided that this paragraph shall not apply with reference to the admission of a native to any hospital in the event of emergency.

"(*d*) The Minister may by notice in the *Gazette* direct that no native shall attend at or be admitted to any school, hospital, club or similar institution on premises situated within any urban area outside a native residential area, if in his opinion —

(i) The presence of natives on such premises or in any area traversed by natives for the purpose of attending at such premises is causing a nuisance to residents in the vicinity of those premises or in such area; or

(ii) It is undesirable, having regard to the locality in which the premises are situated, that natives should be present on such premises in the numbers in which they ordinarily attend or are admitted to such school, hospital, club or institution; or

(iii) Such school, hospital, club or institution is conducted in a manner prejudicial to the public interest,

and any person who conducts, and any native who attends any school, hospital, club or similar institution in contravention of a direction issued under this paragraph, shall be guilty of an offence and liable to the penalties prescribed by section forty-four: Provided that no notice shall be issued under sub-paragraph (i) or (ii) of this paragraph except with the concurrence of the urban local authority concerned; and provided further that a direction under this paragraph shall not apply with reference to a native attending any such school, hospital, club or institution in the capacity of an employee thereat or with reference to the admission to any such hospital of a native in the event of emergency.

"(*e*) The Minister may by notice in the *Gazette* direct that no native shall attend any place of entertainment on premises situated within any urban area outside a native residential area, if in his opinion —

(i) The presence of natives on such premises or in any area traversed by natives for the purpose of attending at such premises is causing a nuisance to residents in the vicinity of those premises or in such area; or

(ii) It is undesirable, having regard to the locality in which the premises are situated, that natives should be present on such premises in the numbers in which they ordinarily attend at such place of entertainment,

and any person who conducts, and any native who attends any place of entertainment in contravention of a direction issued under this paragraph, shall be

[1] See *Yearbook on Human Rights for 1952*, pp. 280-2.

guilty of an offence and liable to the penalties prescribed by section forty-four: Provided that no notice shall be issued under this paragraph except with the concurrence of the urban local authority concerned; and provided further that a direction under this paragraph shall not apply with reference to a native attending at any such place of entertainment in the capacity of an employee thereat.

"(*f*) The Minister may —

(i) By notice in the *Gazette* prohibit the holding of any meeting, assembly or gathering (including any social gathering), which is attended by any native, in any urban area outside a native residential area either generally or within any specified portion of such urban area or in respect of specified premises or classes of premises;

(ii) By like notice prohibit any person mentioned in the notice, or by notice in writing addressed to any person prohibit that person, from holding, organizing or arranging any such meeting, assembly or gathering,

if in the opinion of the Minister the holding of such meeting, assembly or gathering is likely to cause a nuisance to presons resident in the vicinity where such meeting, assembly or gathering will be held or in any area likely to be traversed by natives proceeding to such meeting, assembly or gathering, or will be undesirable having regard to the locality in which the premises are situated or the number of natives likely to attend such meeting, assembly or gathering, and any person who holds, organizes or arranges any meeting, assembly or gathering in contravention of a prohibition imposed under this paragraph, and any native who attends any meeting, assembly or gathering held in contravention of a prohibition imposed under this paragraph by notice in the *Gazette*, shall be guilty of an offence and liable to the penalties prescribed by section forty-four.

"(*g*)(i) No notice shall be issued under paragraph (*f*) unless the Minister has in writing advised the urban local authority concerned of his intention to issue that notice and has invited that urban local authority to inform him within a specified period whether it has any objection to the issue of the notice, or if such urban local authority objects to the issue thereof within the period so specified.

(ii) No prohibition under paragraph (*f*) shall apply with reference to any meeting, assembly or gathering connected exclusively with any church or other religious service or church function or any school, hospital, club or other similar institution or any place of entertainment.

"(*h*) In this sub-section, 'native residential area' means a location, native village, native hostel or area approved by the Minister for the residence of natives in terms of paragraph (*h*) of sub-section (2)."

(ii) By amending section 10[1] as follows:

(*a*) by the substitution for paragraphs (*a*), (*b*), (*c*) and (*d*) of sub-section 1 of the following paragraphs:

(*a*) He has, since birth, resided continuously in such area; or

(*b*) He has worked continuously in such area for one employer for a period of not less than ten years or has lawfully resided continuously in such area for a period of not less than fifteen years, and has thereafter continued to reside in such area and is not employed outside such area and has not during either period or thereafter been sentenced to a fine exceeding fifty pounds or to imprisonment for a period exceeding six months; or

(*c*) Such native is the wife, unmarried daughter or son under the age at which he would become liable for payment of general tax under the Native Taxation and Development Act, 1925 (Act No. 41 of 1925), of any native mentioned in paragraph (*a*) or (*b*) of this sub-section and ordinarily resides with that native; or

(*d*) In the case of a native who is not a workseeker as defined in section one of the Native Labour Regulation Act, 1911 (Act No. 15 of 1911), and is not required to be dealt with by a labour bureau as provided for in any regulations framed under paragraph (*o*) of sub-section 1 of section twenty-three of that Act, permission so to remain has been granted to him by an officer designated for the purpose by the urban local authority concerned or in the case of a native who is such a workseeker, permission has been granted to him by such labour bureau to take up employment in such area:

Provided that whenever any native who is under this sub-section qualified to remain within any such area for a period in excess of seventy-two hours, becomes disqualified so to remain and cannot within that area or any other such area or outside such area but outside a scheduled native area or released area as defined in the Native Trust and Land Act, 1936 (Act No. 18 of 1936), obtain employment and accommodation for himself, his wife and children, if any, the Minister shall, if satisfied that such native cannot so obtain employment and such accommodation, provide that native with a residential site within any such scheduled native area or such released area."

(*b*) By the substitution in sub-section 1 *bis* for the words "The permission required" of the words "Save in regard to a native originally permitted to be in any area for a specific period, the permission required";

(*c*) By the substitution in sub-section 2 for the words preceding the proviso of the words: "Any native who has in terms of paragraph (*d*) of sub-section 1 been permitted to remain in an area referred to in sub-section 1 shall be given a permit indicating the purposes for which and the period during which

[1] See *Yearbook on Human Rights for 1952*, pp. 283-4 and *Yearbook on Human Rights for 1955*, pp. 233-4.

such native may remain in that area and which may, in the case of a permit authorizing such native to remain for the purpose of seeking work, indicate the class of work in which he may accept employment."

(iii) By making the following changes in section 29:[1]

(*a*) The deletion in sub-paragraph (iii) of paragraph (*b*) of sub-section 1 of the words "has failed to depart therefrom, or having been required under paragraph (*e*) of that sub-section to depart from such an area";

(*b*) The addition at the end of sub-paragraph (iv) of paragraph (*b*) of sub-section 1 of the word "or" and the addition to that paragraph of the following sub-paragraphs:

"(v) Has been convicted of any offence involving public violence in such area; or

"(vi) Has been convicted of any offence under any law relating to the illicit possession, conveyance or supply of habit-forming drugs in such area; or

"(vii) Has been convicted of any offence involving violence to an officer entrusted with the administration of any part of this Act or the regulations made thereunder while carrying out his duties as such and has been sentenced to imprisonment, either with or without the option of a fine, for a period in excess of fourteen days;"

(*c*) The insertion in sub-section 1 after the word "twenty-two" of the words "or any officer of the public service or of an urban local authority, appointed for this purpose by a native commissioner or magistrate";

(*d*) The insertion after sub-section 6 of the following sub-section:

"(6) *bis*. If any condition of suspension of any warrant or order issued under this section is not observed, the native in respect of whom such warrant or order has been issued may, upon the order of a native commissioner of any area or magistrate of any district be arrested without warrant by any member of the South African police and brought before such native commissioner or magistrate, who may then order the execution of any such warrant or order, or may, if satisfied that such native has through circumstances beyond his control or for any other good and sufficient reason been unable to observe any condition of such suspension, further suspend such execution for any further period and on any conditions determined by him."

4. The Group Areas Act, 1957 (Act No. 77 of 1957, assented to on 24 June 1957) consolidated the provisions of the following, which were repealed: the Group Areas Act, 1950,[2] the Group Areas Amendment Act, 1952,[3] the Group Areas Amendment Act, 1955,[4] the Group Areas Further Amendment Act 1955[4] (except for sections 23-26), the Group Areas Amendment Act, 1956[5] and the Group Areas Amendment Act, 1957 (Act No. 57 of 1957, assented to on 20 June 1957). The last-mentioned had introduced a number of further amendments to the principal Act on points of detail.

[1] See *Yearbook on Human Rights for 1952*, pp. 284-5 and *Yearbook on Human Rights for 1955*, p. 234.

[2] See *Yearbook on Human Rights for 1950*, pp. 293-300.

[3] See *Yearbook on Human Rights for 1952*, pp. 277-80.

[4] See *Yearbook on Human Rights for 1955*, p. 233.

[5] See *Yearbook on Human Rights for 1956*, p. 238.

UNION OF SOVIET SOCIALIST REPUBLICS

ACHIEVEMENTS OF THE USSR IN 1957 IN RAISING THE SOVIET PEOPLE'S MATERIAL AND CULTURAL LEVEL OF LIVING

Extracts from the Report of the Central Statistical Board of the Council of Ministers of the USSR on the Fulfilment of the State Plan for the Development of the National Economy of the USSR for 1957[1]

In 1957 there was a further rise in the people's material and cultural level of living. The national income of the USSR, in comparative prices, showed an increase of 6 per cent over the figure for 1956.

Various far-reaching measures designed to effect a further improvement in the Soviet people's material well-being and a further rise in their cultural level were applied during the past year.

Low-paid manual and non-manual workers were granted a wage increase and were exempted from tax with effect from 1 January 1957.

On 1 January 1958 manual and non-manual workers and other citizens with children, as well as single women, were exempted from the tax on bachelors and USSR citizens who are single or have small families.

The change-over to a shorter working day for industrial workers continued in 1957. In addition to underground workers in the coal pits of the Donbass and the Lvov-Volynsky coalfield, who changed over to a shorter working day in the last quarter of 1956, manual and non-manual workers in mining, metallurgical and coal-tar chemical undertakings of the ferrous metallurgical industry and in individual undertakings in other branches of industry were put on a shorter working day (seven or six hours) in 1957. The introduction of the shorter working day does not involve any reduction in the wages of manual or non-manual workers. Furthermore, in ferrous-metallurgical undertakings, at the pits of the Donbass and the Lvov-Volynsky coalfield and in individual undertakings in other branches of industry an upward revision of wage scales and other forms of remuneration and a rise in labour productivity have resulted in an increase in the wages of manual workers since the change-over to the shorter working day.

Under the State Pensions Act, state expenditure on the payment of pensions has increased considerably. In 1957, pension payments totalling 57,900 million roubles were received as compared with 36,500 million roubles in 1956, an increase of 21,400 million roubles.

As in previous years, the population received at the State's expense allowances and lump-sum payments under the manual and non-manual workers' social insurance scheme; social security pensions; allowances for mothers of large families and unmarried mothers; students' grants; free medical aid; vouchers for admission to sanitoria and rest homes free of charge or at reduced rates; free education and further training; and various other payments and privileges. In addition, all manual and non-manual workers received at least two weeks' paid leave, while workers in various professions received leave for longer periods. The total value of the payments and privileges received by the population in 1957 was over 201,000 million roubles, which is almost 33,000 million roubles, or 19 per cent, more than in 1956.

An important measure applied in order to increase personal incomes was a reduction in the public subscription to the 1957 loan by 14,400 million roubles as compared with 1956, and the complete abolition of subscriptions to state loans for the future.

The expansion of the output of collective and state farm products has made it possible to abolish, from 1958 onwards, the compulsory deliveries to the State of agricultural produce from the holdings of collective farm workers, manual workers and non-manual workers who, it is calculated, stand to gain over 3,000 million roubles a year from this.

As a result of the increase in commodity production and the rise in state prices for basic and supplementary deliveries of agricultural produce over the period 1953-1957, the cash incomes of collective farms and their workers have increased considerably. Merely through the rise in the prices of produce delivered and sold to the State, the collective farms and their workers earned almost 50,000 million roubles more in 1957 than in 1952. Allowing for the increase in the quantity of produce delivered and sold to the State, the earnings of the collective farms and the population increased by 64,000 million roubles between 1952 and 1957.

[1] Published in *Izvestia Sovetov Deputatov Trudyaschikhsya SSR* of 28 February 1958. Extracts kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations. Translation by the United Nations Secretariat.

According to provisional figures, the cash income of the collective farms has risen by an average of 6 per cent per household since 1956, and by 140 per cent since 1952.

As a result of the increase in the cash incomes of manual and non-manual workers and peasants, the population's deposits in savings banks increased by 16,800 million roubles in the course of the year.

The average real income of manual and non-manual workers increased by 7 per cent from 1956 to 1957, while the average income of the peasants, in cash and in kind, increased by 5 per cent.

There was a considerable rise in the purchase of goods by the population at state and co-operative shops.

The sale of particular types of goods at state and co-operative shops developed as follows:

1957 sales expressed as a percentage of 1956 sales

Meat, sausages and meat products	119	Knitted goods	125
Fish products	108	Stockings and socks	115
Animal oil	110	Leather footwear	118
Milk and milk products	127	Felt footwear	102
Cheese	113	Rubber footwear	108
Eggs	120	Soap	108
Sugar	108	Furniture	116
Confectionery	108	Wristwatches	130
Tea	108	Sewing-machines	118
Vegetables	104	Refrigerators	137
Fruit	135	Washing-machines	202
Cotton fabrics	102	Vacuum cleaners	163
Woollen fabrics	120	Cameras	113
Silk fabrics	121	Motor-cycles	110
Linen fabrics	122	Bicycles	112
Clothing and underwear	118	Wireless sets	92
		Television sets	112

Further advances were made in all aspects of socialist culture.

The total number of persons in the USSR receiving education in some form or other exceeded 50 million in 1957. There was an increase of 500,000 in the number of pupils attending general education schools in the 1957/58 academic year in comparison with the previous academic year. A total of 1,700 new secondary schools were opened during this period. In all, 1.5 million persons completed their secondary studies and received a school-leaving certificate in 1957.

Higher educational establishments (including correspondence schools) had over 2 million students. Of the students admitted to the day departments of higher educational establishments during the past year, 27 per cent were young people who had completed a period of practical work after finishing their secondary studies.

Some 2 million persons studied at technical and other specialized secondary schools (including correspondence schools).

In 1957, over 3.5 million persons studied at higher and secondary specialized educational institutions, general education schools for young industrial and agricultural workers and schools for adults, without loss of working time.

Over 770,000 young skilled workers graduated from higher and secondary specialized educational institutions during the year.

The past year saw the establishment of a number of new higher educational establishments. Universities were set up in the Bashkir ASSR, the Kabardino-Balkarian ASSR, the Dagestan ASSR and the Mordovian ASSR.

The total number of scientific workers in the country exceeded 260,000, showing an increase of almost 9 per cent over 1956, while the number of scientific workers in the technical and physical-mathematical sciences increased by 12 per cent. Over 96,000 scientific workers hold the degree of doctor or candidate of sciences.

The cinema industry underwent further expansion. A total of 141 new full-length films, including 99 artistic and 42 news-documentary and popular-science films, and over 530 short films, not counting newsreels, were issued in the past year. The number of cinemas was 69,000 at the end of 1957, having increased by 6,000 since the previous year. The number of cinema attendances in 1957 was over 3,000 million, an increase of approximately 200 million over the previous year.

Book publication reached 1,100 million copies during the past year; the circulation of newspapers, magazines and other periodicals increased.

The medical care over the population was further improved and developed in 1957. The network of hospitals, maternity homes, dispensaries, crèches and kindergartens was expanded. A broad network of preventive-medicine centres, women's and children's clinics, sanatoria and other public health institutions was developed. The number of beds in hospitals increased by over 80,000 in comparison with 1956, while the number of places in permanent crèches increased by 82,000 and the number of beds at sanatoria by almost 8,000. The number of physicians increased by almost 17,000. There was an increase of 18 per cent in comparison with the previous year in the output of medicaments, medical equipment and instruments.

During the summer of last year, over 6 million children and young people enjoyed holidays at pioneer camps and children's sanatoria or on excursions or tours, or spent the summer in the country at kindergartens, children's homes and crèches.

There was a considerable increase in the amount of building to provide housing and premises for cultural and other community purposes.

Soviet builders, with the active co-operation of the broad working masses, made great progress in

housing construction. The Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, in an order on the development of housing construction in the USSR issued on 31 July 1957, directed that the housing shortage throughout the country was to be ended within the coming ten to twelve years. Dwelling houses providing a total of over 48 million square metres of living space (exclusive of buildings erected by collective-farm workers and the rural intelligentsia) were brought into use in 1957. In addition, collective-farm workers and the rural intelligentsia constructed 770,000 dwelling houses in the past year.

There was a 33 per cent increase in capital investment in the building of schools, hospitals and childrens' institutions in 1957.

There was an increase of 16 per cent in the number of new general-education schools brought into use, of 40 per cent in the corresponding figure for hospitals and polyclinics, of 21 per cent in that for kindergartens and of 30 per cent in that for crèches. A large number of cinemas, clubs, sports installations and other buildings providing cultural and community services were also brought into use.

During the past year the planning of towns, villages and rural district centres was continued; the existing network of communal undertakings was extended and new ones — water mains, drainage systems, baths and laundries — were built; tramway, trolley-bus and motor-bus services were expanded; and heating and gas were installed in dwellings.

EXTRACTS FROM A DECISION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE SOVIET UNION AND THE COUNCIL OF MINISTERS OF THE USSR ON THE DEVELOPMENT OF HOUSING CONSTRUCTION IN THE USSR

of 31 July 1957[1]

One of the most important tasks in a socialist country, in which power belongs to the workers, is to raise levels of living and to enhance the well-being of the people. The Communist Party and the Soviet Government regard it as their prime task to work for the welfare and happiness of the people and the improvement of their living conditions.

The Communist Party and the Soviet Government did everything possible to expand housing construction from the first five-year plan onwards.

The emergence of new industrial centres led to an increase in the number of towns and villages. The country saw the rise of new large cities such as Magnitogorsk, Komsomolsk-on-the-Amur, Karaganda, Stalinsk, Kirovsk, Balkhash and hundreds more.

Housing construction in the country was not interrupted even in the hard years of the Great Patriotic War. The housing stock suffered enormous damage as a result of the war and the fascist occupation; more than 1,700 towns and villages were demolished, about 70 million square metres of housing space were destroyed, and more than 25 million people were left homeless. In the difficult war-time conditions, dwelling houses with a total floor-space of some 50 million square metres were built or rebuilt.

After defeating the fascist invaders, the Soviet people, under the leadership of the Party and Government, undertook, in the post-war years, the immense constructive task of restoring and further developing the national economy of the USSR. The grim consequences of the war were liquidated with unprecedented speed, an achievement which required the energie of the whole people. Much was also done in housing construction. The urban housing stock has not only been fully reconstructed, but is considerably larger than before the war.

During the period 1946-1956 stone dwelling houses with a total floor space of some 300 million square metres were built or rebuilt in cities and workers' settlements, a figure which exceeds the entire urban housing stock of pre-revolutionary Russia by over 50 per cent. In rural areas, too, there has been an extensive development of housing construction. During the same period, collective farm workers and members of the rural intelligentsia built some 5.7 million dwelling houses.

The entire housing stock in cities and urban-type settlements has been increased by 370 per cent during the years of Soviet power. Thousands of new dwelling houses have been brought into occupancy during these years in Moscow, Leningrad, Kiev, Gorky and other cities. In Moscow, for example, the housing stock doubled between 1926 and the beginning of 1956. In 1956 alone, 1,374,000 square metres of housing were built in Moscow, and in 1957 the building workers of Moscow undertook to build and make available for occupancy 1.8 million square metres of new dwelling space. In other cities, too, the housing stock has considerably increased. At Gorky, it was 420 per cent larger at the beginning of 1956 than in 1926, the corresponding figure for Novosibirsk and Sverdlovsk being 650 and 540 per cent.

[1] Published in *Izvestia Sovetov Deputatov Trudyaschikhsya SSR* of 2 August 1957. Extracts kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations. Translation by the United Nations Secretariat.

Until recently, however, industrial construction in the country outstripped housing construction. Considerable material and financial resources were required to establish heavy industry and thus to ensure the further intensive development of all branches of the national economy, to bring about a substantial increase in agricultural production and on this basis to achieve a considerable rise in the material welfare and cultural level of the Soviet people. Housing construction therefore lagged behind the people's needs.

At the same time, owing to the higher level of living of the workers and to the improved medical services and living conditions in our country, the birth-rate is increasing from year to year, mortality is declining sharply, and the population is growing. With the execution of large-scale plans for the industrialization of the country and the emergence of new industrial centres, the urban population has more than trebled in the last thirty years.

The Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR consider that at the present time the further development of housing construction, since it concerns the whole population, is one of the most important tasks of all Party, Soviet, trade union, and economic organizations and of the whole Soviet people. The housing construction target for the Sixth Five-Year Plan, laid down in the directives of the twentieth congress of the Communist Party of the Soviet Union, must not only be fulfilled but overfulfilled.

The Party and Government are systematically seeking additional financial and material resources for the greatest possible development of housing construction in the country.

In the period 1956–1960, state capital investment in housing construction will exceed investment under the Fifth Five-Year Plan by 78,000 million roubles, and it will increase even further in subsequent years.

The steady improvement in the workers' material well-being is also facilitating a considerable development of individual housing construction financed from the people's savings.

The Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR consider that the necessary conditions at present exist for a further advance in housing construction and set the objective of securing a substantial addition to the housing stock within the shortest possible period, so that the housing shortage in the country will be ended during the next ten to twelve years.

The Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR resolve as follows:

(1) To require the State Planning Organization of the USSR, the councils of ministers of union republics, and the ministries, when fixing the volume of housing construction under state plans for the development of the national economy, to be guided by the need to eliminate the shortage of housing for the workers within the next ten to twelve years.

(2) To fix the volume of state housing construction for the period 1956–1960 at a total area of 215 million square metres (as compared with the figure of 205 million square metres specified in the directives of the twentieth congress of the Communist Party of the Soviet Union) of which 34 million square metres are to be brought into occupancy in 1957, 42 million square metres in 1958, 51 million square mtres in 1959 and 60 million square metres in 1960.

(3) To increase the volume of housing to be constructed by the population at its own expense with the aid of state loans in the period 1956-1960 in cities, urban-type settlements, machine and tractor stations, state farms, and industrial forestry undertakings from the previously fixed figure of 84 million square metres to 113 million square metres, of which 13 million square metres are to be constructed in 1957, 19 million square metres in 1958, 29 million square metres in 1959 and 41 million square metres in 1960.

(4) To increase the volume of dwelling house construction in collective farms by collective farm workers and members of the rural intelligentsia from 2.3 million houses in the period 1951–1955 to 4 million houses in the period 1956–1960, of which 750,000 houses are to be constructed in 1957, 800,000 in 1958, 850,000 houses in 1959 and 900,000 houses in 1960.

UKASE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE UNION OF SOVIET SOCIALIST REPUBLICS TO APPROVE REGULATIONS FOR THE PROCEDURE TO BE FOLLOWED IN EXAMINING LABOUR DISPUTES

of 31 January 1957[1]

SUMMARY

In this Ukase the Presidium of the Supreme Soviet of the USSR approved new regulations for the procedure to be followed in examining labour disputes.

[1] Text published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsialisticheskikh Respublik* of 24 February 1957, No. 4, Text 58, and kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations.

The regulations laid down that disputes of certain types were to be examined in the first place by labour disputes boards set up in undertakings, institutions and organizations. If no agreement was reached, or the employee wished to appeal, the case was to be examined by the factory, works or local trade union committee, with the possibility of a further appeal by the employee or management to the people's court.

Translations of the Ukase and the regulations into English and French have appeared in International Labour Office: *Legislative Series* 1957 — USSR 1.

AMNESTY DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR IN COMMEMORATION OF THE FORTIETH ANNIVERSARY OF THE GREAT OCTOBER REVOLUTION

of 1 November 1957[1]

In the joyous days of the celebration of the fortieth anniversary of the Great October Socialist Revolution, the Presidium of the Supreme Soviet of the USSR, desiring to lighten the lot of citizens who have committed offences which do not constitute a grave danger to the State, appealing to them to remedy the harm they have done to Soviet society and to resume a life of honest work through participation in socialist construction, and being guided by humanitarian principles, hereby decrees as follows:

1. The penalties of persons sentenced for terms not exceeding three years and persons sentenced to other forms of punishment not involving deprivation of liberty shall be remitted.

2. The penalties of the following convicted persons shall be remitted, irrespective of the term of their sentence:

(*a*) Mothers of children not more than eight years of age and pregnant women;

(*b*) Men over sixty and women over fifty-five years of age;

(*c*) Minors not more than sixteen years of age.

3. That part of the sentence of persons sentenced to deprivation of liberty for a term of more than three years which has not yet been served shall be reduced by half.

4. The persons referred to in articles 1, 2 and 3 above and persons who have already served a major part of their sentence or have been released prior to the completion of their sentence shall be absolved from additional penalties in the form of exile, deportation or deprivation of rights.

5. All investigatory proceedings shall be terminated, and all cases not yet dealt with by the courts dismissed, when they relate to offences committed before the publication of this decree for which the penalty prescribed by law is deprivation of liberty for a term not exceeding three years or any form of punishment not involving deprivation of liberty, and proceedings against the persons enumerated in article 2 above shall also be terminated.

In cases relating to offences, committed before the publication of this decree, for which the penalty prescribed by law is deprivation of liberty for a term exceeding three years, the court, if it considers it possible to impose a penalty of deprivation of liberty for a term not exceeding three years, shall remit the penalty in full; if, however, the court considers it necessary to impose a penalty of deprivation of liberty for a term exceeding three years, the penalty shall be reduced by half.

6. The conviction shall be stricken from the record of persons whose penalties have been remitted in pursuance of this decree and of persons who have already completed their sentence or have been released prior to the completion of their sentence.

7. This amnesty shall not apply to:

(*a*) Persons convicted for the offences set forth in part I of the Act relating to offences against the State, banditry, premeditated murder, robbery, premeditated infliction of grievous bodily harm, malicious hooliganism, rape, and major thefts of socialist property;

(*b*) Thieves convicted on two or more occasions and other persons previously convicted on more than two occasions;

(*c*) Persons released prior to the completion of their sentence who have again committed an offence;

(*d*) Convicted persons who, while serving their sentence in places of confinement or in exile, have maliciously violated the established regulations.

8. Citizens who, before the publication of this decree, have committed misdemeanours punishable under administrative regulations shall be absolved from detention, fines and other disciplinary measures.

[1] Published in *Vedomosti Verkhovnovo Soveta Soyuza Sovetskikh Sotsyalisticheskikh Respublik*, 1957, No. 24 (891), p. 589, and received through the courtesy of the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations. Translation by the United Nations Secretariat.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

Article 3 of the Universal Declaration of Human Rights

The Geneva Conventions Act, 1957, made such changes in the law of the United Kingdom as were necessary in order to enable Her Majesty's Government to ratify the four Geneva conventions.[2]

Under the Act, grave breaches of the conventions are made "felonies" under the law of the United Kingdom, and the Act provides that such offences are triable in the United Kingdom wherever and by whomsoever they were committed.

The Act contains provisions designed to ensure that prisoners of war and civilian protected persons interned in the United Kingdom in time of war have, in the event of their being tried for criminal offences, the rights and facilities required by the conventions.

The Act also provides for the punishment of persons who misuse the emblems protected by the conventions.

The Homicide Act, 1957, abolished the death penalty in Great Britain for murder, except in the following cases:

(*a*) Any murder done in the course of furtherence of theft;

(*b*) Any murder by shooting or by causing an explosion;

(*c*) Any murder done in the course or for the purpose of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody;

(*d*) Any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting;

(*e*) In the case of a person who was a prisoner when he did or was a party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting.

A murderer continues to be liable to the death penalty if, before conviction of the murder, he has been previously convicted of murder.

The Act also amends the law relating to constructive malice, diminished responsibility, provocation and suicide pacts.

NORTHERN IRELAND

During 1957, because of the recurrence of outbreaks of violence in Northern Ireland, it was found necessary to enforce regulations made under the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-43, giving powers of arrest of suspected persons without warrant, of detention of such persons pending investigation and of internment. The power to require persons in a specified area to remain within doors during certain hours was used in one town and its immediate environs for a short period. The powers have been exercised only to the extent strictly required by the exigencies of the situation.

Articles 5, 11 and 17

See the Geneva Conventions Act under article 3 above.

Article 21

The House of Commons Disqualification Act brought up to date and clarified the law relating to the disqualification for membership of the House of Commons of the holders of certain specified offices; it removed some anomalies in the existing law and with a view to securing greater consistency brought certain additional appointments and classes of appointments within the scope of the statutory disqualification.

It also provided that a candidate, when consenting to be nominated for election, should state that he is aware of the provisions of the Act and is not disqualified from membership of the House of Commons.

The Act made corresponding provision in respect of the Senate and House of Commons for Northern Ireland.

Article 22

Since 1948, a widow not entitled to a widow's pension because either she had no child, or was below a certain age, or was not incapable of self-support through incapacity was unable to qualify for sickness benefit and unemployment benefit until she had paid the necessary number of qualifying contributions. In 1957 provision was made for such a widow to receive sickness benefit and unemployment benefit without fulfilling the qualifying contribution condition. (Family Allowances and National Insurance

[1] Note kindly furnished by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations.

[2] See *Yearbook on Human Rights for 1949*, pp. 299-309.

Act, 1956; National Insurance (Married Women) Amendment Regulations, 1957.

In the same year, a new benefit, "child's special allowance", was introduced. This is a benefit for a woman whose marriage has been dissolved or annulled, and who has not remarried, and it is paid on the death of her former husband if she has a child towards whose support he was contributing. (National Insurance Act, 1957; National Insurance (Child's Special Allowance) Regulations, 1957.)

Reciprocal agreements with Cyprus (National Insurance (Cyprus) Order 1957), covering benefits for sickness, unemployment, maternity, old age, widowhood, orphanhood and death, and with Israel (National Insurance and Industrial Injuries (Israel) Order, 1957), covering benefits for maternity, old age, widowhood, orphanhood and industrial injuries, came into force. An agreement with Sweden (National Insurance and Industrial Injuries (Sweden) Order, 1957) also came into operation, and covers all insurance benefits except death grant. It also enables United Kingdom citizens in Sweden (including tourists) to take advantage of the Swedish health services, and for Swedish nationals to have the medical benefits provided under United Kingdom legislation.

Similar extensions in the field of Social Security in Northern Ireland were secured under parallel legislation by the Parliament of Northern Ireland.

Article 25 (2)

In 1957 a new benefit was introduced, called "child's special allowance" (see report on article 22)

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1957

A SUMMARY OF PERTINENT ACTIONS TAKEN BY FEDERAL, STATE, AND OTHER GOVERNMENTAL AUTHORITIES[1]

INTRODUCTION

Basic guarantees of individual rights and freedoms are contained in the Constitution of the United States (especially the first ten amendments thereto, known collectively as the "Bill of Rights") and in corresponding provisions of the Constitution or organic laws of the states, territories, and other jurisdictions. The exercise of governmental authority must conform to these constitutional provisions, which have been fortified by action at all levels of government to protect and keep inviolate the people's freedoms.

The following survey is confined to those official acts and decisions of consequence which contributed significantly to the protection, enhancement, and enjoyment of individual rights and freedoms in 1957. A more nearly complete picture would encompass the countless day-to-day activities of the various agencies of government, and of the American people themselves, toward the goal of justice and opportunity for all.

HUMAN RIGHTS IN GENERAL

In proclaiming United Nations Human Rights Day, 10 December 1957, President Eisenhower called upon the citizens of the United States ". . . to honour this day by reading and studying the Universal Declaration of Human Rights and the Bill of Rights in the Constitution of the United States, that we may be reminded or our privileges and responsibilities as a people dedicated to the principles of freedom. Let us draw strength from our own experience of liberty to use our new resources for the benefit of all mankind. Let us reaffirm our faith in the individual, and let us as members of the brotherhood of all free men strengthen and defend the blessings of liberty for this generation and for generations to come."

The new treaties of friendship, commerce and navigation entered into force in 1957, with the Republic of Korea and with the Netherlands, making a total of 35 countries with which the United States has agreements of this type currently in effect. These treaties include provisions for the protection of fundamental rights of American citizens in foreign countries and of their nationals in the United States. Among the rights specified in the 1957 treaties are freedom of movement and residence, freedom of conscience and religious worship, and freedom to gather data and to transmit material for dissemination to the public abroad, subject to measures necessary for the maintenance of public order, public health, morals and safety; the right to fair and prompt trial, and reasonable and humane treatment if taken into custody, property rights, compensation or other benefits on the same basis as nationals for disease, injury or death incurred in the course of employment, and social security benefits in case of sickness, disability, or loss of financial support due to death of the person liable for maintenance. A similar treaty, but without provisions on workmen's compensation and social security, entered into effect in 1957 between the United States and Iran.

CIVIL AND POLITICAL RIGHTS

A new federal law for the protection of civil rights, known as the Civil Rights Act of 1957,[2] was adopted by Congress on 9 September 1957, after extensive hearings and debate which demonstrated the importance attached by citizen organizations and official leaders to full implementation of constitutional provisions for equal protection under the law. This legislation supplements earlier laws, particularly with regard to the right to vote; it sets up a Commission on Civil Rights to undertake investigations where voting rights have been denied, to appraise the laws and policies of the state and federal governments with respect to equal protection, and make recommendations thereon within two years. The Act also provides for an additional Assistant Attorney-General in the Department of Justice to deal with civil rights, and specifically authorizes the Attorney-General to initiate a civil action on behalf of an individual whose rights have been infringed, or are threatened with infringement, even though the individual may not himself have sought such action.

Similar action was taken in several states. Ohio set up a State Advisory Commission on Civil Rights, and Massachusetts, New York and Pennsylvania

[1] Statement kindly furnished by the United States Government.

[2] See below, p. 257

created civil rights sections in the offices of their Attorneys-General.

Equal Protection of the Laws

The fourteenth amendment to the United States Constitution forbids a state to deny equal protection of the laws to any of its citizens. In 1954 the Supreme Court held that use of "separate but equal" school facilities denied such equal protection to Negro children.[1] In 1957, in *Pennsylvania* v. *Board of Directors of City Trusts*,[2] the Supreme Court held that the Board in question, as an agency of the state, could not refuse to admit Negroes to Girard College, which was being operated on a discriminatory basis under the terms of an 1831 will.

The transition from the system of public schools operated in certain states on a racially segregated basis to a non-segregated system continued a major concern of responsible authorities.

In September 1957, the local school board in Little Rock, Arkansas, enrolled Negro students in a local high school pursuant to a systematic local plan of integration approved by the Federal District Court as in conformity with the Supreme Court's 1954 school decision. When unlawful obstruction of justice in the community made it impracticable to enforce the laws by the ordinary course of judicial proceedings, the President, on 24 September 1957, in the execution of his constitutional responsibilities, ordered federal troops to enforce the court's orders relating to enrolment and attendance of the Negro students at the high school.

During the year, a Federal District Court of Appeals had ruled that a pupil placement law adopted by the State of Virginia was unconstitutional on the ground that it was designed to circumvent the Supreme Court's school decision of 1954. In October, the U.S. Supreme Court refused to review this decision, thereby allowing the judgement to stand.[3]

The principle stated by the Supreme Court in its 1954 school decision continued to find expression in various decisions by the lower courts. For example, federal district courts ruled that state and city bus segregation laws in Florida, Louisiana and Maryland were unconstitutional, and authorities in two North Carolina cities were enjoined from discriminating against Negroes on public golf links.

Vermont adopted a law banning racial and religious discrimination in public accommodations, bringing the total of states with such statutes to 22.

Fair Trial

A number of states adopted legislation in 1957 to strengthen the rights of individuals under arrest and during trial. A Michigan law forbids the filing of any information against a person accused of an offence until after a preliminary examination before a justice of the peace or other examining magistrate, and New York amended its criminal code to render invalid any indictment which is not brought to trial within 180 days. Minnesota was among states adopting a new plan under which offenders sentenced to a prison term of one year or less may be allowed to continue, under appropriate provisions, in employment at their customary work, their earnings to pay cost of maintenance inside or outside the jail. Florida gave its courts discretion to refer persons convicted of felonies to its Department of Corrections, to determine the institution best suited to effect rapid rehabilitation; it also authorized county legal aid bureaus to assist indigent and needy persons in legal matters.

The Supreme Court of the United States handed down several significant decisions regarding fair trial.

The authority of Congress to dispense with the jury and grand-jury provisions of the fifth and sixth amendments of the United States Constitution when providing for the trial of American citizens abroad was challenged by two civilian defendants accused of murdering their servicemen husbands at overseas posts. Courts-martial overseas convicted the women of murder pursuant to article 2(11) of the Uniform Code of Military Justice. In *Reid* v. *Covert*, 354 U.S. 1, the court vacated its own final judgements,[4] and released the prisoners, without an opinion of the court having been agreed upon by all the justices. Four of the members of the court[5] found no reason for excluding overseas civilian dependants from the protections of the fifth and sixth amendments and article III of the Constitution. Two concurring justices based their extension of the Bill of Rights safeguards to these defendants on the capital nature of the offence and the fact of its commission during a time of peace.

In *Wilson* v. *Girard*, 354 U.S. 524, the surrender of a serviceman by American authorities for trial by a Japanese court was held valid, thus upholding an important provision of Status of Forces agreements which are in effect between the United States and many foreign nations. While guarding a machine-gun on an army firing range in Japan, Girard killed a Japanese woman searching among piles of expended cartridges. The United States chose to deliver Girard to Japanese authorities for trial under a provision of the Japanese-American Status of Forces agreement, whereby sympathetic consideration is to be given to the request of the host state for a trial by local authorities.

The right of a defendant in a criminal trial to have access to reports submitted to the Federal Bureau of

[1] *Brown* v. *Board of Education*, 347 U.S. 483.

[2] 253 U.S. 330.

[3] *School Board* v. *Atkins*, 355 U.S. 855.

[4] The court had heard the case in 1956 and, with three justices dissenting, upheld the court-martial convictions. *Reid* v. *Covert*, 351 U.S. 487.

[5] Justice Black wrote an opinion in which Chief Justice Warren, and Justices Douglas and Brennan joined.

Investigation by government witnesses was upheld in *Jencks* v. *United States.*[1] Jencks was convicted of filing a false non-communist affidavit. At his trial he demanded that the reports of F.B.I. witnesses to his alleged communist activities be produced to the judge who could then decide whether defence counsel might use them for purposes of impeachment on cross-examination. The request was denied by the trial judge. The Supreme Court ruled that reports of this nature not only must be made available to the defendant but will be given to him directly, without initial screening by the trial judge, where the statements by the witness relate to the subject matter of his testimony.

Thereafter, Congress enacted a statute setting forth the procedures and circumstances under which the Government must deliver these statements to a defendant in a criminal case.

In further protecting the rights of defendants in criminal cases, the Supreme Court ruled, in *Mallory* v. *United States,*[2] that a confession of guilt obtained during a period of detention prior to formal arraignment, where the prisoner was detained in the vicinity of numerous committing magistrates, was inadmissible in the federal courts.

At the same term, the court reversed denials by the California and New Mexico state boards of bar examiners of applications for admission to the bar or to take bar examinations based on an applicant's past communist membership or refusal to answer questions about past communist activities. In both these cases, the Supreme Court found no rational basis for the state board's finding that these men were morally unfit to practise law; and hence these actions resulted in a denial to the applicants of the due process of law protected by the United States Constitution.

Privacy

In line with provisions in the Federal and State Constitutions protecting persons against unreasonable searches and seizures, California made "eavesdropping" a penal offence — i.e., the recording of any conversation between a person in physical custody and law enforcement or other public officers without the permission of all parties — and New York made eavesdropping a felony, defining it as the "wilful overhearing or recording of communications including the deliberation of a jury", and declared evidence so obtained inadmissable "for any purpose in any civil action, proceeding or hearing".

Asylum

Amendments to the Federal Immigration and Nationality law provided asylum for additional "refugee-escapees" and their families. A refugee-escapee was defined as an alien who because of persecution or fear of persecution on account of race, religion or political opinion has fled from certain areas.

Freedom of Speech

In 1957, eight states enacted legislation establishing or strengthening standards and procedures for the control of material found to be obscene, indecent, or depicting in substantial part horror or crime judged to be a contributing factor in impairing moral and ethical development, particularly of young people. Similar legislation in many states has been examined in various aspects by the courts to assure consistency with guarantees of free speech in federal and state constitutions.

The Supreme Court of the United States handed down two significant decisions during the year relating to freedom of speech.

In *Yates* v. *United States,*[3] fourteen admitted Communists had been convicted under the Smith Act of conspiracy "to advocate and teach the duty and necessity of overthrowing the Goverment of the United States by force and violence" and "to organize, as the Communist Party of the United States, a society of persons who so advocate and teach . . ." The court construed the word "organize" to mean only initial formation of the Communist Party, and therefore found that the statute of limitations barred conviction in this case. It also ruled that the trial judge's charge was erroneous in failing to distinguish between "advocacy of abstract doctrine", protected by the First Amendment, and prescribed advocacy of illegal action. Five of the defendants were ordered acquitted, and the remainder were awarded new trials.

The right of the individual to freedom of speech, political belief and association was further protected by the Supreme Court in *Watkins* v. *United States.*[4] Watkins, a trade-union official summoned by a subcommittee of the House Committee on Un-American Activities, refused to answer whether he knew certain people to have been members of the Communist Party. He based his refusal to answer not on the fifth amendment's privilege against self-incrimination, but on the power of the committee itself and the relevancy of the questions asked to the purpose of the inquiry. His conviction for contempt of Congress was reversed by the Supreme Court. The majority opinion held that there is no congressional power to expose for exposure's sake, that the scope of inquiry that a congressional committee is authorized to pursue must be defined with unambiguous clarity by the resolution creating the committee, and witnesses must be shown clearly the relevancy of the questions asked.

Government by Will of the People

In addition to the Federal Civil Rights Act, described above, a number of states took action to

[1] 353 U.S. 657.

[2] 354 U.S. 449.

[3] 354 U.S. 298.

[4] 354 U.S. 178.

improve elections and other procedures. Four states — Minnesota, Rhode Island, Georgia, and Iowa — established commissions or other groups to make comprehensive studies and investigations of existing election laws. Wyoming and Kansas authorized the use of voting machines, and Connecticut tightened the provisions for the use of such machines and the duties of election officials. New York enacted legislation to insure the voting privileges of persons in military service and of their families.

Congress also amended the Organic Act of the Virgin Islands to provide for consent by the legislature to appointments of important public officials by the governor.

Economic, Social and Cultural Matters

Under the traditional system of free enterprise in the United States, economic and social progress is achieved principally through individual initiative. While legislation in this field is in large part the responsibility of the state and territorial governments, the Federal Government co-operates, financially and otherwise, to maintain steady economic development and promote the general welfare.

Work and Remuneration

In line with increasing concern to improve opportunities for the ageing, the Federal Government expanded its counselling, testing and selective placement services for older workers. Through offices in areas of 100,000 or more population, these services became available in 1957 to nearly one-half the people of the United States. The Federal Department of Labor study of comparative job performance in large plants in significant industries showed that, while average output declined gradually with advancing years, variations within all age groups were greater than the differences between the average output of different age brackets, so that substantial proportions of older workers were found to perform better than the average for younger groups.

Colorado, Wisconsin, Alaska and the State of Washington strengthened their laws prohibiting discrimination in employment on account of race, creed, colour or national origin. In Guam, a free public employment service was established by law.

Important changes in minimum-wage legislation were enacted in nine jurisdictions during 1957, and Vermont became the thirty-fourth jurisdiction to adopt a minimum-wage law. These state and territorial laws supplement the Federal Fair Labor Standards Act, which establishes a dollar an hour minimum with overtime at one and a half their regular rate for more than 40 hours in a work week for workers in interstate commerce.

The effort to improve conditions under which migrant agricultural workers and their families live and work continued; new state migratory labour committees were established in Delaware, Oregon, and Texas, bringing to 16 the number of states with such committees, and three additional states strengthened laws regulating employment of migrant farm workers.

In the field of occupational health and safety Alaska, Connecticut, Illinois, North Dakota and South Dakota enacted legislation designed to protect workers from possible radiation hazards.

About half of the states extended or otherwise strengthened workmen's compensation laws: the most significant changes were in Illinois, where coverage of the occupational disease act was made compulsory rather than elective, and in Puerto Rico, where coverage was extended to all employers regardless of number employed, to domestic servants and elected public officials, and to additional occupational diseases. Provisions for rehabilitation services was made for the first time in Texas, making 22 jurisdictions with some provisions in their workmen's compensation law for rehabilitation. Major increases in benefits payable were made in 31 states and territories; medical benefits were improved in 11 states, and full medical benefits were provided for the first time in Texas and Nevada, making thirty-eight jurisdictions which now provide unlimited medical benefits.

Standards of Living

While in the United States the attainment of an adequate consumption level is primarily the responsibility of the individual, the federal and state governments take steps to encourage and supplement private initiative. Levels of living for individuals continued high in 1957, in line with high employment and earnings. Although employment declined somewhat in the autumn months, primarily in the manufacturing industries, hourly earnings of factory workers again attained record levels and non-farm employment reached a new high, averaging well over 52 million, or approximately 80 per cent of the labour force.

In August 1957, the Housing Administrator of the United States presented a newly married young couple in the State of Virginia with a certificate congratulating them on being the fifty millionth family in the United States to own its own home with assistance from the Federal Government. They had purchased their new house with a mortgage loan provided by a private lending institution, insured by the Federal Government against any loss. The latest survey of the Bureau of the Census showed that 60 per cent of American families own the homes they live in, more than at any previous time since information on this subject was first collected in 1890. The Federal Housing Act of 1957 provided for lower down-payments on housing purchased with federally insured mortgages. Eight states enacted laws permitting banks and other lenders to invest more of their assets in home mortgages.

Interest continued high in urban renewal projects for clearing and rehabilitating slum and blighted areas and the Federal Government made additional

funds available to local governments for this purpose. By the end of 1957, 491 urban renewal projects were in progress in 299 localities and urban-renewal legislation was in effect in thirty-nine states and some territories. A number of these laws established or extended the authority of official planning agencies for the orderly development of their communities. The co-operative Federal-State Rural Development Programme, designed to help balance farm, industry and community development in low-income rural areas, was expanded in 1957 to six additional states and Puerto Rico, making a total of 30 jurisdictions which have selected rural areas for demonstration programmes. Typical of the results achieved was a one-crop farming area in south-western United States which developed new industries in canneries, dairies, and woodworking, and a large-scale glove factory.

Massachusetts, Montana, Colorado and Vermont adopted legislation to provide special assistance for the aged in need of housing, and Indiana and Maryland provided partial tax exemption for the homes of elderly persons. In line with action already taken in many areas, the states of Massachusetts, New Jersey, Oregon, and Washington prohibited discrimination in housing built with government guaranteed financing. New York City banned discrimination in private housing; it had previously done so as to public housing. Minnesota established a commission to study the discrimination problem.

Health

The federal and state governments co-operate actively to prevent and control communicable diseases, enforce sound food and drug standards, and provide medical services to certain groups. In general, medical, surgical, and hospital services in the United States are provided by private means. About two-thirds of the population — 116 million persons — were covered in 1957 by insurance for hospital care, an increase of 7.7 per cent over the preceding year. A number of presidential proclamations focused attention on special health periods. New efforts by the Federal Government in 1957 were directed primarily to research and training of public health workers, with special attention to the care of older persons, the prevention of chronic diseases, and expansion of occupational and other health services.

Vocational Rehabilitation

For the seond consecutive year, a new record was set in 1957 in the number of physically and mentally handicapped persons prepared for and placed in employment through the state-federal vocational rehabilitation programme. Heightened concern for rehabilitation was evident also in new legislation; for example, several states expanded provisions for the blind, including licensing blind persons as operators of vending stands in public buildings, exempting blind merchants from certain sales taxes, encouraging sheltered workshops, supervised industrial home work and other types of self-help for blind or otherwise handicapped persons, and establishing councils to study the problems involved in the restoration of sight, rehabilitation, education and employment.

Social Security

Federal legislation in 1957 simplified and liberalized several provisions of the old-age, survivors', and disability insurance programme which covers most of the gainfully employed. The changes included broadening of coverage for some types of employment and liberalizing the provisions that qualify the members of a worker's family to receive survivor or supplementary benefits.

State legislation affecting the federal-state programmes for the needy dealt chiefly with revisions arising from 1956 changes in the federal law, and was concerned with emphasizing services, as well as money payments and the financing of medical care for the needy. Two states established new programmes for the needy disabled, and some states set up commissions on problems for the ageing.

Child Health and Welfare

In addition to the continuing programmes for maternal and child health services, services to crippled children, and child welfare services, special attention was devoted in 1957 to the needs of mentally retarded children; demonstration projects to help such children were developed in 30 states, through federal-state co-operation.

Continued concern for sound adoption procedures was also evident. A federal law permitted alien-adopted children and alien orphans to be adopted by United States citizens who meet specified requirements to enter the United States outside the usual immigrant quotas. Typical of state actions was a law adopted by Connecticut, which requires a study of all proposed adoptions by either the Connecticut Department of Welfare or a licensed agency.

Education

The greatest volume of laws in the history of the United States to extend and intensify educational advantages for citizens of all ages was enacted in 1957, thus further strengthening the system of free public schools covering the twelve grades of elementary and secondary education which exist throughout the country. Since education is primarily the responsibility of state and local governments, these were largely laws adopted in thirty-seven different states and reflected varying needs and interests. Many states emphasized provisions for exceptional and handicapped children. Some authorized work-study programmes enabling older students alternately to work for a period and then return to school, and seven states extended certain benefits to children in private schools, such as pupil transportation and school milk and lunch programmes, previously restricted to public schools. New or extended programmes were

established in vocational and adult education, including opportunity for American Indians to improve job skills and enhance earning powers; provisions were also made for more nursery schools. The Federal Government provided increased funds to satisfy pressing needs for improved rural library services, training in practical nursing, and the construction of dormitories and other facilities for college and university students.

A number of jurisdictions increased scholarship programmes; many of these more than doubled the appropriation or the number of scholarships. Action taken by various Indian tribal groups under federal law is illustrative; the Navajo tribe, for example, set aside a five million dollar trust fund, the income of $200,000 a year to be used for scholarships in colleges and universities for their young people. Twenty-four states provided for commissions to conduct extensive studies in education, including such topics as school financing, scholarship programmes, special education and higher education.

Cultural Opportunities

While each individual in the United States is free to pursue his own cultural interests and inclinations under constitutional guarantees of freedom of speech and press, public funds are frequently used to extend enjoyment of the arts and other cultural resources. For example, in 1957 the Smithsonian Institution in Washington, which promotes scientific research, explorations, exhibits and cultural and scientific publications, opened three new exhibit halls featuring the history of the telephone and other aspects of technological development. A new building was provided for the Smithsonian Collection of Fine Arts, which circulates travelling exhibits to museums and galleries in the United States and abroad. The National Archives, also established under federal legislation, received the largest single accession of cartographic items in its history, a set of 110,000 large-scale topographic maps covering all regions of the world.

State governments took various actions in 1957 to contribute to the cultural resources of the people; for example, California, noted for its scenic beauties and natural wonders, created a recreation committee to prepare long-range plans, and South Carolina authorized annual grants to local museums of fine arts.

Nineteen hundred Americans went abroad under governmental exchange programmes in 1957, including students, teachers, university lecturers, research scholars and specialists and approximately thirty-eight hundred foreign nationals came to the United States in the same capacities. While official programmes represent only a small part of the knowledge and experience gained by citizens through travel abroad, they assure continuing contacts with all countries. Executive agreements facilitating educational exchange were renewed or came into force in 1957 with Brazil, China, Ecuador, Iceland, Iran, Ireland, Pakistan, Paraguay, Thailand and Turkey.

Benefits of Scientific Advance

The National Science Foundation, one of the agencies administering official funds for scientific advancement, awarded over a thousand fellowships in 1957 to aid research scientists and increase the competence of science teachers. In anticipation of the International Geophysical Year, it confirmed plans for the establishment in the United States of one of three regional world data centres, to take the form of a series of geophysical discipline archives, responsibility for which will be assigned to certain universities and federal agencies. The Foundation also facilitated the "optical tracking program" for earth satellites, responsibility for which was assigned to the Astrophysical Observatory of the Smithsonian Institution.

In the field of atomic energy, research continued in the use of radioactive products and atom power for peaceful uses. By 1957, the use of radioisotopes has been authorized in 1,600 industrial organizations throughout the country, and by 1,900 medical institutions and physicians. An example of research in this field was the determination that a radioactive insecticide (Thimet) could be used for seed treatment of cotton. The use of radioisotopes in domestic industry was estimated as earning the equivalent of a 7 per cent yearly dividend on the $7 billion tax money invested by the Federal Government on atomic energy plants and equipment since 1942.

By the end of the year, the U.S. Atomic Energy Commission had in operation seven experimental civilian power reactors of six different types including the full scale nuclear power plant at Shippingport, Pennsylvania, which is a pressurized water reactor. The first privately financed atomic electric power plant, the Vallecitos Boiling Water Reactor, received its licence in 1957.

Activities continued to assist other nations seeking to develop peaceful nuclear energy science. In the last three years, 273 students from 44 nations have attended reactor training courses in the United States. During that time, co-operative agreements on peaceful uses of atomic energy entered into force between the United States and 37 other countries. With the coming into being of the International Atomic Energy Agency, designed to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity, the United States offered 5,000 kilogrammes of uranium 235 and a promise to match contributions of other member states up to July 1960.

EXCERPTS FROM THE CIVIL RIGHTS ACT OF 1957

(Public Law 85-315, adopted by the Congress of the United States)

To provide means of further securing and protect-

ing the civil rights of persons within the jurisdiction of the United States.

. . .

Part IV. — To provide means of further securing and protecting the right to vote.

. . .

(*b*) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, delegates or commissioners from the territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(*c*) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by sub-section (*a*) or (*b*), the Attorney-General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

(*d*) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section, and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

URUGUAY

NOTE

A decree regulating the limitation by labour laws of hours of work in industry, commerce and offices, of 29 October 1957 (*Diario Oficial* No. 15258, of 11 November 1957), consolidated the provisions of a number of enactments adopted between 1915 and 1954, and of several International Labour Conventions having been given the force of law through ratification by Uruguay.[1]

[1] Translations of the decree into English and French have appeared in International Labour Office: *Legislative Series* 1957 — Ur.1.

Act No. 12353, of 27 December 1956 (*Diario Oficial* No. 15011, of 10 January 1957), granted all salaried employees and wage-earners working for private individuals and enterprises the right to a minimum annual holiday with pay of twenty consecutive days, not including the public holidays of Carnaval and Holy Week (Semana de Turismo). Persons having worked for more than five years for the same enterprise were to enjoy an additional day for every four years of seniority. A decree of 24 January 1957 (*Diario Oficial* No. 15026, of 28 January 1957) implemented Act No. 12353.

REPUBLIC OF VIET-NAM

NOTE[1]

Act No. 1057 of 2 July 1957 contains provisions concerning the legal assistance of minors.

Under the Act, minors under eighteen years of age charged with an offence punishable by imprisonment are required to be assisted by a lawyer at every stage of the proceedings, during both the preliminary investigation and the hearing and in the correctional courts and Assize Courts and the Court of Cassation.

If the persons concerned do not select their own lawyer the examining judge must request the Bar Council to appoint a lawyer officially.

If these provisions are disregarded the entire proceedings undertaken are null and void.

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[1] Information kindly supplied by the Secretariat of State for Foreign Affairs of the Republic of Viet-Nam. Translation by the United Nations Secretariat.

YUGOSLAVIA

NOTE

1. The Act respecting employment relationships of 12 December 1957 (*Sluzbeni List*, 25 December 1957, No. 53, Text 663; *errata*: ibid., 15 January 1958, No. 2, p. 31; 12 February 1958, No. 6, p. 107, and 5 March 1958, No. 9, p. 173), an enactment containing 420 articles, governed a wide range of aspects of workers' rights and repealed a number of previous enactments. The Act, which entered into force on 1 January 1958, contained six parts. Part II, on employment relationships in economic organizations, which was the most detailed, was made up of eleven chapters, entitled: Principles; Establishment of an Employment Relationship; Temporary Employment Relationships; Hours of Work; Personal Incomes and Indemnities; Rest and Leave; Protection of Labour; Labour Discipline and Liability of Workers; Cessation of an Employment Relationship; Rules of Economic Organizations; and Exercise of Rights under an Employment Relationship. Parts III and IV concerned, respectively, the application of part II to persons working for social organizations and the application of the Act to persons working for private employers. Parts V and VI contained penal provisions and transitional and concluding provisions, respectively.

Part I of the Act set out general provisions as to employment relationships which were applicable to all persons covered by an employment relationship. Section 5 guaranteed citizens the right to work, and guaranteed the freedom of workers to choose their occupation and workplace and to change their employment and the right of workers who are temporarily without employment to enjoy material security. Section 8 provided that workers were to enjoy all the rights attaching to their employment relationship without regard to differences of sex, age, creed, political opinion or racial, national or social origin, and section 9 laid down that, for equal work and work performed under equal conditions, workers were to have the same rights under the employment relationship. Section 11 guaranteed the rights of the trade unions to protect and defend the rights of workers under the employment relationship. Chapter II (Basic rights under an employment relationship) of part I entitled the worker to a wage in consideration of his work, to social security, to legal regulation of normal hours of work, to a rest during the working day and to a weekly rest and annual leave and to appropriate health and safety measures. Women and young persons in employment, and disabled workers, were to be entitled to a special protection. Other chapters of part I included more detailed provisions on these matters.

Translations of the Act into English and French have appeared as International Labour Office: *Legislative Series* 1957 — Yug.2.

2. The Pension Insurance Act of 6 December 1957 (*Sluzbeni List*, 11 December 1957, No. 51, Text 629; *errata*: ibid., 18 December 1957, No. 52, p. 1027; 15 January 1958, No. 2, p. 31, and 5 March 1958, No. 9, p. 173) related to the compulsory, contributory pension insurance scheme, guaranteeing to insured working people the right to a personal pension, and the right of certain members of their families to a family pension in the event of the insured person's death under circumstances defined in the Act. The Act was to enter into force on 1 January 1958.

Translations of the Act into English and French have appeared as International Labour Office: *Legislative Series* 1957 — Yug.1.

ACT CONCERNING AUTHORS' RIGHTS

of 10 July 1957[1]

Chapter I

INTRODUCTORY PROVISIONS

Art. 1. The community shall grant special privileges (the author's right) to authors in respect of their intellectual creations (authors' works).

Art. 2. Authors' works of Yugoslav nationals shall enjoy protection under this Act whether they are published in Yugoslavia, published in any foreign country, or unpublished.

Previously unpublished works of foreign nationals which are first published in Yugoslavia shall enjoy

[1] Serbo-Croat text of the Act in the *Sluzebni List FNRJ* (Official Gazette of the Federal People's Republic of Yugoslavia) No. 36, text 482, of 28 August 1957. Translation by the United Nations Secretariat.

the same protection under this Act as works of Yugoslav nationals.

Works of foreign nationals which are not first published in Yugoslavia shall enjoy protection under this Act in accordance with the obligations assumed by the Federal People's Republic of Yugoslavia under international agreements.

Works of foreign nationals which are not first published in Yugoslavia shall also enjoy protection under this Act on the basis of effective reciprocity.

Chapter II

THE AUTHOR'S WORK AND THE AUTHOR

1. *The Author's Work*

Art. 3. Any intellectual creation, regardless of its kind, form and mode of expression, shall be considered an author's work.

Authors' works within the meaning of this Act shall be understood to mean, in particular, creations in the literary, scientific or artistic domain, such as:

Books, pamphlets, articles and other writings;

Lectures, addresses, discourses and other works of a similar nature;

Dramatic and operatic works;

Choreographic or pantomimic works, the presentation of which is noted in writing or other form;

Musical works with or without words;

Cinematographic works and works produced by a process analogous to cinematography;

Works in the form of drawing, painting, sculpture, architecture and carving, incised work (engravings) in metal, wood or other material, and also any other works of plastic art;

Works in all branches of applied art, graphic art and lithography;

Works of artistic and documentary photography and works of such nature produced by a process analogous to photography;

Illustrations, geographical maps;

Plans, sketches and plastic works relative to geography, topography, architecture or other science.

Art. 4. Protection shall also be granted to collections of authors' works, such as encyclopaedias, chrestomathies, anthologies, collections of music and photographs and the like which, so far as the selection and arrangement of the material are concerned, represent independent intellectual creations; such protection shall be without prejudice to the rights of the authors of the individual works of which such collections are composed.

Such protection shall also be granted to collections of literary and artistic creations which are national property, and of documents, judicial decisions and other analogous materials which do not in themselves constitute protected authors' works, provided that such collections represent independent intellectual creations so far as the selection, arrangement and manner of presentation of the materials are concerned.

Art. 5. Translations, adaptations, musical arrangements and other transformations of an author's work shall be granted the same protection as an original work, without prejudice to the rights of the author of the original work.

Such protection shall also be granted to translations of official texts in the legislative, administrative and judicial domain, provided that such translations are not made for the purpose of official publication and are not in fact published as official documents.

Art. 6. National literary and artistic creations may be freely used for the purpose of all literary, artistic or scientific work.

Art. 7. The title of a work shall enjoy the same protection under this Act as the work itself.

No person may take as the title of a work a designation already used for an author's work of the same type if the use of such title could give rise to confusion.

2. *The Author*

Art. 8. The author of a work is the person who created the work.

The person whose name is indicated on the work shall be regarded as the author thereof in the absence of proof to the contrary.

Art. 9. The author of a collection of authors' works is the person who compiled the collections.

The author of a translation, adaptation, musical arrangement or other transformation of an author's work is the person who translated, adapted, wrote the musical arrangement or otherwise transformed the said work.

A person who has created a literary, artistic or scientific work by using literary and artistic creations which are national property is the author of the work so created.

Art. 10. If a work created through the collaboration of two or more persons forms an indivisible whole, each collaborator in the said work shall be entitled to an indivisible author's right.

The shares of the individual collaborators shall be determined in proportion to the actual contribution which each of them has made to the work, unless the mutual relations between the collaborators are otherwise regulated by agreement.

If a work created through the collaboration of two or more persons does not form an indivisible whole, each collaborator shall retain an author's right in his contribution.

Art. 11. The author's right in an anonymous work or in a work produced under a pseudonym shall vest, if the author is unknown, in the publisher of the work.

Any order made pursuant to the preceding paragraph shall cease to have effect when the identity of the author is discovered.

The author's right in an unpublished work, the author of which is unknown, shall vest in the association of authors of such works.

Art. 12. The authors of a completed cinematographic work shall be deemed to be the script writer, the composer of the music, the director and the lighting cameraman.

The relationship of the producer to the authors of a cinematographic work, and also the relationship between the authors of a cinematographic work, shall be regulated by agreement.

Authors' rights in the matter of the utilization of a cinematographic work as a whole shall, in relation to third persons, be exercised by the producer.

Art. 13. An author's right may vest not only in the author, but also in any person who, by virtue of the law, a will or an agreement, is entitled to all or some of the author's rights which are recognized by this Act.

The author's rights which are recognized to an author under this Act shall vest in another person to the extent to which they are granted to him by law or to the extent to which they are transferred to him by a will or agreement.

Art. 14. Where an author's right vests in the Federation, a People's Republic, an autonomous province, an autonomous region, a department or a commune, protection of the right shall be secured by the administrative organs of the political-territorial unit concerned which are responsible for cultural matters.

When an author's right is exercised by a state organ, institution, economic organization or the like, the said body shall also secure the protection of such author's right.

Art. 15. The Federation may, for fair compensation, take over from an author or other beneficiary who is a Yugoslav national all or a specified part of any author's right in scientific works of special interest to national defence.

Any order pursuant to the preceding paragraph shall be made by the State Secretariat for National Defence.

3. *Authors' Works created in the Course of Employment, by Order or under Contract*

Art. 16. Where an author's work is created in the course of employment, the agency, institution, economic or social organization, or any other employer in whose service the said work is created, shall have the exclusive right to use the work within the scope of its or his activities, without application for special permission from the author or payment of compensation for such use.

Authors of the works referred to in the preceding paragraph shall retain all other authors' rights to the said works, to the extent that such rights are not limited by this Act.

Art. 17. The right to publish an author's work created in the course of employment shall vest in the employer.

In publishing such a work, the employer shall be required to indicate the author's name.

If an employer fails, within an agreed or specified period, to publish an author's work created in the course of employment, the right to publish the work shall be acquired by the author.

An employer may permit the author to publish a work created in the course of employment before the expiry of the period referred to in the preceding paragraph.

Upon the expiry of ten years from the completion of an author's work created in the course of employment, the right to publish the work shall in all cases vest in the author, unless otherwise provided by agreement.

Art. 18. An author who, in the course of employment, creates an author's work which exceeds the scope of the regular activity of the employer or the regular duties of the author, or which represents an intellectual creation of exceptional importance and value, shall retain all authors' rights to the work so created.

In the case referred to in the preceding paragraph, the author's work may also be used by the employer within the scope of his activities, without application for special permission from the author or payment of compensation for such use.

Art. 19. Current professional reports, memoranda, opinions, proposals, official documents and works of like nature, which are drawn up by an official in the course of his regular duties and as part of his regular work, shall not be considered authors' works.

Art. 20. The provisions of articles 16-19 of this Act shall apply unless the relationship between an author and employer in respect of authors' rights is otherwise determined by a special order, the rules and regulations of the employer or an agreement between the employer and the author.

Art. 21. Where an author's work is created under an agreement in respect of the work, the exclusive author is the person who created the work, unless otherwise indicated by the nature of the order or agreement.

Art. 22. Where a body corporate (academy, university, faculty, institute, undertaking, social or other similar organization), or one or more individuals, undertake the creation of an author's work involving the collaboration of several contributors who are not in the employment of the contractor, the author's right in the work as a whole shall vest in the contractor.

Each of the contributors to the work referred to in the preceding paragraph shall retain an author's right in his own contribution.

Such contributors may not publish their contribution separately before the expiry of five years from the publication of the collective work without the consent of the contractor.

The contractor may not re-publish the work referred to in this article or use it for another purpose without the consent of the contributors.

The mutual relations between the contractor and the contributors may also be otherwise determined by agreement between them.

Art. 23. Where a work, the preparation of which was undertaken by the persons referred to in the preceding article, also involved the collaboration of one or more persons who are in the employment of the contractor, the authors' rights of such contributors shall be governed by the provisions of articles 16-20.

Chapter III

CONTENT, UTILIZATION AND TRANSFER OF AUTHORS' RIGHTS

1. Content

Art. 24. An author's rights comprise property rights and personal rights (authors' property rights and moral rights).

Art. 25. An author's property rights consist of the right to utilize the work.

Utilization of a work is constituted by its publication, adaptation, reproduction, presentation, performance, transmission and translation.

A work may not be utilized by another person except with the consent of the author.

An author shall be entitled to compensation for every utilization of his work by another person, unless otherwise provided by law or by agreement.

Art. 26. An author's moral rights include the right to be recognized and designated as the creator of a work, the right to object to any deformation, mutilation or other modification of the work, and the right to object to any improper use of the work which would be prejudicial to his honour or reputation.

Art. 27. Any person who publishes, adapts, performs, presents, translates or reproduces the work of an author and any person who publicly utilizes such a work shall be required to indicate the name of the author on every occasion on which the work is utilized.

2. Utilization

Art. 28. The author shall have the exclusive right to publish, reproduce, duplicate, adapt, perform and present his work and to utilize it in any form whatsoever.

Art. 29. The author shall have the exclusive right of making and authorizing a translation of his work.

A translation within the meaning of the preceding paragraph shall be deemed to include a translation from one national language of Yugoslavia into another.

Art. 30. The authors of dramatic, operatic, and musical works shall have the exclusive right to authorize:

(1) The public presentation and public performance of their works;

(2) The public transmission, by any means, of a presentation or performance of their works.

The authors of dramatic, operatic and musical works shall enjoy the same rights in respect of translations of such works.

Art. 31. The author shall have the exclusive right to authorize:

(1) The broadcasting of his work by radio or its communication to the public by any other means for the wireless transmission of signs, sounds or images;

(2) Any communication to the public, by wire or by wireless, of a work broadcast by radio, where such communication is carried out by an institution other than the one by which the work was originally broadcast by radio;

(3) The communication to the public, by loudspeaker or by any similar apparatus for the transmission of signs, sounds or images, of a work which has been broadcast by radio.

Art. 32. The authors of musical and literary works shall have the exclusive right to authorize:

(1) The recording of such works by instruments for mechanical reproduction;

(2) The public performance of such works recorded by instruments for mechanical reproduction.

Art. 33. An authorization granted for a public presentation and public performance, for a public transmission of a presentation and performance, for public broadcasting by radio, or for any other communication to the public, shall not include authorization to record the work by instruments for the recording of sounds or images.

In the absence of any agreement to the contrary, a radio-broadcasting institution may, with its own equipment and for its own exclusive use, record the broadcast of a protected work which it has been authorized to broadcast, and may re-transmit such recordings upon payment of compensation and without further authorization from the author and other beneficiaries.

Such recordings may be deposited in the public archives for registration.

Art. 34. Radio broadcasting institutions may also broadcast works recorded by instruments for mechanical reproduction without authorization, but all other rights of the author and other beneficiaries shall be observed.

Art. 35. The author of a literary work shall have the exclusive right to authorize the public recitation and reading of his work.

Art. 36. The author shall have the exclusive right to authorize the adaptation, arrangement and other alteration of his work.

Art. 37. The author of a literary, musical, scientific or artistic work shall have the exclusive right to authorize:

(1) The cinematographic adaptation or reproduction of such a work and the circulation of a work so adapted or reproduced;

(2) The public presentation and public performance of a work so adapted or reproduced.

A cinematographic work created by the adaptation or reproduction of literary, musical, scientific or artistic works shall be protected as an original work, without prejudice to the rights of the author of the work adapted or reproduced.

Cinematographic works derived from literary, musical, scientific and artistic works may not be transformed into any other artistic form without the authorization of the author of the original work or without the authorization of the authors of the said cinematographic works, unless that right has been expressly transferred to the producer by special agreement.

The provisions of this article shall also apply to a reproduction or production obtained by any other process analogous to cinematography.

Art. 38. Authors of works of plastic art shall have with respect to such works, and writers and composers with respect to their original manuscripts, the right to be notified by the proprietors of such works and manuscripts of the transfer of ownership of a work or manuscript and of the new proprietor thereof.

Art. 39. Authors of works of painting, sculpture, photography and works of similar nature may prohibit the exhibition of individual works on a specific occasion.

An author may not prohibit the exhibition of works owned by museums, galleries and similar institutions.

Art. 40. The following acts shall be permitted in the territory of Yugoslavia without the consent of an author:

(1) The publication and reproduction of isolated passages of a literary or scientific work for the purposes of instruction;

(2) The reprinting in periodical publications of current articles on general topics of public interest, except where the reproduction of such articles has been expressly prohibited by the author;

(3) The reproduction in newspapers and periodical publications of current photographs, illustrations, technical drawings and works of similar nature, which have been published in newspapers and other periodical publications;

(4) The reproduction of artistic works exhibited in streets and public places, with the exception of works of sculpture obtained by an impression from a mould;

(5) The reproduction of works of sculpture, paintings and architecture by means of photographs in newspapers and magazines, except where such reproduction has been expressly prohibited by the author;

(6) The reproduction of works of applied art by industrial, artisan or domestic labour;

(7) The textual quotation of fragments of a published literary, artistic or scientific work, provided that the fragments so quoted do not exceed one-fourth of the work in which the quotation is being made.

In all the above-mentioned cases the name of the author, the original work and the source of the borrowing shall be clearly indicated.

The author shall also retain all his other rights under this Act, including the right to fair compensation.

Art. 41. The following acts shall be permitted in the territory of Yugoslavia without the consent of an author and without payment of compensation for utilization:

(1) The presentation and performance of a literary or artistic work for the purpose of and in the course of instruction, and at school events to which admission is free;

(2) The publication of commentaries on published literary, artistic and scientific works, in which the content of such works is reproduced in the original or in an abridged form;

(3) The exhibition of works in public displays, with the exception of works the exhibition of which is prohibited by the author;

(4) The reproduction of an already published work for the purpose of personal improvement, provided that the reproduction is not intended for or accessible to the public;

(5) The reproduction of a work of painting in the medium of sculpture and *vice versa*, and the reproduction of an architectural work in the medium of painting or sculpture.

In the cases specified in this article, the author shall similarly retain all his other rights under this Act.

Art. 42. Speeches intended for the public which are delivered before representative bodies, judicial and other state organs and scientific institutions and at public political gatherings and official celebrations may be communicated to the public by the press or by radio for the purpose of reporting current events, without the authorization of the author or payment of compensation.

Brief reports of other speeches, lectures, sermons and works of like nature may be published in the daily and periodical press without the authorization of the author or the payment of compensation.

However, only the author shall have the right to compile a collection of the works referred to in this article.

In the cases specified in this article, the author shall similarly retain all his other rights under this Act.

Art. 43. Compensation for the utilization, in the form of the performance, of literary and artistic creations which are national property shall be paid to the Fund for the Advancement of Cultural Activities.

The utilization in any other form of literary and artistic creations which are national property shall be free.

Persons who utilize literary and artistic creations which are national property shall be required to indicate the source of the work and to refrain from any mutilation or improper use of the work.

The protection of the right referred to in the preceding paragraph shall be secured by the appropriate professional association of authors and the academies of science and art.

3. Transfer of Authors' Property Rights by Agreement

Art. 44. Authors' property rights in the whole or in specified parts of a work may be transferred to individuals and bodies corporate, either wholly or partially, for the whole term of the author's right or for a specified shorter period, for a specified locality and for publication or presentation in a specified language.

An agreement concerning the transfer of authors' property rights shall not be valid unless it is concluded in writing.

An agreement concerning the transfer of authors' property rights which is not concluded in writing shall have no legal effect.

4. Succession

Art. 45. The succession to authors' property rights and moral rights shall be governed by the provisions of the Succession Act unless otherwise provided by the present Act.

Art. 46. Where, under the regulations concerning succession, an author's right becomes public property, the proprietor of the author's right shall be the community in whose territory the deceased author had his last residence or domicile in Yugoslavia.

Art. 47. The moral right of a deceased author may also be exercised by the association to which he belonged, or to which he would have belonged by virtue of the nature of the work, unless the author provided otherwise during his lifetime or in his will.

Chapter IV

THE DURATION OF AUTHORS' RIGHTS

Art. 48. The term of an author's property rights shall be the life of the author and fifty years after his death, except as otherwise provided in this Act with respect to specific types of authors' rights.

Where the proprietor of an author's right within the meaning of article 22 of this Act is a body corporate, that right shall lapse upon the expiry of fifty years after publication of the work.

Art. 49. Authors' moral rights shall continue even after the expiry of authors' property rights.

Art. 50. An author's property right in photographic or cinematographic works which are analogous to photographic works shall lapse upon the expiry of five years after publication.

An author's property rights in works of applied art shall lapse upon the expiry of ten years after publication.

Art. 51. An author's property right in anonymous works and works published under a pseudonym shall lapse upon the expiry of fifty years after publication of such works.

If the pseudonym leaves no doubt as to the identity of the author, or if the author reveals his identity, the duration of the author's right shall be the same as if the work had been published under the author's true name.

Art. 52. Where the author of a work published in a foreign language does not make or authorize a translation of that work into any of the languages of the peoples of Yugoslavia within a period of ten years after publication of the work, the said work may be translated into the languages of the Yoguslav peoples without the authorization of the author of the work.

This provision shall also apply to works published in the language of one of the Yugoslav peoples.

In the cases specified in this article, the author of the translated work shall retain the right to compensation in respect of the translation which has been made, and to all other authors' rights in the translated work.

Art. 53. The duration of an author's right which belongs in common to the joint authors of a work shall be calculated from the death of the author who dies last.

Art. 54. The periods of time referred to in the preceding articles of this chapter shall run from the first of January of the year immediately following the death of the author or the publication of the work, as the case may be.

Chapter V

PROTECTION OF AUTHORS' RIGHTS

[Here are defined civil law and criminal law remedies available to the author for the protection of his rights.]

Chapter VI

GIVING EFFECT TO AUTHORS' RIGHTS

[Here appear the provisions according to which authors' rights are carried into effect.]

Chapter VII

RIGHTS IN DIARIES, PRIVATE LETTERS AND PORTRAITS

Art. 76. Diaries, personal notes and other similar documents of a personal nature may not be published without the consent of the writer, unless otherwise provided by law.

A private letter not intended by the writer for publication may not be published without his consent, unless otherwise provided by law.

The publication of a letter within the meaning of the preceding paragraph shall also be subject to the consent of the person to whom the letter was addressed, where the publication of the letter would be prejudicial to important interests of that person.

On the death of the persons specified in this article, the diaries, letters and other documents referred to in this article may be published with the consent of the surviving spouse and children, or failing these with the consent of the parents of the said persons.

The provisions of the foregoing paragraphs shall not apply to diaries, letters and other documents referred to in this article which are conserved in public archives, museums, libraries and similar institutions.

Art. 77. Portraits, plastic art representations or photographs may not be circulated or publicly exhibited without the consent of the sitter.

On the death of a sitter, and for a period of ten years thereafter, the consent of his surviving spouse and children, or failing these, the consent of his parents shall be required for circulation and public exhibition within the meaning of the preceding paragraph.

The person portrayed shall be deemed to have given his consent if he received remuneration for posing.

Art. 78. Notwithstanding the provisions of the preceding article, the following works may be publicly exhibited, displayed and circulated without the consent referred to in the preceding article:

(1) Portraits, plastic art representations or photographs of persons connected with contemporary history;

(2) Pictures in which persons are presented as a detail of a landscape or scenario;

(3) Pictures representing meetings, processions and similar events in which the persons depicted took part;

(4) Uncommissioned portraits, works of plastic art or photographs, if the public exhibition, display or circulation thereof serves some higher interest of art.

Chapter VIII

INTERIM AND FINAL PROVISIONS

Art. 79. The provisons of this Act shall also apply to all authors' works published before its entry into force.

An author's right which, under the law previously in force has lapsed or has passed to the State, shall be enjoyed by the persons in whom such right is vested by this Act from the date on which this Act enters into force.

The right of the persons specified in the preceding paragraph shall continue until the expiry of the period provided by this Act for the duration of an author's right.

Art. 80. If, during the period in which an earlier law is in force, an author's right has been transferred to another person (article 7 of the Act of 25 May 1946 concerning the protection of authors' rights), such right shall, upon the expiry of the period for which it has been transferred, vest in the author or his heirs and other legal successors in accordance with the provisions of this Act.

Art. 81. Detailed regulations governing relations between authors and persons who publish, translate, transform, reproduce, present or perform authors' works, and governing the compensation for the utilization of such works shall be made by the Federal Executive Council.

Art. 82. The Federal Executive Council shall make regulations governing the rights of artists — performers of musical, literary and artistic works — in respect of the recording and reproduction of their performances recorded by instruments for mechanical reproduction, and the manner in which such rights shall be exercised.

The Federal Executive Council is also empowered to make regulations governing the rights of radio-broadcasting institutions in respect of the performances which they transmit and the rights of producers of instruments for mechanical reproduction.

Art. 83. The following shall cease to have effect after the entry into force of this Act: the Act of 25 May 1946 concerning the Protection of Authors' Rights, the regulations concerning the transfer to authors' unions and associations of matters relating to representation and agency in connexion with authors' rights, and any rules made under the said Act which are incompatible with the provisions of the present Act.

Art. 84. This Act shall come into force upon the expiry of three months from the date of its publication in the *Službeni List FNRJ* (Official Gazette of the Federal People's Republic of Yugoslavia).

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

TRUST TERRITORY OF NEW GUINEA

NOTE[1]

Adoption of Children Ordinance, 1956 (Papua and New Guinea)

Following the practice in the states of the Commonwealth of Australia, this ordinance amends the *Adoption of Children Ordinance*, 1951, to enable the Minister for Territories to make reciprocal arrangements with ministers of states and other territories of the Commonwealth for the registration of adoption orders in respect of children born in the Territory of New Guinea. By this means a proper record of adopted children can be kept, which will facilitate the determining of questions of succession to property of adoptive parents and other matters. The ordinance does not apply to natives or to part-natives. Provision as to the care and custody of native and part-native children is made in the *Native Children Ordinance*, 1950, and the *Part-native Children Ordinance*, 1950, respectively.

Minimum Age (Sea) Ordinance, 1957 (Papua and New Guinea)

The Minimum Age (Sea) Convention, 1920 (International Labour Convention No. 7), is to the effect that, subject to certain exceptions, children under the age of fifteen years shall not be employed or work on vessels. This ordinance is designed to implement the Convention in the Territory. As it is often not possible to obtain documentary proof of the ages of natives, special provision is made for proof of age to be given in these cases by means of a medical certificate.

Administration Employees' Compensation Ordinance, 1957 (Papua and New Guinea)

This ordinance is an amending ordinance making compensation for injuries suffered in the course of their employment payable to native members of the Auxiliary Division of the Public Service. It restricts the compensation to a percentage of that otherwise payable which represents the relation between the minimum salary (i.e., £400) payable to a member of the Auxiliary Division and the minimum salary (i.e., £668) payable to a member of the Third Division.

In addition, it provides that, in the case of a native employee, a wife means a wife whether by native custom or otherwise, other than a wife of a polygamous union entered into after the officer joined the public service.

It further extends the principal ordinance to all employees of the administration, whether native or otherwise, except persons employed under the *Native Labour Ordinance* or the *Native Apprenticeship Ordinance*, for whom provision is made in those ordinances.

Amendment of Native Administration Regulations, 1924 (New Guinea)

A native who is absent from his tribal area and is without adequate means of support may under this amendment (regulations No. 24 of 1957) be ordered by a Court for Native Affairs to return to his tribal area. Failure to comply with an order entails a penalty of three months' imprisonment. If the native returns to the place where the order was made within six months from the date of the order and is again without means of support, he is liable to a penalty of six months' imprisonment. A similar provision already exists in Papua.

[1] Information kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, government-appointed correspondent of the *Yearbook on Human Rights*.

BELGIUM

TRUST TERRITORY OF RUANDA-URUNDI

NOTE[1]

All the legislative enactments and international agreements mentioned in the note on the Belgian Congo[2] are applicable to Ruanda-Urundi, except for legislative ordinance No. 22/250, of 20 August 1957, concerning family allowances for workers.

Regulations concerning Movement

Ordinance No. 21/110, of 10 July 1957 (*Bulletin officiel* of 31 July 1957), giving effect to the decree of 14 July 1952 on the reorganization of the indigenous political structure of Ruanda-Urundi, provides in particular that all indigenous inhabitants must obtain a change-of-residence passport before leaving Ruanda-Urundi or before leaving their chiefdom for more than thirty days in order to take up residence in certain parts of the Territory.

The indigenous chiefs shall decide upon the issuance of such passports; however, passports must be granted to certain categories of persons, in particular to married women and children accompanying an indigenous inhabitant in possession of a passport. Those concerned have the right to appeal to the administrator of the Territory. An indigenous inhabitant who is shown not to have complied with the above-mentioned obligations is liable to short terms of penal servitude and fines; he may furthermore be returned to his customary environment by judicial ruling.

[1] Note prepared on the basis of information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See below, p. 28.

FRANCE

TRUST TERRITORY OF THE CAMEROONS UNDER FRENCH ADMINISTRATION

NOTE[1]

As a preliminary to the termination of the trusteeship and in application of Act No. 56-619, of 23 June 1956,[2] a decree was promulgated on 16 April 1957[3] setting forth the Statute of the Trust State of the Cameroons. The Cameroonian institutions include a parliament and a government. The relationship between the French Republic and the new State is defined by the decree in conformity with the principles of the trusteeship.

The application of various provisions of civil law was expressly extended to the Cameroons by decrees dated 6 May and 11 July 1957. These provisions included Act No. 56-656, of 5 July 1956,[4] amending article 331 of the Civil Code concerning the legitimation of adulterine children; Act No. 48-889, of 29 May 1948, supplementing article 311 of the Civil Code concerning judicial separation; Act No. 55-934, of 15 July 1955, amending articles 340-342 of the Civil Code concerning the recognition of natural children and adding an article 342 *bis*; and Act No. 55-1465, of 12 November 1955, supplementing article 57 of the Civil Code concerning additions or alterations to the first names shown in birth certificates.

Mention has already been made of the decree of 24 February 1957 concerning compensation for and prevention of industrial accidents and occupational diseases, which is applicable to the Cameroons.[5]

[1] Note kindly furnished by Mr. E. Dufour, *Maître des Requêtes au Conseil d'Etat*, Paris, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United States Secretariat.

[2] See *Yearbook on Human Rights for 1956*, pp. 267 and 275.

[3] Decree No. 57-501, *Journal officiel*, April 1957, p. 4112. See below.

[4] *Journal officiel*, July 1956, p. 6263.

[5] See p. 283.

DECREE No. 57-501 SETTING FORTH THE STATUTE OF THE CAMEROONS of 16 April 1957[1]

Part I

THE SPECIAL ORGANIZATION OF THE CAMEROONS

Article 1

The special organization of the Trust State of the Cameroons (l'Etat sous tutelle du Cameroun) is defined in this statute.

Article 2

This organization shall continue in force until the inhabitants of the Cameroons, in conformity with the Charter of the United Nations and the Trusteeship Agreement of 13 December 1946,[2] in particular with the provisions of article 5 thereof, are invited to express an opinion on the definitive regime of the Cameroons.

. . .

Article 6

The High Commissioner of the French Republic shall be, in the Cameroons, the representative of the French Government and the depository of the powers of the Republic.

Part II

CAMEROONS CITIZENSHIP

Article 7

The nationals of the Cameroons (ressortissants du Cameroun) are Cameroons citizens.

Article 8

Cameroons citizens shall, for so long as the Trust State (l'Etat sous tutelle) administered by France continues to be governed by the provisions of this statute, enjoy the civil, civic and social rights of French citizens; in particular, they shall have access to all civil and military office and may vote and stand for election anywhere in the French Republic.

[1] Published in *Journal officiel* of 18 April 1957. The Statute entered into force on 9 May 1957. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1947*, pp. 407-8.

French citizens shall enjoy in the Cameroons by virtue of reciprocity all the rights attaching to the status of Cameroons citizen.

Part III

CAMEROONS INSTITUTIONS

Chapter I. — *The Legislative Assembly of the Cameroons*

Article 9

The Legislative Assembly of the Cameroons shall hold its sessions in the capital of the Trust State.

The Legislative Assembly shall consist of seventy members elected for a term of five years by direct universal suffrage and by secret ballot, in a manner which will ensure representation of each administrative region in proportion to the size of its population.

. . .

Article 15

The Cameroons legislation and the regulations made by the Cameroons authorities must be consistent with treaties and international conventions, in particular the Trusteeship Agreement of 13 December 1946 and the principles set forth in the Universal Declaration of Human Rights and the Charter of the United Nations and in the preamble to the Constitution of the French Republic, and with the provisions of the present statute.

. . .

Part IV

THE OFFICE OF THE HIGH COMMISSIONER OF THE FRENCH REPUBLIC IN THE CAMEROONS

. . .

Chapter II. — *Exercise of Trusteeship*

. . .

Article 49

Independently of the appellate remedies under the ordinary law, any legislation, regulation or administrative act which conflicts with the provisions of this statute or with international conventions, and particularly if it conflicts with the legislative provisions mentioned in article 14 above or impedes the discharge by the French Republic of its obligations under the Trusteeship Agreement of 13 December 1946, shall be referred back for reconsideration or re-examination at the request of the High Commissioner. It shall be annulled by decree, to be enacted after consultation with the Conseil d'Etat, at any time before the expiry of three months after the date on which the text in question is transmitted by the High Commissioner to the Minister for Overseas France. The Prime Minister of the Assembly, as the case may be, shall be informed immediately of such recourse, which must be instituted within one month and which shall have the effect of suspending the entry into force of the legislative text in question.

. . .

ITALY

TRUST TERRITORY OF SOMALILAND

ACT No. 2 OF 1957 ON ORIGINAL SOMALI CITIZENSHIP of 1 December 1957[1]

Art. 1

ORIGINAL SOMALI CITIZENSHIP

The following are Somali citizens:

(*a*) The child of a Somali father who was born in the Territory;

(*b*) The child of a Somali father who, although not born in the Territory, has elected at the time of the entry into force of this Act to reside permanently in the Territory.

Art. 2

LOSS OF SOMALI CITIZENSHIP

Original Somali citizenship shall be lost by:

(*a*) A citizen who accepts foreign citizenship or who retains foreign citizenship acquired before the entry into force of this Act;

(*b*) A citizen who, having accepted employment from a foreign government or having entered the military service of a foreign power, continues in that service or employment notwithstanding notice from the Somali Government to withdraw from it within a specified period of time;

(*c*) A female Somali citizen who marries a foreigner.

Art. 3

REACQUISITION OF ORIGINAL CITIZENSHIP

A person who has lost his original Somali citizenship may reacquire it upon request. In each case, he must declare his renunciation of any foreign citizenship he may have acquired.

Art. 4

SOMALIS BORN IN THE TERRITORY WHO ARE CITIZENS OF OTHER STATES

Any person to whom the provisions of article 1(*a*) apply shall, even if he is a citizen of a foreign State, enjoy in the Territory all the civil rights of citizens, save the right to occupy executive public office of an essentially political or military character; he may, furthermore, obtain Somali citizenship upon request, provided he renounces his foreign citizenship.

Art. 5

SOMALIS NOT BORN IN THE TERRITORY

Any child of a Somali father not born in the Territory shall, even if he is a citizen of a foreign State, enjoy in the Territory all the civil right of citizens, save the right to occupy executive public office of an essentially political or military character.

He may, furthermore, obtain Somali citizenship upon request, provided that he can show that he has transferred his own domicile and residence to the Territory and has renounced any other citizenship he may have acquired.

. . .

[1] Text published in *Bollettino Ufficiale Della Somalia* of 1 February 1958. Translation by the United Nations Secretariat. The Act entered into force upon publication. Legislation dealing with acquisition of Somali citizenship by persons not covered by Act No. 2 of 1957 is reported to be in preparation.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

TRUST TERRITORY OF TANGANYIKA

THE LEGISLATIVE COUNCIL ELECTIONS ORDINANCE, 1957

No. 29 of 1957, assented to on 3 July 1957[1]

Part II

QUALIFICATIONS AND DISQUALIFICATIONS FOR VOTERS AND CANDIDATES

Voters

5. Every person who

(*a*) Has attained the age of twenty-one years; and

(*b*) Has the requisite residential qualification for a voter under the provisions of section 6; and

(*c*) Has one or more of the following qualifications, that is to say:

(i) The requisite educational qualification for a voter under the provisons of section 7; or

(ii) The requisite income qualification for a voter under the provisions of section 8; or

(iii) The requisite office holder qualification for a voter under the provisions of section 9, and

(*d*) Is not disqualified under this ordinance,

shall be entitled to be registered as a voter in the constituency in respect of which he has the requisite residential qualification under the provisions of section 6.

6. (1) In order to have the requisite residential qualification to be registered as a voter, a claimant must

(*a*) (i) Have been ordinarily resident in the Territory for a period of not less than three years out of the five years immediately preceding his application to register; or

(ii) At the time of his application to register, be in possession of a valid certificate of permanent residence issued under the provisions of the Immigration Ordinance, 1957, or any ordinance enacted in substitution therefor; and

(*b*) Be ordinarily resident in the constituency in which he makes application to register as a voter.

(2) For the avoidance of doubt, it is hereby declared that where a claimant has been absent from the Territory merely for some temporary purpose or for the purpose of undergoing a course of education or for the purpose of receiving surgical or medical treatment, his period of ordinary residence in the Territory shall be deemed not to have been interrupted by reason thereof.

(3) Residence in the Territory as a prohibited immigrant under the provisions of the Immigration Ordinance, 1957, or any ordinance enacted in substitution therefor, whether or not under a temporary permit or pass issued under that ordinance, shall not be reckoned as residence for the purposes of this section.

7. (1) In order to have the requisite educational qualification to be registered as a voter, a claimant must have completed satisfactorily the course of general education known as standard VIII in the schools established by the Government, or a course of general education or training of a standard equal to or higher than that standard.

(2) A certificate purporting to be under the hand of the Director of Education, or any officer of the Department of Education authorized in that behalf by the Director of Education, that a course of general education or training is or is not of a standard equal to or greater than the course of general education known as standard VIII in the schools established by

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[1] Published in *Supplement No. 1* to the *Tanganyika Gazette*, vol. XXXVIII, No. 39, of 12 July 1957. Read together with the Tanganyika (Legislative Council) Orders in Council, 1926 to 1955 (see *Yearbook on Human Rights for 1955*, pp. 280-1), the ordinance provided for a system, based on a common electoral roll, under which every constituency was to be represented in the Legislative Council by three members—namely, one African, one Asian and one European—and every voter wishing to exercise the right to vote was to be required to vote for a candidate of each race unless the candidate of a particular race was unopposed, in which case the candidate was to be returned without a vote.

The ordinance entered into force on 31 July 1957.

The Tanganyika (Legislative Council) (Amendment) Order in Council, 1957 (*Statutory Instruments*, 1957, No. 1875, H.M.S.O., London) amended the Tanganyika (Legislative Council) Orders in Council, 1926 to 1955, so as to increase the total number of *ex officio* and nominated members of the Legislative Council to thirty-four, to increase the number of constituencies into which the Territory was to be divided from nine to ten, and to provide for the filling of certain seats in the Legislative Council by appointment instead of election where no candidates have been nominated for election.

the Government shall be *prima facie* evidence of that fact.

(3) A certificate purporting to be under the hand of the principal of any school or other educational or training institution or establishment that a claimant has or has not completed satisfactorily the course of general education or training therein specified (being a course of general education or training provided by the school or educational or training institution or establishment of which the person issuing the certificate is the principal) shall be *prima facie* evidence of that fact.

8. (1) In order to have the requisite income qualification to be registered as a voter, a claimant must, during the whole of the period of one year immediately preceding his application to register, have been in the *bona fide* receipt within the Territory of income, salary or wages at the rate of not less than three thousand shillings a year.

(2) In the computation of income, salary or wages for the purposes of sub-section 1 of this section, board, lodging and clothing, or any money received for any or all of these purposes, may be included.

9. (1) In order to have the requisite office holder qualification to be registered as a voter, a claimant must, at the time of his application to register, be

(*a*) A member, or former member, of the Council as an *ex officio* member, nominated member, representative member or temporary member; or

(*b*) A councillor, or former councillor, a municipal council established under the Municipalities Ordinance; or

(*c*) A member, or former member, of an authority established under the Local Government Ordinance; or

(*d*) A member, or former member, of a township authority established under the Townships Ordinance; or

(*e*) A member of an authority established under the Minor Settlements Ordinance; or

(*f*) A member of a Provincial Advisory Council established by the Provincial Commissioner of a province; or

(*g*) A member of a District Advisory Council established by the District Commissioner of a district; or

(*h*) A Native Authority or member of a Native Authority established under the Native Authority Ordinance; or

(*i*) A member of a Council established with the approval of the Provincial Commissioner to advise a Native Authority established under the Native Authority Ordinance; or

(*j*) Constituted or appointed a chief, or appointed to perform the duties of a chief during the minority of a chief, pursuant to the provisions of the African Chiefs Ordinance; or

(*k*) The liwali, wakili, waziri, superior headman or headman for a municipality established under the Municipalities Ordinance, or the area of an authority established under the Local Government Ordinance, or a township established under the Townships Ordinance, or a minor settlement established under the Minor Settlements Ordinance; or

(*l*) Recognized by native law and custom as the head of a clan or kindred group for the purposes of representing such clan or group in affairs relating thereto.

(2) A certificate purporting to be under the hand of a District Commissioner of the district in which a claimant is ordinarily resident that such claimant is or is not a person of a class specified in paragraph (*i*) or paragraph (*l*) of sub-section 1 of this section shall be *prima facie* evidence of that fact.

10. No person shall be registered as a voter, or, being registered, shall be entitled to vote at an election in any constituency who

(*a*) Is a person adjudged to be of unsound mind, or is condemned as a criminal lunatic under any law for the time being in force; or

(*b*) In any part of Her Majesty's dominions, or in any territory under Her Majesty's protection, or in which Her Majesty has for the time being jurisdiction, is under sentence of death, or has been sentenced to imprisonment and has not served such sentence or received a free pardon; or

(*c*) Is disqualified from registering as a voter or voting under any law for the time being in force in the Territory relating to offences connected with elections.

11. A person registered as a voter in any constituency who, for a continuous period of twelve months, has not been ordinarily resident in that constituency shall thereafter cease to be entitled to have his name retained on the roll for that constituency.

12. No person shall be registered as a voter in more than one constituency or, if the constituency in which he is entitled to be registered as a voter is divided, in more than one registration division.

13. (1) Any person registered as a voter in a constituency and not disqualified for voting under the provisions of section 10 shall be entitled to vote in that constituency at an election therein in the manner provided in this ordinance.

(2) A person registered as a voter whose name has been changed consequent upon marriage or otherwise since being so registered shall, if nor disqualified for voting under section 10, be entitled to vote under the name in which she or he is so registered.

(3) No person other than a person entitled to vote pursuant to the provisions of sub-sections 1 and 2 of this section shall vote at an election.

Candidates

14. (1) No person shall be elected as a member of the Council or stand as a candidate at an election unless he is qualified for election.

(2) A person shall be qualified for election if he satisfies the following conditions, that is to say:

(*a*) He has attained the age of twenty-five years; and

(*b*) He is registered as a voter in a constituency and is not disqualified for voting under the provisions of section 10; and

(*c*) He has the requisite residential qualification for candidature under the provisions of section 15; and

(*d*) He has the requisite literacy qualification for candidature under the provisions of section 16; and

(*e*) He has one or more of the following qualifications, that is to say:

(i) The requisite educational qualification for candidature under the provisions of section 17; or

(ii) The requisite income qualification for candidature under the provisions of section 18; or

(iii) Previous membership of the Council as an *ex officio* member, nominated member, representative member or temporary member; and

(*f*) He has been validly nominated pursuant to the provisions of section 71; and

(*g*) He has deposited with the returning officer the sum of five hundred shillings pursuant to the provisions of section 73; and

(*h*) He is both willing and able to take the oath of allegiance specified in clause X of the Order in Council; and

(*i*) He is

(i) An African where the vacancy in the constituency concerned is for an African member; or

(ii) An Asian where the vacancy in the constituency concerned is for an Asian member; or

(iii) A European where the vacancy in the constituency concerned is for a European member; and

(*j*) He is not disqualified under this ordinance or the Order in Council.

15. (1) In order to have the requisite residential qualification for candidature a person must

(i) Have been ordinarily resident in the Territory for a period of not less than four years out of the six years immediately preceding his nomination as a candidate; or

(ii) At the time of his nomination, be in possession of a valid certificate of permanent residence issued under the provisions of the Immigration Ordinance, 1957, or any ordinance enacted in substitution therefor.

(2) For the avoidance of doubt it is hereby declared that where a claimant has been absent from the Territory merely for some temporary purpose or for the purpose of undergoing a course of education or for the purpose of receiving surgical or medical treatment, his period of ordinary residence in the Territory shall be deemed not to have been interrupted by reason thereof.

16. (1) In order to have the requisite literacy qualification for candidature, a person must have sufficient fluency in the English language to be able to read and understand documents normally considered by the Council and have absolute fluency in either the English or Swahili language.

(2) A certificate purporting to be under the hand of the speaker, or any person duly authorized in that behalf by the speaker, that a prospective candidate has or has not the requisite literacy qualification specified in sub-section 1 of this section shall be *prima facie* evidence of that fact.

(3) For the purpose of satisfying himself that a prospective candidate has or has not the requisite literacy qualification the speaker, or any person duly authorized in that behalf by the speaker, may make such enquiries as he deems fit and may test a prospective candidate as to his ability to read and understand documents normally considered by the Council and as to his fluency in either the English or Swahili language.

17. (1) In order to have the requisite educational qualification for candidature a person must have completed satisfactorily the course of general education known as standard XII in the schools established by the Government, or a course of general education or training of a standard equal to or higher than that standard.

(2) The provisions of sub-sections 2 and 3 of section 7 relating to the production of certificates as evidence of the requisite educational qualification for voters shall apply, *mutatis mutandis*, to the production of evidence of the requisite educational qualification for candidature under sub-section 1 of this section.

18. (1) In order to have the requisite income qualification for candidature, a person must, during the whole of the period of one year immediately preceding his nomination, have been in the *bona fide* receipt within the Territory of income, salary or wages at the rate of not less than four thousand shillings a year.

(2) In the computation of income, salary or wages for the purposes of sub-section 1 of this section, board, lodging and clothing, or any money received for any or all of these purposes, may be included.

19. For the avoidance of doubt it is hereby declared that the offices enumerated in paragraphs (*b*) to (*l*) inclusive of sub-section 1 of section 9, or any of them, shall not be offices of emolument under the Crown in the Territory for all or any of the purposes of the Order in Council.

20. In addition to the disqualifications for election specified in clause VIF of the Order in Council,[1] and subject thereto, a person shall be disqualified for election while he is a nominated member, a representative member or a temporary member.

. . .

Part VI

ELECTION PROCEDURE

[This part includes provisions safeguarding the secrecy of voting.]

[1] See *Yearbook on Human Rights for 1955*, pp. 280-1.

Part VII

ELECTION OFFENCES

. . .

[Section 116 concerns the offence of infringement of secrecy.]

. . .

126. (1) No person shall within any building where voting in an election is in progress, or on any public way within a distance of fifty yards of any entrance to such building, wear or display any card, symbol, favour or other emblem indicating support for a particular candidate in the election.

. . .

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA

NOTE[1]

Adoption of Children Ordinance 1956 (Papua and New Guinea)

Minimum Age (Sea) Ordinance 1957 (Papua and New Guinea)

Administration Employees' Compensation Ordinance 1957 (Papua and New Guinea)

These ordinances are described on p. 271 above.

Amendments of Native Regulations, 1939 (Papua)

The *Native Administration Regulations*, 1924 (New Guinea), contain provisions whereby, in the event of non-payment of a fine imposed by a Court for Native Affairs, the fine may be converted into a term of imprisonment, the maximum length of which is proportional to the amount of the fine. This was formerly not the case in Papua, except in a limited number of cases. By regulations No. 3 of 1957, of the Territory of Papua and New Guinea, provisions along the lines of those in New Guinea were inserted in the Native Regulations, 1939, of Papua.

Regulation 127 of the Native Regulations, 1939 (Papua), compelled natives to work as carriers when so required by the Administration. The regulation has now been repealed, by regulations No. 9 of 1957 of the Territory of Papua and New Guinea.

Amendment of Public Entertainment Regulations

Under the regulations as they stood before this amendment, separate accommodation had to be provided in places of public entertainment for natives and non-natives. The amendment (regulations No. 36 of 1957) allows the administrator to waive this requirement in particular cases.[2]

[1] Information kindly furnished by Mr. H. F. E. Whitlam, former Crown Solicitor, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Since the enactment of the 1957 amendment, however, the whole provision as to separate accommodation has been omitted from the legislation; see regulations No. 33 of 1958.

BELGIUM

BELGIAN CONGO

NOTE[1]

I. LEGISLATION

The Right to Work

Legislative Ordinances No. 22/198, of 11 July 1957 (*Bulletin administratif du Congo belge* of 27 July 1957), and No. 22/249, of 20 August 1957 (*Bulletin administratif* of 7 September 1957), amend the royal order of 19 July 1954 consolidating the provisions of previous decrees concerning the contract of employment of indigenous workers. Under the terms of the contract, the employer must provide suitable accommodation for the worker and his family; he may, however, be exempted, in certain circumstances, from this obligation in the case of day or temporary workers. In certain cases, *inter alia*, where the worker is provided with land for cultivation on the work site, the employer may be authorized to reduce the food allowance to which the worker is entitled. A broader definition is given of the term "the worker's family", which now includes wards and children who have been adopted or legally recognized.

The decree of 23 July 1957 (*Bulletin officiel du Congo belge* of 15 August 1957)[2] regulates the apprenticeship contract. The apprentice must be under twenty-one years of age and physically fit for the work in question. The contract must be signed by a person exercising paternal authority. The master must, *inter alia*, watch over the safety and health of the apprentice, ensure that he receives the necessary medical care and grant him fifteen days' leave on the expiry of each period of one year's effective service.

The decree of 28 March 1957 (*Bulletin officiel* of 15 April 1957) regulates the payment of compensation in respect of occupational diseases contracted by non-indigenous workers. A worker contracting such a disease is entitled, in certain circumstances, to receive the necessary medical care at the employer's expense and an indemnity. The widow and the children of a deceased worker are entitled to a payment in respect of funeral expenses and to a life pension. The contributions are paid by the employer.

Legislative ordinances No. 22/65, of 15 March 1957 (*Bulletin administratif* of 23 March 1957),[3] and 22/290 of 20 September 1957 (*Bulletin administratif* of 28 September 1957), govern the compulsory conciliation and arbitration procedure in the case of a collective labour dispute. In the event of the failure of direct negotiations between the two parties, the authorities set up conciliation committees composed of representatives of employers and employees, who must have no connexion with the undertaking concerned, and a chairman, who is a law officer or official. If the conciliation procedure proves unsuccessful, the parties are invited to sign an agreement to submit the matter to arbitration. Neither party may have recourse to a strike or lockout except in the case of the final failure of the procedure or the non-execution by the other party of the agreement reached.

The decree of 25 January 1957 (*Bulletin officiel* of 1 February 1957), concerning the right of association,[4] accords the inhabitants of the Belgian Congo the right to join occupational associations devoted exclusively to the study, defence and furtherance of their occupational, economic and social interests. Such associations must be approved by the authorities in the manner prescribed by royal order; they may apply for legal status subject to the conditions laid down by decree. It is unlawful to form or participate in any combination that has for its object a collective stoppage of work until the prescribed means of conciliation and arbitration have been exhausted.

A decree of the same date (*Bulletin officiel* of 1 February 1957)[5] accords officers of the African administration and the judiciary the right to join occupational associations for the same purposes. The general terms of this decree are similar to those of the decree mentioned above, except that officers of the administration may in no case form or participate in any combination that has for its object a collective stoppage of work. Detailed regulations governing staff associations of officers of the African administration are contained in a royal order of the same date made under the decree (*Bulletin officiel* of 1 February 1957). Certain

[1] Note prepared on the basis of information kindly furnished by Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, Brussels, government appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Legislative Series* 1957 — Bel.C.4, published by the International Labour Office.

[3] See *Legislative Series* 1957.— Bel.C.5, published by the International Labour Office.

[4] See *Legislative Series* 1957 — Bel.C.1, published by the International Labour Office.

[5] See *Legislative Series* 1957 — Bel.C.1, published by the International Labour Office.

categories of staff, in particular members of the police force, do not enjoy the rights accorded by the decree. Duly authorized associations may, *inter alia*, intervene with the authorities in the interests of the staff, participate in the management of welfare institutions and appoint representatives to attend recruitment and promotion examinations.

Consultative councils, half of whose members are representatives of staff associations, must be consulted on proposals concerning the status of officials. In certain circumstances, representatives of staff associations are temporarily relieved of their normal duties, but they retain their posts and are eligible for promotion.

The decree of 14 March 1957 (*Bulletin officiel* of 15 April 1957)[1] provides that, with certain exceptions, the actual hours of work in all public and private undertakings shall not exceed eight a day or forty-eight a week, and that employers may not employ any persons other than the members of their families on Sundays or public holidays.

Social Security

Legislative ordinance No. 22/250 of 20 August 1957 (*Bulletin administratif* of 7 September 1957), amending the decree of 26 May 1951 concerning family allowances for indigenous workers, provides that, where accommodation is not provided in kind for his children, a worker shall be entitled to an additional family housing allowance.

The decree of 6 April 1957 (*Bulletin officiel* of 1 May 1957) institutes a daily allowance for non-indigenous workers who are unemployed for reasons outside their own control and whose income is below a specified sum. Persons who have taken part in a strike before the legal means of conciliation and arbitration have been exhausted are not entitled to this allowance nor are married women and minors if the head of the family is in gainful employment.

The decree of 19 February 1957 (*Bulletin officiel* of 13 March 1957)[2] establishes invalidity allowances for workers in the Belgian Congo whose earning capacity has been permanently reduced by two-thirds as a result of an illness contracted or an injury sustained in the course of a period of employment under a contract of employment. This allowance is not granted in cases where the worker is entitled to claim compensation under the legislation relating to occupational diseases and industrial accidents. The scope of this decree was extended to certain categories of individuals by legislative ordinance No. 22/457, of 31 December 1957 (*Bulletin administratif* of 13 January 1958).

Legislative ordinances No. 22/248, of 20 August 1957 (*Bulletin administratif* of 7 September 1957), and No. 22/456, of 31 December 1957 (*Bulletin administratif* of 13 January 1958), extend to various categories of workers the system of retirement pensions and grants to widows and orphans instituted by the decree of 6 June 1956. Ordinance No. 22/248 also introduces changes in the amount of pensions and in the remuneration taken into account in calculating pensions and contributions.

II. International Agreements

By a declaration transmitted to the Director-General of the International Labour Office on 7 January 1957, the Belgian Government extended to the Territory of the Belgian Congo and to the Trust Territory of Ruanda-Urundi the application of ILO Conventions No. 19 concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents (*Moniteur belge* of 1 February 1957) and No. 62 of 23 June 1937 concerning Safety Provisions in the Building Industry (*Moniteur belge* of 16 February 1957).

By a declaration dated 3 September 1957, it took similar action in respect of ILO Conventions No. 42 concerning Workmen's Compensation for Occupational Diseases, No. 84 concerning the Right of Association and the Settlement of Labour Disputes in Non-metropolitan Territories, and No. 85 concerning Labour Inspectorates in Non-metropolitan Territories (*Moniteur belge* of 21 December 1957).

[1] See *Legislative Series* 1957 — Bel.C.3, published by the International Labour Office.

[2] See *Legislative Series* 1957 — Bel.C.2, published by the International Labour Office.

FRANCE

PROVISIONS CONCERNING THE OVERSEAS TERRITORIES AS A WHOLE

NOTE[1]

In view of the events of 1958, a detailed study of the provisions introduced in 1957 concerning the overseas territories loses much of its retrospective interest. The year 1957, however, saw the enactment of a number of decrees which bear witness to France's desire to put the reforms called for by the Act of 23 June 1956[2] into effect as rapidly as possible. Among them was decree No. 57-245, of 24 February 1957,[3] on compensation for and the prevention of industrial accidents and occupational diseases in the overseas territories and in the Cameroons.

It should also be pointed out that a considerable number of collective labour agreements were signed in the various territories of French West Africa and French Equatorial Africa, as also at the federal level, or had supplementary clauses added to them. The chief purpose of these agreements or conventions is to establish the rate of remuneration for European and African workers. By way of example, some features of one of these agreements, that which concerns employers and employees of commercial enterprises operating in French West Africa, will be analysed briefly. This agreement, signed on 16 November 1956, was patterned on a similar one concerning building, signed on 6 July 1956.

The agreement concerning commercial enterprises is entered into for an indefinite period; it may be denounced on three months' notice. It derives its authority from the widely representative character of the signatory trade unions. It goes into great detail about suspension of contract because of illness or accident, causes of breach of contract, clauses dealing with promotion of transfer from one post to another and notice of resignation given while on leave. It contains more liberal provisions than the Labour Code concerning benefits to workers who are ill or dismissed from their employment. If a worker is transferred out of the territory in which he resides, he receives a substantial indemnity. There are also some ingenious provisions, such as those concerning the paritary federal commission for interpretation and conciliation: a unanimous decision by that body has the same legal weight as the clauses of the agreement itself, subject only to its being filed with the Labour Tribunal.

Such agreements are expected to have considerable effect. They demonstrate the mutual understanding between the various trade unions and their acceptance of the legal status given to overseas labour relations.

Along the same lines, mention might be made of a judgement of the Cour de Cassation[4] which states that it is a serious offence, entailing a breach of the work contract, for an employer to pay an employee wages in the form of purchase vouchers to be used in the local shops for products furnished by the employer, without a statement of account being submitted or a receipt requested at the time the purchases are made.

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[1] Note kindly furnished by Mr. E. Dufour, *Maître des requêtes au Conseil d'Etat*, Paris, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1956*, p. 275.

[3] *Journal officiel*, February 1957, p. 2305. The French text and an English translation of the decree were published by the International Labour Office in the 1957 *Legislative Series*, Fr.1.

[4] Cass. Soc., 15 November 1957, *Revue Droit Social*, January 1958.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BRITISH GUIANA

THE REPRESENTATION OF THE PEOPLE ORDINANCE, 1957

Ordinance No. 3 of 1957, assented to on 21 February 1957[1]

Part I

PRELIMINARY

2. In this ordinance,

"Election" means an election of a member to serve in the Legislative Council;

. . .

Part III

ELECTIONS

. . .

The Poll

. . .

[Section 37 concerns the maintenance of secrecy at polling places.]

. . .

41. (1) Every employer shall, on polling day, permit every elector in his employ to be absent from his work on polling day for a reasonable time in addition to the normal midday meal-hour for voting, and no employer shall make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.

[Sub-section 2 makes an exception to sub-section 1 in relation to certain persons operating trains and vessels.]

(3) Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other way, interferes with the granting to any elector in his employ of the prescribed period for voting as in this section provided, shall on summary conviction be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months.

. . .

Part IV

ELECTION EXPENSES, ILLEGAL AND CORRUPT PRACTICES AND OTHER ELECTION OFFENCES

. . .

Illegal Practices

. . .

72. (1) Any person, or the directors of any body or association corporate, who, before or during any election, shall, for the purpose of affecting the return of any candidate at the election, make or publish any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice.

(2) No person shall be deemed to be guilty of illegal practice under this section if he can show that he had reasonable grounds for believing, and did believe, the statement made by him to be true.

. . .

73. (1) A person shall not:

(*a*) Print or publish, or cause to be printed or published, any bill, placard or poster having reference to an election or any printed document distributed for the purpose of promoting or procuring the election of a candidate; or

(*b*) Post or cause to be posted any such bill, placard or poster as aforesaid; or

(*c*) Distribute or cause to be distributed any printed document for the said purpose,

unless the bill, placard, poster or document bears upon the face thereof the name and address of the printer and publisher.

(2) For the purposes of this section any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly.

. . .

Miscellaneous Election Offences

. . .

85. (1) No person shall play any instrument in a band at any meeting or in any procession held for the

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[1] Published in *British Guiana: Ordinances for the Year 1957*, by *The Argosy* Company, Limited, Government Printers. The ordinance entered into force on 23 February 1957.

The operation of the British Guiana (Emergency) Order in Council, 1953 (see *Yearbook on Human Rights for 1954*, p. 342), which had been in force since 8 October 1953, was suspended on 23 November 1957.

purpose of promoting or procuring the election of any candidate.

. . .

(3) No person shall, for the purpose of promoting or procuring the election of any candidate,

(*a*) Hire any band; or

(*b*) Use or permit to be used in or upon any vehicle any instrument for the purpose of reproducing or amplifying any music.

. . .

FEDERATION OF NIGERIA

THE NIGERIA (CONSTITUTION) (AMENDMENT No. 2) ORDER IN COUNCIL, 1957

of 23 August 1957[1]

Amendment of Order of 1954

. . .

4. Section 6 of the principal order is hereby amended by the deletion of paragraph (*b*).

. . .

6. (1) Section 10 of the principal order is hereby amended

(*a*) By the deletion from sub-section 1 of paragraph (*d*), and the substitution of the following paragraph:

"(*d*) Holds, or is acting in, any office of emolument under the Crown; or"; . . .

. . .

[Paragraph (*b*) of sub-section 1 of section 6 inserts a new sub-section 3 in section 10 of the principal order concerning the meaning of the term, "office of emolument under the Crown".]

8. (1) Section 39 of the principal order is hereby amended:

(*a*) By the deletion from sub-section 1 of paragraph (*d*) and the substitution of the following paragraph:

"(*d*) Holds, or is acting in, any office of emolument under the Crown; or"; . . .

[Paragraph (*b*) of sub-section 1 of section 8 inserts a new sub-section 3 in section 39 of the principal order concerning the meaning of the term, "office of emolument under the Crown".]

. . .

18. (1) Section 88 of the principal order is hereby revoked and the following section is substituted:

"88. (1) The members of the Council of Ministers shall be:

(*a*) The Governor-General, who shall be the President of the Council; and

(*b*) Not less than eleven other members, who shall be styled ministers.

"(2) The number of ministers who shall be appointed in addition to the Prime Minister shall, subject to the provisions of this section, be such as the Governor-General may on the recommendation of the Prime Minister from time to time prescribe."

(2) The seats in the Council of Ministers of the ministers holding office immediately before the commencement of this order shall become vacant at the commencement of this order.

19. The principal order is hereby amended by the insertion after section 88 of the following section:

"88A. (1) Every minister shall be appointed by Instrument under the Public Seal from among the members of the House of Representatives, and at least one minister shall be appointed from among the representative members of that House elected in the Southern Cameroons.

"(2) Of the ministers:

"(*a*) One, who shall be styled the Prime Minister, shall be appointed by the Governor-General in accordance with sub-section 3 of this section;

"(*b*) The others shall be appointed by the Governor-General on the recommendation of the Prime Minister.

"(3) Whenever the Governor-General has occasion to appoint a person to be a Prime Minister, he shall appoint as such the person who appears to him to be best able to command a majority in the House of Representatives and who is willing to be appointed.

. . .

[1] Published as H.M.S.O., *Statutory Instruments*, 1957, No. 1530. The order was made on 23 August 1957, was laid before Parliament on 29 August 1957 and entered into force on 30 August 1957. The order amended the provisions of the Nigeria (Constitution) Order in Council, 1954, relating to the legislative houses established for Nigeria, the powers of the Nigerian legislatures, the Council of Ministers of the Federation and the executive councils of the regions. The Office of Prime Minister of the Federation was created. Only the amendments to those provisions of the order of 1954 which appeared in *Yearbook on Human Rights for 1954*, pp. 359-62, are printed above.

NORTHERN RHODESIA

THE RACE RELATIONS (ADVISORY AND CONCILIATION) ORDINANCE, 1956

No. 49 of 1956, assented to on 7 January 1957[1]

2. In this ordinance, unless a contrary intention otherwise appears,

"Business premises" means shops, hotels, banks, and offices which are open to the public generally;

. . .

"Racial discrimination" means discrimination either of an adverse or of a preferential nature practised by any person or group of persons against, or in favour of, any other person or group of persons for reasons only of race or colour.

3. (1) There shall be established a committee to be known as the Central Race Relations Advisory and Conciliation Committee.

. . .

4. (1) The Central Committee shall consist of a chairman and such other persons as the Governor in Council may from time to time appoint, not exceeding nine in number, of whom not less than two shall be Africans, one shall be an Asian, two shall be representatives of the commercial community and two shall be officers of the Government.

. . .

9. The Central Committee shall:

(*a*) Take such action as it may consider desirable to improve relations between the people of various races within the territory and, in order to promote and develop a better understanding between people of such races, may sponsor or organize lectures, exhibitions and other similar projects;

(*b*) Subject to the provisions of section twenty[2] inquire into complaints and grievances, whether general or particular, relating to racial discrimination in any business premises, or to any conduct or behaviour in any business premises which is likely to be detrimental to good race relations, and shall ascertain to what extent, if at all, such complaints or grievances are well founded;

(*c*) Endeavour, with the consent of the persons concerned, in any such complaints to act as a conciliator between such persons with a view to remedying such complaints or grievances;

(*d*) Recommend to the Governor how such complaints or grievances may best be removed or remedied;

(*e*) Act as an advisory body to persons seeking advice or information on questions of race relations within the territory, and receive and consider such representations or suggestions as may be made to the Central Committee by any person for the improvement of relations between the various races or for the removal or mitigation of racial discrimination in any business premises;

(*f*) Submit an annual report to the Governor and the Legislative Council, not later than the thirty-first day of March in every year, concerning the activities of the Central Committee, and of the several district committees, during the year; and

(*g*) Collect and collate information from any source on any matter connected with or relating to the functions of the Central Committee.

10. Any person who is in any way implicated or concerned in any matter under inquiry by the Central Committee may, by leave of the Central Committee, be represented by counsel if he so desires.

. . .

13. (1) There shall be established in and for such districts as the Governor may think fit race relations conciliation committees (in this ordinance referred to as "district committees") for such districts. A district committee may be appointed for and in respect of more than one district.

. . .

14. (1) A district committee shall consist of such persons as the Governor may from time to time appoint who shall elect their chairman. The membership of any such committee shall include the district commissioner of one of the districts in and for which the committee is established. The members of any district committee shall hold office during the Governor's pleasure.

. . .

19. (1) A district committee shall consider any complaint which may be made to it of racial discrimination being practised in any business premises within the district, or of any conduct or behaviour in any business premises which is likely to be detrimental to good race relations, and may request the attendance before it of any persons who in the opinion of the committee may be of assistance to the committee in its consideration of the complaint.

(2) A district committee shall use its best endeavours actively to promote in the district good relations between persons of the various races, and shall so far as possible take all necessary steps to remove or remedy legitimate grievances.

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[1] Published in *Northern Rhodesia Government Gazette, Ordinances*, 1956, printed by the Government Printer, Lusaka, Northern Rhodesia. The ordinance entered into force on 7 January 1957.

[2] Section 20 requires the Central Committee not to consider certain complaints until they have first been considered by a district committee.

(3) Where a district committee is unable effectively to deal with a complaint made before it of racial discrimination, or of such conduct or behaviour as is referred to in sub-section 1 of this section, in business premises, it shall refer the complaint, together with all relevant documents and records, to the Central Committee for consideration and advice.

(4) Any person who is dissatisfied with the recommendations or advice of a district committee may refer the matter in question to the Central Committee for further consideration.

(5) Every district committee shall, within fourteen days of the holding of any meeting of such committee, furnish to the Board a copy of the minutes of such meeting, and shall also furnish to the Board such other records or information touching the matters in question as the Board may in any case require.

(6) Every district committee shall not later than the thirty-first day of December in every year furnish to the Central Committee an annual report on the activities of such district committee during that year.

. . .

22. This ordinance shall continue in force for a period of three years from the date of its coming into operation and shall then, unless re-enacted, expire.

SIERRA LEONE

THE SIERRA LEONE (HOUSE OF REPRESENTATIVES) (AMENDMENT) ORDER IN COUNCIL, 1957

of 23 August 1957[1]

Amendment of the Principal Order

2. Section 13 of the principal order is hereby amended:

(*a*) By the deletion of paragraph (*c*) and the substitution therefor of the following paragraph:

"(*c*) Is under sentence of death or is serving, or has within the immediately preceding five years completed the serving of, a sentence of imprisonment (by whatever name called), without the option of a fine, of or exceeding twelve months imposed in any part of Her Majesty's dominions and has not received a free pardon; or;" and

(*b*) By the deletion of paragraph (*d*).

3. Paragraph (*g*) of sub-section 3 of section 14 of the principal order is hereby amended by the deletion of the words "paragraphs (*c*) and (*d*) of section 13", and the substitution therefor of the words "paragraph (*c*) of section 13".

[1] Published as H.M.S.O., *Statutory Instruments*, 1957, No. 1532. The order was made on 23 August 1957, laid before Parliament on 29 August 1957 and entered into force on 19 September 1957. The effect of the order was to amend the Sierra Leone (House of Representatives) Order in Council, 1956 (see *Yearbook on Human Rights for 1956*, pp. 284-5) by removing from section 13 of that order the provision that a person possessed of professional qualifications, who has been disqualified from practising his or her profession, is disqualified for membership of the House, and by altering the provisions as to disqualification on conviction for crime. The Order quoted above has since been replaced by the Sierra Leone (Constitution) order in Council, 1958, of which section 27 is the relevant section. The position regarding disqualification remains unchanged.

SINGAPORE

THE SINGAPORE CITIZENSHIP ORDINANCE, 1957

No. 35 of 1957, assented to on 21 October 1957[1]

Part I

PRELIMINARY

2. In this ordinance, unless there is something repugnant in the context,

"Commonwealth country" means any country for the time being included by Act of Parliament in sub-section 3 of section 1 of the British Nationality Act, 1948;

"Foreign country" means any territory other than a territory within the British Commonwealth, but does not include the Republic of Ireland.

Part II

CITIZENSHIP OF SINGAPORE

3. (1) There shall be a status known as "the status of a citizen of Singapore".

[1] Published in the *Colony of Singapore Government Gazette*, Supplement No. 77 of 25 October 1957. The ordinance was put into effect on 1 November 1957. It has been amended, consequent on the enactment of the State of Singapore Act, 1959, so as to confer the status of a British subject on a citizen of Singapore.

(2) The status of a citizen of Singapore may be acquired by: (*a*) birth; (*b*) descent; (*c*) registration; or (*d*) naturalization.

Part III

ACQUISITION OF CITIZENSHIP

4. Every person born in the colony before, on or after the date of the coming into operation of this part of this ordinance, shall be a citizen of Singapore by birth;

Provided that a person shall not be such a citizen, if at the time of his birth,

(*a*) His father, not being a citizen of Singapore, possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Her Majesty; or

(*b*) His father was an enemy alien, and the birth occurred in a place then under occupation by the enemy.

5. A person born outside the colony before, on or after the date of the coming into operation of this part of this ordinance shall, subject to the provisions of section 19 of this ordinance, be a citizen of Singapore by descent if at the time of the birth his father is, or would if alive on the date of the coming into operation of this part of this ordinance, be entitled to the status of a citizen of Singapore by birth:

Provided that where such person is born on or after the date of the coming into operation of this part of this ordinance he shall not be such a citizen unless his birth is registered in the prescribed manner within one year of its occurrence or with the permission of the Minister later

(*a*) At the office of an official representative of the colony in the country of birth; or

(*b*) Where there is no such office, at the office of the Minister in the colony.

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

7. Any reference in this part of this ordinance to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the death of the father; and where that death occurred before and the birth occurs on or after the date of the coming into operation of this part of this ordinance the status or description which would have been applicable to the father had he died after the date of such coming into operation shall be deemed to be the status or description applicable to him at the time of his death.

8. (1) A person shall be entitled, on making application therefor to the Minister in the prescribed manner, to be registered as a citizen of Singapore if he satisfies the Minister that he (*a*) is of full age and capacity; (*b*) is of good character; (*c*) has resided in the colony throughout the two years immediately preceding the date of application; and (*d*) is either: (i) a person born in the Federation of Malaya; or (ii) a citizen of the United Kingdom and colonies.

(2) The Minister may by notification in the *Gazette* direct that sub-section 1 of this section shall apply to a citizen of any Commonwealth country or of the Republic of Ireland in like manner as it applies to a citizen of the United Kingdom and colonies.

(3) A woman may, in making application therefor in the prescribed manner, be registered as a citizen of Singapore if she satisfies the Minister that she is or has been married to a citizen of Singapore or to a person who if alive on the date of the coming into operation of this part of this ordinance would under this section of this ordinance be entitled to the status of a citizen of Singapore.

(4) If an applicant for registration under this section is a citizen of a foreign country the provisions of section 19 of this ordinance shall be applicable to him.

9. A person to whom section 8 of this ordinance does not apply who satisfies the Minister that he is of full age and capacity and of good character and that he has resided in the colony throughout the eight years immediately preceding the date of the coming into operation of this part of this ordinance may, on making application therefor to the Minister in the prescribed manner within two years of the date of the coming into operation of this part of this ordinance, be registered as a citizen of Singapore.

10. No person shall be registered as a citizen of Singapore under section 8 or 9 of this ordinance until he has taken the oath of allegiance and loyalty in the form prescribed in the schedule to this ordinance.

11. For the purposes of sections 8 and 9 of this ordinance, there shall not be taken into account any period of residence in the colony whilst the applicant was, or was the member of the family of, (*a*) a person serving on full pay in any naval, military or air force not maintained out of moneys provided by the Legislative Assembly; (*b*) a person recruited outside Malaya serving in a civil capacity in any department of the government of the colony.

12. The Minister shall not be required to assign any reason for the grant or refusal of any application under this ordinance the decision on which is at his discretion and the decision of the Minister on any such application shall be final and shall not be subject to appeal to or review in any court:

Provided that before refusing an application the Minister shall refer the case to an advisory committee consisting of three persons appointed for the purpose, either generally or specially, by the Governor in

Council and in making his decision shall have regard to any report made to him by the advisory committee.

13. (1) The Minister may, if satisfied that a minor child of any citizen of Singapore is residing in the colony, cause such child to be registered as a citizen of Singapore on application being made therefor in the prescribed manner by the parent or guardian of such child.

(2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Singapore.

. . .

15. (1) The Minister may, on application being made therefor in the prescribed manner, grant a certificate of naturalization to any person who satisfies the Minister that he:

(*a*) Is of full age and capacity;

(*b*) Is of good character;

(*c*) Has resided in the colony throughout the twelve months immediately preceding the date of his application;

(*d*) Has during the twelve years immediately preceding the date of his application resided in the colony for periods amounting in the aggregate to not less than eight years; and

(*e*) Intends to reside permanently in the colony.

(2) (*a*) The Minister may on application being made therefor in the prescribed manner grant a certificate of naturalization to any person who satisfies the Minister that he (i) has served satisfactorily for a period of not less than three years in full-time service or for a period of not less than four years in part-time service, in such of the armed forces of the colony as the Minister may prescribe by notification in the *Gazette*; and (ii) intends to reside permanently in the colony.

(*b*) An application under this sub-section may be made either while the applicant is serving in such service as aforesaid or within the period of five years or such longer period as the Minister may in any particular case allow, after his discharge.

(*c*) In calculating for the purposes of this sub-section the period of full-time service in such forces of a person who has served both in full-time and in part-time service therein, any two months of part-time service shall be treated as one month of full-time service.

(3) No person shall be granted a certificate of naturalization until he has taken the oath of allegiance and loyalty in the form prescribed in the schedule to this ordinance.

. . .

18. In calculating for the purposes of this ordinance a period of residence in the colony, (*a*) a period or periods of absence from the colony of less than six months in the aggregate; (*b*) a period of absence from the colony for the purposes of education of such kind, in such country and for such time, as may from time to time be either generally or specially approved by the Minister; and (*c*) a period of absence from the colony for reasons of health or any other cause either generally or specially approved by the Minister, shall be treated as residence in the colony; and a person shall be deemed to be resident in the colony on a particular day if he had been resident in the colony before that day and that day is included in any such period of absence as aforesaid.

19. (1) No person of full age who is a citizen or subject of any foreign country under any law in force in that foreign country shall become a citizen of Singapore by registration or naturalization unless he has taken an oath of renunciation, allegiance and loyalty in the form prescribed in the schedule to this ordinance:

And where by the law of that foreign country a person:

(*a*) Can either before or at the time of taking the oath of renunciation, allegiance and loyalty divest himself of the citizenship or nationality of that foreign country be making a declaration of alienage or otherwise such person shall not be a citizen of Singapore until he so divests himself of such citizenship or nationality of that foreign country, unless in any particular case the Minister in his discretion otherwise directs; or

(*b*) May only divest himself of the citizenship or nationality of the foreign country after acquiring another citizenship such person shall, unless in any particular case the Minister in his discretion otherwise directs, cease to be a citizen of Singapore on the expiration of twelve months from the date of his becoming a citizen of Singapore unless within that period he divests himself of such foreign citizenship or nationality.

(2) A person who being a minor becomes a citizen of Singapore by descent or registration shall cease to be a citizen of Singapore on attaining the age of twenty-two years unless within twelve months after he attains the age of twenty-one years he takes an oath of renunciation, allegiance and loyalty in the form prescribed in the schedule to this ordinance and where the Minister so requires divests himself of any foreign citizenship or nationality in the manner set out in the first proviso to sub-section 1 of this section.

Part IV

LOSS OF CITIZENSHIP

20. (1) If any citizen of Singapore of full age and capacity who is also a citizen of another country makes a declaration in the prescribed manner renouncing his citizenship of Singapore, the Minister shall cause such declaration to be registered, and upon such registration, that person shall cease to be a citizen of Singapore:

Provided that the Minister may withhold registra-

tion of any such declaration if it is made during any war in which Her Majesty may be engaged.

(2) For the purposes of this section, a woman who has been married shall be deemed to be of full age.

21. (1) If the Minister is satisfied that a citizen of Singapore has at any time after the date of the coming into operation of this part of this ordinance acquired by registration, naturalization or other voluntary and formal act (other than marriage) the citizenship of any foreign country, or has voluntarily claimed and exercised in a foreign country any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Minister may declare such person to have ceased to be a citizen of Singapore.

(2) If the Minister is satisfied that a woman who is a citizen of Singapore by registration under subsection 2 of section 8 of this ordinance has, after the date of the coming into operation of this part of this ordinance married a person who is not a citizen of Singapore and has thereupon acquired the citizenship of any foreign country, he may declare that such woman has ceased to be a citizen of Singapore.

22. (1) A citizen of Singapore who is a citizen by registration or by naturalization shall cease to be such a citizen if he is deprived of his citizenship by an order of the Minister made in accordance with the provisions of this section.

(2) The Minister may, by order, deprive any such citizen of his citizenship if he is satisfied that the registration or certificate of naturalization (*a*) was obtained by means of fraud, false representation or the concealment of any material fact; or (*b*) was effected or granted by mistake.

(3) The Minister may, by order, deprive a citizen of Singapore by registration or by naturalization of his citizenship if he is satisfied that that citizen:

(*a*) Has shown himself by act or speech to be disloyal or disaffected towards Her Majesty or to Singapore; or

(*b*) Has, during any war in which Her Majesty may be engaged, unlawfully traded or communicated with an enemy, or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(*c*) Has within five years after registration or naturalization been sentenced in any country to imprisonment for a term of not less than two years.

(4) The Minister may, by order, deprive a person who is a citizen of Singapore by registration or by naturalization of his citizenship if he is satisfied that that person has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither (*a*) been at any time in the service of the government of the colony or of an international organization of which the colony was a member; nor (*b*) registered annually at the office of an official representative of the colony in a foreign country or where there is no such office at the office of the Minister in the colony his intention to retain his citizenship.

(5) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of Singapore.

(6) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this section.

(7) If any person to whom such notice is given applies within such time as may be prescribed to have the case referred to a committee of inquiry, the Minister shall, and in any other case may, refer the case to a committee of inquiry consisting of a chairman, who shall be a person qualified to be appointed a judge, and two other members appointed by the Minister in that behalf.

(8) The committee of inquiry shall, on such reference, hold an inquiry in such manner as may be prescribed and submit a report to the Minister and the Minister shall have regard to such report in making an order under this section.

. . .

UGANDA

THE LEGISLATIVE COUNCIL (ELECTIONS) ORDINANCE, 1957

No. 20 of 1957, assented to on 16 October 1957[1]

Part I

PRELIMINARY

. . .

9. (1) Subject to the provisions of section 10 of this ordinance, any person with the following qualifications shall be entitled to have his name entered on a register of electors in the electoral district in which he resides:

[1] Published in *Supplement to the Uganda Gazette*, vol. L, of 17 October 1957. The ordinance governs the election of the African members of the Legislative Council. In addition to the sections concerning qualifications and disqualifications for electors and candidates which are printed above, the ordinance included provisions concerning secrecy of voting and the prohibition of certain types of electoral propaganda on polling day.

The ordinance entered into force on 17 October 1957.

(*a*) He is twenty-one years of age or over, and

(*b*) He is resident in the electoral district, and

(*c*) He (i) is the owner of freehold or mailo land in the electoral district, or (ii) for the two years immediately preceding his application for registration has occupied land on his own account for agricultural or pastoral purposes in the electoral district or for such a period has paid busulu or rent for Crown land in the electoral district or has been lawfully exempted from paying such busulu or rent, or (iii) is able to read and write his own language, or (iv) has been employed in the public service of the Protectorate for a continuous period of seven years and his employment has not been terminated with dismissal, or (v) has been in regular paid employment in agriculture, commerce or industry during seven years out of the eight years immediately prior to his application for registration, or (vi) has a cash income of Shs. 2,000 or more a year, or owns property worth Shs. 8,000 or more.

(2) For the purpose of this section, a person shall be deemed to be resident in an electoral district if:

(*a*) He owns either freehold or mailo land in the district, or

(*b*) He holds a kibanja in the district, or

(*c*) He is entitled to a right of occupancy over land in the district, or

(*d*) He has lived for not less than three years since his eighteenth birthday in the electoral district or in the administrative area in which the electoral district is situated, and is living in the electoral district on the date on which he applies for registration, or

(*e*) He owns a business in the district, or

(*f*) He is and has been for the six months prior to applying for registration employed in the district.

10. No person shall be entitled to have his name entered upon a register of electors or to vote at an election notwithstanding that his name has been entered on a register of electors who:

(*a*) Is disqualified from registering as an elector under any law for the time being in force in the protectorate relating to offences connected with elections, or

(*b*) Has been sentenced by a court in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called), and has not either suffered the punishment to which he was sentenced or such other punishment as may by a competent authority have been substituted therefor or received a free pardon, or

(*c*) Is of unsound mind having been so adjudged by a competent authority, or is detained as a criminal lunatic under any law in force in Her Majesty's dominions, or

(*d*) Is a non-African.

. . .

Part III

ELECTIONS

. . .

17. (1) Subject to the provisions of section 18 of this ordinance any person who:

(*a*) Is twenty-seven years of age or over; and

(*b*) Is able to speak, and, unless incapacitated by blindness, to read and write the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Legislative Council; and

(*c*) Has been registered as an elector in the administrative area in which the electoral district for which he is standing as a candidate is situated; and

(*d*) Has himself an annual income of not less than Shs. 4,000 or property belonging to himself or jointly belonging to himself and his spouse worth Shs. 14,000,

shall be qualified to be nominated for election as a representative member and elected as such, and no other person shall be qualified for nomination and election or having been elected shall sit or vote in the Legislative Council.

18. No person shall be nominated, elected or sit or vote as an elected representative member of the Legislative Council who:

(*a*) Has been declared bankrupt by any competent court in the protectorate or elsewhere and has not received his discharge; or

(*b*) Is of unsound mind having been so adjudged by a competent authority or is detained as a criminal lunatic under any law in force in Her Majesty's dominions; or

(*c*) Is disqualified from membership of the Legislative Council or from election thereto under the provisions of this ordinance relating to offences connected with elections; or

(*d*) Is holding or acting in any office the functions of which involve (i) any responsibility for or in connexion with the conduct of any elections to membership of the Legislative Council; or (ii) any responsibility for the compilation or revision of any register of electors of members of the Legislative Council; or

(*e*) Has been convicted of a criminal offence and has been sentenced by a court in any part of Her Majesty's dominions to death, or to imprisonment (by whatever name called) for a term of twelve months or more other than in default of payment of a fine, and has not received a free pardon:

Provided that this disqualification shall cease to have effect on the expiration of three years after such person has been lawfully released from prison; or

(*f*) Holds or is acting in an office of profit in the public service of the protectorate.

19. The seat of any representative member elected under the provisions of this ordinance shall become

vacant (*a*) if he dies; or (*b*) if he becomes disqualified from sitting or voting in the Legislative Council under the provisions of section 18 of this ordinance; or (*c*) If he is absent from the protectorate for a period of one year without the permission of the Governor.

. . .

THE WEST INDIES

CONSTITUTION OF THE WEST INDIES[1]

Whereas the peoples of the West Indies consider it essential to their future well-being that the colonies of Antigua, Barbados, Dominica, Grenada, Jamaica, Montserrat, Saint Christopher Nevis and Anguilla, Saint Lucia, Saint Vincent, and Trinidad and Tobago should be associated in a federation;

And whereas all inhabitants of these colonies should continue, under such a federation, to enjoy the free exercise of their respective modes of religious worship;

And whereas there should be the greatest possible freedom of movement for persons and goods within such a federation;

And whereas it is essential for the economic strength of the area that there should be an integrated trade policy for the federation and that there should be introduced in the federation, as far and as quickly as practicable, a customs union, including internal free trade;

NOW, THEREFORE, the said colonies shall be associated in a federation in accordance with the following provisions:

. . .

Chapter II

THE FEDERAL LEGISLATURE

General

Legislative Power of Federation

7. The legislative power of the Federation shall be vested in a Federal Legislature consisting of Her Majesty, a Senate and a House of Representatives.

. . .

[Article 8 provides for the appointment of the members of the Senate by the Governor-General. Articles 9, 10, 11 and 12 concern respectively: qualifications for appointment as a senator; disqualifications for such appointment; effect on a senator of membership of the Legislature or the Executive Council of a Territory; and tenure of office of senators.]

. . . .

The House of Representatives

. . .

Qualifications and disqualifications for electors

17. (1) Subject to the provisions of paragraph 2 of this article, a person shall be qualified to be registered as an elector for elections to the House of Representatives in an electoral district if, and shall not be so qualified unless, he:

(*a*) Is a British subject of the age of twenty-one years or upwards;

(*b*) Has resided in the territory in which that district is situated for a period of not less than six months immediately before the date of registration; and

(*c*) Has such connexion (if any) with that district by virtue of residence therein as may be required by any law of the Federal Legislature.

(2) No person shall be qualified to be registered as an elector for elections to the House of Representatives in any electoral district who:

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

(*b*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Federation; or

(*c*) Is disqualified for such registration by virtue of any law of the Federal Legislature enacted in pursuance of paragraph (*d*) of article 18 of this constitution.

(3) No person shall vote at an election to the House of Representatives in any electoral district unless he is registered as an elector for such elections in the district.

Laws as to Elections

18. Subject to the provisions of this constitution, the Federal Legislature may, except as respects the matters referred to in the next succeeding article, make provision by law for the election of members of the House of Representatives and in particular for:

. . .

(*d*) The definition and trial of offences relating to

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[1] The text of the Constitution is annexed to the West Indies (Federation) Order in Council, 1957, made on 31 July 1957 (*Statutory Instruments*, 1957, No. 1364, H.M.S.O., London). Of the provisions quoted above, articles 106, 107 and 116 were among those brought into force on 3 January 1958, when the federation come into being. The other articles quoted came in to force on 22 April 1958.

elections and the imposition of penalties therefor including the disqualification for membership of the House of Representatives or for registration as an elector or for voting at elections of any person concerned in any such offence.

Electoral Areas

19. . . .

Qualifications for Election as Member

20. Subject to the provisions of the next following article, a person shall be qualified to be elected as a member of the House of Representatives if, and shall not be qualified to be so elected unless, he:

(*a*) Is a British subject of the age of twenty-one years or upwards;

(*b*) Has resided in the territory comprised in the Federation for a period of, or periods amounting in the aggregate to, not less than three years before the date of his nomination for election; and

(*c*) Has resided in the territory comprised in the Federation for a period of not less than six months immediately before the date of his nomination for election.

Disqualifications for Election as Member

21. No person shall be qualified to be elected as a member of the House of Representatives who:

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

(*b*) Holds or is acting in any paid office in the service or appointment of the Crown;

(*c*) Is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any contract with the federal government for or on account of the public service and has not within one month before the date of election published in the official gazette of the territory in which he seeks election and in a newspaper circulating in the electoral district for which he seeks election a notice setting out the nature of such contract and his interest, or the interest of such firm or company, therein;

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

(*e*) Has been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions and has not been discharged;

(*f*) Being a person possessed of professional qualifications, is disqualified from practising his profession by the order of any competent authority on account of any act involving dishonesty;

(*g*) Is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Federation;

(*h*) Is disqualified for membership of the House of Representatives by any law of the Federal Legislature by reason of his holding, or acting in, any office the functions of which involve (i) any responsibility for, or in connexion with, the conduct of any election, or (ii) any responsibility for the compilation or revision of any electoral register; or

(*j*) Is disqualified for membership of the House of Representatives by virtue of any law of the Federal Legislature enacted in pursuance of paragraph (*d*) of article 18 of this constitution.

Effect on Member of Membership of Legislature or Executive Council of a Territory

22. If at the time of his election as a member of the House of Representatives a person is a member of the Legislature or of the Executive Council of any territory, (*a*) he shall not take part in the proceedings of the House until he has ceased to be a member of that Legislature or Executive Council; and (*b*) if he has not ceased to be such a member at the expiration of a period of twenty-one days after the date of his election as a member of the House he shall thereupon vacate his seat in the House.

Tenure of Office of Members

23. (1) Every member of the House of Representatives shall vacate his seat in the House at the next dissolution of the Federal Legislature after his election.

(2) A member of the House of Representatives shall also vacate his seat in the House:

(*a*) If he resigns it by writing under his hand addressed to the speaker;

(*b*) If he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the standing orders of the House;

(*c*) If, with his consent, he is nominated as a candidate for election to the legislature of any territory, or if he is elected to such a legislature, or if he becomes a member of such a legislature otherwise than by election;

(*d*) If he becomes a member of the Executive Council of any territory;

(*e*) If he ceases to be a British subject;

(*f*) If he becomes a party to any contract with the federal government for or on account of the public service or if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to the House of Representatives to be just so to do, the House may exempt any member from vacating his

seat under the provisions of this sub-paragraph, if such member, before becoming a party to such contract as aforesaid, or before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company), discloses to the House the nature of such contract and his interest, or the interest of such firm or company, therein;

(*g*) If he is sentenced by a court in any part of Her Majesty's dominions to death, or to imprisonment (by whatever name called) for a term exceeding twelve months;

(*h*) If he ceases to be resident in the territory comprised in the Federation; or

(*j*) If any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of paragraph (*a*), (*b*), (*e*), (*f*), (*g*), (*h*) or (*j*) of article 21 of this constitution.

. . .

Chapter VIII

TRANSITIONAL PROVISIONS

Provision regarding Certain Disqualifications for Membership of House of Representatives

106. Until the Federal Legislature by law otherwise provides, paragraphs (*h*) and (*j*) of article 21 of this constitution shall have effect in relation to the election in any territory of a member of the House of Representatives as if the references in these paragraphs to the House of Representatives and to any law of the Federal Legislature were references, respectively, to the legislative chamber of that territory (or, in the case of a territory having two legislative chambers, to either of those chambers) and to any law of or relating to the legislature of that territory.

First Elections to the House of Representatives

107. (1) Notwithstanding articles 17 and 18 of this constitution, for the purposes of the first general election of members to the House of Representatives and, until the Federal Legislature by law otherwise provides, for the purposes of any subsequent election of members to that House, (*a*) the qualifications and disqualifications of persons for registration as electors and for voting at elections, and (*b*) the matters for which the Federal Legislature is empowered to make provision by article 18 of this constitution, shall be governed as respects any territory by the laws which, immediately before the date when this constitution comes into force, govern such matters in relation to the election of members to the legislature of that territory; and any such laws shall apply in relation to the election of members to the House of Representatives with such modifications and adaptations as the governor of the territory concerned may by regulation make therein for that purpose.

. . .

3. . . .

(*c*) No regulations shall be made under paragraph 1 of this article after the House of Representatives first meets following the date when this constitution comes into force, . . .

Chapter IX

MISCELLANEOUS

. . .

Interpretation

116. (1) In this constitution, unless it is otherwise expressly provided or required by the context:

. . .

"Executive Council" means, in relation to any territory, the Governor's principal executive advisory body, by whatever name called, and in relation to Jamaica includes the Privy Council;

. . .

"Sitting" means, in relation to a chamber of the Federal Legislature, a period during which that chamber is sitting continuously without adjournment and includes any period during which the chamber is in committee;

"Territory" means any of the following territories — that is to say:

(*a*) The colony of Jamaica, including its dependencies but not including the Cayman Islands and the Turks and Caicos Islands;

(*b*) Each of the other colonies referred to in paragraph 1 of article 1 of this constitution,[1] including its dependencies, if any;

(*c*) The Cayman Islands; and

(*d*) The Turks and Caicos Islands:

Provided that: (i) any reference in chapter II and in article 93 and article 98 of this constitution to a territory (not being a reference to the legislature or Executive Council of a territory) does not include a reference to the Cayman Islands or the Turks and Caicos Islands; and (ii) any reference to the legislature of a territory includes, in relation to the Cayman Islands or the Turks and Caicos Islands, as the case may be, a reference to the Legislature of Jamaica as well as to the legislature of those islands; . . .

(6) For the purposes of chapter II of this constitution, a person shall not be deemed to hold a paid office in the service or appointment of the Crown by reason of:

(*a*) Being in receipt of any remuneration or allowances as a minister of the federal government, as a minister or parliamentary secretary of the government of any territory or as a member of the Federal Legislature or of the Legislature or Executive Council of any territory;

[1] These are the colonies named in the first paragraph of the preamble to the Constitution.

(*b*) Being in receipt of a pension or other like allowance from the Crown;

(*c*) Being an officer of Her Majesty's armed forces on retired or half pay;

(*d*) Being an officer or member of any of the defence forces of the Federation whose services as such are not wholly employed by the Federation or any territory;

(*e*) Holding any office in the service or appointment of the Crown or performing any functions on behalf of the Crown, being an office or functions in respect of which he receives payment by way of travelling or subsistence allowances or a refund of out-of-pocket expenses; or

(*f*) Holding any other office that is declared by any law of the Federal Legislature to be deemed not to be a paid office in the service or appointment of the Crown for the purposes of chapter II of this constitution.

. . .

ZANZIBAR

THE LEGISLATIVE COUNCIL (ELECTIONS) DECREE, 1957

No. 4 of 1957, entered into force on 23 February 1957[1]

Part II

REGISTRATION OF ELECTORS

4. Subject to the provisions of section 5, any male person shall be entitled to be registered as an elector in any one constituency if he:

(*a*) Is a Zanzibar subject of the age of twenty-five years or upwards; and

(*b*) Has resided in the protectorate for a period of at least twelve months immediately before the date of his registration as an elector and is normally resident in that constituency on that day; and

(*c*) (i) Is able to read in English or Arabic or Kiswahili; or (ii) is of the age of forty years or upwards; and

(*d*) (i) Owns immovable property of a capital value of one hundred and fifty pounds or more; or (ii) has an annual income of seventy-five pounds or more; or (iii) owns immovable property of a capitable value which, when added to his annual income, amounts to one hundred and fifty pounds or more; or (iv) has been a member of the Legislative Council (or of any legislative council which it replaced) or for a total of five years or upwards of any local government authority established by law or has been a member of any local government authority established by law since the establishment of that authority; or (v) is the holder of a civil or military decoration or award recognized for this purpose by the British Resident.

5. No person shall be entitled to be registered as an elector in any constituency who:

(*a*) Has been sentenced by a court in any of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term of twelve months or more and has not received a free pardon:

Provided that any such person shall be entitled to be registered as an elector after two years from the date of his discharge from prison; or

(*b*) Is a person adjudged to be of unsound mind or detained as an accused person of unsound mind under any law in force in the protectorate; or

(*c*) Is disqualified for registration as an elector by any law in force in the protectorate relating to offences connected with elections; or

(*d*) Is serving a sentence of imprisonment.

. . .

Part IX

GENERAL

. . .

82. Subject to the provisions of section 83 any male person may be a candidate for election to the Legislative Council if he:

(*a*) Is a Zanzibar subject of the age of twenty-five years or upwards; and

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[1] Published in *Legal Supplement (Part I) to the Official Gazette Extraordinary of the Zanzibar Government*, vol. LXVI, No. 3764, of 23 February 1957.

The following information appears in *The Colonial Territories 1956-1957* (H.M.S.O., London), pp. 20-21:

"129. The constitutional reforms announced in October, 1955 were implemented in September, when the Councils Decree, 1956, came into force. The decree provides for the establishment of a Privy Council, the reconstitution of the Executive Council to enable the increased association of the people of Zanzibar in the formation of government policy, and the enlargement of the Legislative Council by an increase in membership to 25 of whom 12 will be representative members. The new councils were constituted immediately after the decree was brought into operation.

. . .

"131. Government proposals for choosing the unofficial members of the Legislative Council were approved by the Council in August. . . . Of the 12 representative seats, six are to be filled by common roll elections in six single-member constituencies. The remaining six seats will continue to be filled by nomination. Franchise qualifications have been laid down in the Legislative Council (Elections) Decree, which became law in February. . . ."

In addition to the sections concerning qualifications and disqualifications for electors and candidates which are printed above, the decree included provisions concerning secrecy of voting, prohibition of certain types of electoral propaganda on polling day and the obligation of employers to allow employees sufficient time to vote.

(*b*) Has resided in the island in which is situated the constituency for which he seeks to be elected for a period of twelve months immediately preceding his nomination as a candidate; and

(*c*) Is able to read and write in English or Arabic or Kiswahili; and

(*d*) Is in possession of a yearly income of one hundred and fifty pounds per annum or alternatively is in possession of immovable property or a business to the value of three hundred pounds.

83. No person shall be a candidate for election to the Legislative Council who:

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside the British Commonwealth of Nations; or

(*b*) Is a person declared to be of unsound mind under any law in force in the protectorate; or

(*c*) Has been sentenced by a court in the protectorate or in any part of Her Majesty's dominions or in any protectorate, protected state or trust territory to death or to imprisonment (by whatever name called) for a term exceeding six months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(*d*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the protectorate or in any part of Her Majesty's dominions or in any protectorate, protected state or trust territory; or

(*e*) Is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government for or on account of the public service and has not disclosed to the British Resident the nature of that contract and his interest, or the interest of the firm or company, therein:

Provided that a person shall not be considered to be a party to a contract with the Government for the purposes of this paragraph by reason of his holding, or acting in, any public office. For the purposes of this proviso "public office" shall mean any office appointment which is made by or is subject to the approval of the British Resident.

. . .

UNITED STATES OF AMERICA

DEVELOPMENTS IN NON-SELF-GOVERNING TERRITORIES

See pages 255-6.

PART III

INTERNATIONAL INSTRUMENTS

UNITED NATIONS

CONVENTION ON THE NATIONALITY OF MARRIED WOMEN[1]

The contracting States,

Recognizing that conflicts in law and in practice with reference to nationality arise as a result of provisions concerning the loss or acquisition of nationality by women as a result of marriage, of its dissolution or of the change of nationality by the husband during marriage,

Recognizing that, in article 15 of the Universal Declaration of Human Rights, the General Assembly of the United Nations has proclaimed that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality",

Desiring to co-operate with the United Nations in promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex,

HEREBY AGREE as hereinafter provided:

Art. 1. Each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

Art. 2. Each contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

Art. 3. 1. Each contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

2. Each contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.

Art. 4. 1. The present Convention shall be open for signature and ratification on behalf of any State Member of the United Nations and also on behalf of any other State which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Art. 5. 1. The present Convention shall be open for accession to all States referred to in paragraph 1 of article 4.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Art. 6. 1. The present Convention shall come into force on the ninetieth day following the date of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Art. 7. 1. The present Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any contracting State is responsible; the contracting State concerned shall, subject to the provisions of paragraph 2 of the present article, at the time of signature, ratification or accession declare the non-metropolitan territory or territories to which the Convention shall apply, *ipso facto*, as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the contracting State or of the non-

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[1] The Convention is annexed to resolution 1040 (XI) of the General Assembly, adopted on 29 January 1957, entitled *Convention on the Nationality of Married Women*, and reading as follows:

"*The General Assembly*,

"*Considering* that it is appropriate to conclude, under the auspices of the United Nations, an international convention on the nationality of married women, designed to eliminate conflicts of law arising out of provisions concerning the loss or acquisition of nationality by women as a result of marriage, of its dissolution, or of the change of nationality by the husband during marriage,

"*Decides* to open the Convention annexed to the present resolution for signature and ratification at the end of the eleventh session of the General Assembly."

The Convention was opened for signature and ratification on 20 February 1957.

metropolitan territory for the application of the Convention to that territory, that contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that contracting State, and when such consent has been obtained the contracting State shall notify the Secretary-General of the United Nations. The present Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of the present article, the contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of the present Convention may have been withheld.

Art. 8. 1. At the time of signature, ratification or accession, any State may make reservations to any article of the present Convention other than articles 1 and 2.

2. If any State makes a reservation in accordance with paragraph 1 of the present article, the Convention, with the exception of those provisions to which the reservation relates, shall have effect as between the reserving State and the other parties. The Secretary-General of the United Nations shall communicate the text of the reservation to all States which are or may become parties to the Convention. Any State party to the Convention or which thereafter becomes a party may notify the Secretary-General that it does not agree to consider itself bound by the Convention with respect to the State making the reservation. This notification must be made, in the case of a State already a party, within ninety days from the date of the communication by the Secretary-General; and, in the case of a State subsequently becoming a party, within ninety days from the date when the instrument of ratification or accession is deposited. In the event that such a notification is made, the Convention shall not be deemed to be in effect as between the State making the notification and the State making the reservation.

3. Any State making a reservation in accordance with paragraph 1 of the present article may at any time withdraw the reservation, in whole or in part, after it has been accepted, by a notification to this effect addressed to the Secretary-General of the United Nations. Such notification shall take effect on the date on which it is received.

Art. 9. 1. Any contracting State may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date or receipt of the notification by the Secretary-General.

2. The present Convention shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than six becomes effective.

Art. 10. Any dispute which may arise between any two or more contracting States concerning the interpretation or application of the present Convention, which is not settled by negotiation, shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless the parties agree to another mode of settlement.

Art. 11. The Secretary-General of the United Nations shall notify all States Members of the United Nations and the non-member States contemplated in paragraph 1 of article 4 of the present Convention of the following:

(*a*) Signatures and instruments of ratification received in accordance with article 4;

(*b*) Instruments of accession received in accordance with article 5;

(*c*) The date upon which the present Convention enters into force in accordance with article 6;

(*d*) Communications and notifications received in accordance with article 8;

(*e*) Notifications of denunciation received in accordance with paragraph 1 of article 9;

(*f*) Abrogation in accordance with paragraph 2 of article 9.

Art. 12. 1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of the Convention to all States Members of the United Nations and to the non-member States contemplated in paragraph 1 of article 4.

INTERNATIONAL LABOUR ORGANISATION

CONVENTION CONCERNING THE ABOLITION OF FORCED LABOUR

Convention No. 105, adopted on 25 June 1957
by the International Labour Conference at its Fortieth Session[1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957,

Having considered the question of forced labour, which is the fourth item on the agenda of the session, and

Having noted the provisions of the Forced Labour Convention, 1930, and

Having noted that the Slavery Convention, 1926, provided that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, provided for the complete abolition of debt bondage and serfdom, and

Having noted that the Protection of Wages Convention, 1949, provided that wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment, and

Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights, and

Having determined that these proposals shall take the form of an international convention,

ADOPTS this twenty-fifth day of June of the year one thousand nine hundred and fifty-seven the following convention, which may be cited as the Abolition of Forced Labour Convention, 1957.

Art. 1. Each member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour —

(*a*) As means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(*b*) As a method of mobilizing and using labour for purposes of economic development;

(*c*) As a means of labour discipline;

(*d*) As a punishment for having participated in strikes;

(*e*) As a means of racial, social, national or religious discrimination.

Art. 2. Each member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in article 1 of this Convention.

Art. 3. The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Art. 4. 1. This Convention shall be binding only upon those members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any member twelve months after the date on which its ratification has been registered.

Art. 5. 1. A member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

Art. 6. 1. The Director-General of the International Labour Office shall notify all Members of

[1] Published in appendix XVI to the *Record of Proceedings* of the International Labour Conference, Fortieth Session, Geneva, 1957.

the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the members of the Organisation.

2. When notifying the members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the members of the Organisation to the date upon which the Convention will come into force.

Art. 7. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Art. 8. At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Art. 9. 1. Should the Conference adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides —

(*a*) The ratification by a member of the new revising convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of article 5 above, if and when the new revising convention shall have come into force;

(*b*) As from the date when the new revising convention comes into force this Convention shall cease to be open to ratification by the members.

2. This Convention shall in any case remain in force in its actual form and content for those members which have ratified it but have not ratified the revising convention.

Art. 10. The English and French versions of the text of this Convention are equally authoritative.

STATUS OF INTERNATIONAL INSTRUMENTS[1]

I. UNITED NATIONS

1. *Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 484-6)

During 1957, Pakistan became a party to the convention, by instrument of ratification deposited on 12 October.

2. *Convention relating to the Status of Refugees (Geneva, 1951)* (see *Yearbook on Human Rights for 1951*, pp. 581-8)

During 1957, Liechtenstein[2] became a party to the convention, by instrument of ratification deposited on 8 March, and Tunisia gave notice on 24 October that it recognized itself as being bound by the convention, which was ratified by France on its behalf on 23 June 1953.

3. *Convention on the Political Rights of Women (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 375-6)

During 1957, Canada,[2] France,[2] Nicaragua and Philippines became parties to the convention, by instruments of ratification or accession deposited on 30 January, 22 April, 17 January and 12 September, respectively.

4. *Convention on the International Right of Correction (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 373-5)

During 1957, Guatemala became a party to the convention, by instrument of ratification deposited on 9 May.

5. *Slavery Convention of 1926 as amended by the Protocol of 7 December 1953* (signed in New York) (see *Yearbook on Human Rights for 1953*, pp. 345-6)

During 1957, Albania, Libya and Sudan became parties to the convention as amended by the protocol, by instruments of accession deposited on 2 July, 14 February and 9 September, respectively, and Burma, Norway and Romania became parties to the convention, as amended, by acceptance of the protocol on 29 April, 11 April and 13 November, respectively.

6. *Convention on the Status of Stateless Persons (New York, 1954)* (see *Yearbook on Human Rights for 1954*, pp. 369-75)

No States became parties to the convention during 1957.

7. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Geneva, 1956)* (see *Yearbook on Human Rights for 1956*, pp. 289-91)

During 1957, the Byelorussian Soviet Socialist Republic, Cambodia, the Federation of Malaya, the Hashemite Kingdom of Jordan, Israel, Laos, Netherlands, Romania, Sudan, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland became parties to the convention, by instruments of ratification or accession deposited on 5 June, 12 June, 18 November, 27 September, 23 October, 9 September, 3 December, 13 November, 9 September, 12 April and 30 April, respectively.

The convention came into force on 30 April 1957.

8. *Convention on the Nationality of Married Women* (see pp. 301–2 above)

During 1957, Cuba, Dominican Republic, Ireland, Israel and the United Kingdom of Great Britain and Northern Ireland became parties to the convention, by instruments of ratification deposited on 5 December, 10 October, 25 November, 7 June and 28 August, respectively.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 420-5)

No States ratified the convention during 1957.

SOURCE: Information kindly furnished by the International Labour Office.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Rights for 1948*, pp. 425-7)

No States ratified the convention during 1957.

SOURCE: Information kindly furnished by the International Labour Office.

3. *Freedom of Association and Protection of the Right to Organize Convention, 1948* (see *Yearbook on Human Rights for 1948*, pp. 427-30)

During 1957, the ratifications of Albania, Egypt, Federal Republic of Germany, Hungary, Israel, Poland, Romania and Tunisia were registered, on 3 June, 6 November, 20 March, 6 June, 28 January, 25 February, 28 May and 18 June, respectively.

SOURCE: Information kindly furnished by the International Labour Office.

[1] Concerning the status of these instruments at the end of 1956, see *Yearbook on Human Rights for 1956*, pp. 300-302.

[2] With reservation or reservations.

4. *Right to Organise and Collective Bargaining Convention, 1949* (see *Yearbook on Human Rights for 1949*, pp. 291-2).

During 1957, the ratifications of Albania, Haiti, Hungary, Indonesia, Israel, Morocco, Poland, Sudan, Syria and Tunisia were registered, on 3 June, 12 April, 6 June, 15 July, 28 January, 20 May, 25 February, 18 June, 7 June and 15 May, respectively.

SOURCE: Information kindly furnished by the International Labour Office.

5. *Equal Remuneration Convention, 1951* (see *Yearbook on Human Rights for 1951*, pp. 469-70)

During 1957, the ratifications of Albania, Brazil, Czechoslovakia, Ecuador, Romania and Syria were registered, on 3 June, 25 April, 30 October, 11 March, 28 May and 7 June, respectively.

SOURCE: Information kindly furnished by the International Labour Office.

6. *Social Security (Minimum Standards) Convention, 1952* (see *Yearbook on Human Rights for 1952*, pp. 377-89)

No States ratified the convention during 1957.

SOURCE: Information kindly furnished by the International Labour Office.

7. *Maternity Protection Convention (Revised), 1952* (see *Yearbook on Human Rights for 1952*, pp. 389-92)

No States ratified the convention during 1957.

SOURCE: Information kindly furnished by the International Labour Office.

8. *Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955* (see *Yearbook on Human Rights for 1955*, pp. 325-7)

During 1957, the ratifications of Cuba and Syria were registered, on 15 August and 7 June, respectively.

SOURCE: Information kindly furnished by the International Labour Office.

9. *Abolition of Forced Labour Convention, 1957* (see pp. 303-4 above)

The ratification of the United Kingdom of Great Britain and Northern Ireland was registered on 30 December 1957.

SOURCE: International Labour Office, *Industry and Labour*, vol. XIX.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. *Agreement for facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 431-3)

No further States became parties to the convention during 1957.

2. *Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (Lake Success, 1950)* (see *Yearbook on Human Rights for 1950*, pp. 411-15)

During 1957, Belgium, France, the Federal Republic of Germany, Luxembourg and Netherlands became parties to the agreement, by instruments of ratification or acceptance deposited on 31 October, 14 October, 9 August, 31 October and 31 October, respectively.

3. *Universal Copyright Convention (Geneva, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 398-403)

During 1957, Argentina, Austria, Cuba, Ecuador, India, Mexico and the United Kingdom of Great Britain and Northern Ireland became parties to the convention, by instruments of ratification or accession deposited on 13 November, 2 April, 18 March, 5 March, 21 October, 12 February and 27 June, respectively.

SOURCE: Information kindly furnished by the secretariat of UNESCO.

4. *Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto (The Hague, 1954)* (see *Yearbook on Human Rights for 1954*, pp. 380-9)

During 1957, the Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, France, Hashemite Kingdom of Jordan, Israel, Libya, Monaco, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics became parties to the convention (and, excepting Israel, the protocol), by instruments of ratification or accession deposited on 7 May, 26 November, 6 December, 7 June, 2 October, 3 October, 19 November, 10 December, 6 February and 4 January, respectively.

SOURCE: Information kindly furnished by the secretariat of UNESCO.

IV. ORGANIZATION OF AMERICAN STATES

1. *Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works (Washington, D.C., 1946)* (see Pan American Union: *Law and Treaty Series*, No. 19).

No States became parties to the convention during 1957.

SOURCE: Information kindly furnished by the Pan American Union.

2. *Inter-American Convention on the Granting of Political Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 438-9)

During 1957, Argentina became a party to the convention, by instrument of ratification deposited on 2 October.

SOURCE: Information kindly furnished by the Pan American Union.

3. *Inter-American Convention on the Granting of Civil Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 439-40)

During 1957, Argentina became a party to the convention, by instrument of ratification deposited on 2 October.

SOURCE: Information kindly furnished by the Pan American Union.

4. *Convention on Diplomatic Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 330-2)

During 1957, Paraguay, Mexico and Brazil became parties to the convention, by instruments of ratification deposited on 25 January, 6 February and 17 September, respectively.

SOURCE: Information kindly furnished by the Pan American Union.

5. *Convention on Territorial Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 329-30)

During 1957, Paraguay became a party to the convention, by instrument of ratification deposited on 25 January.

SOURCE: Information kindly furnished by the Pan American Union.

V. COUNCIL OF EUROPE

1. *Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)* (see *Yearbook on Human Rights for 1950*, pp. 418-26).

No further States became parties to the convention during 1957.

SOURCE: Information kindly furnished by the secretariat-general of the Council of Europe.

2. *Protocol (Paris, 1952) to the Convention for the Protection of Human Rights and Fundamental Freedoms* (see *Yearbook on Human Rights for 1952*, pp. 411-12)

During 1957, the Federal Republic of Germany became a party to the protocol, by instrument of ratification deposited on 13 February.

SOURCE: Information kindly furnished by the secretariat-general of the Council of Europe.

3. *European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors, and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 355-7)

During 1957, Belgium and France became parties to the interim agreement and the protocol, by instruments of ratification deposited on 3 April and 18 December, respectively.

SOURCE: Information kindly furnished by the secretariat-general of the Council of Europe.

4. *European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 357-8)

During 1957, Belgium and France became parties to the interim agreement and the protocol, by instruments of ratification deposited on 3 April and 18 December, respectively.

SOURCE: Information kindly furnished by the secretariat-general of the Council of Europe.

5. *European Convention on Social and Medical Assistance, and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 359-61)

During 1957, France became a party to the convention and the protocol, by instruments of ratification deposited on 30 October.

SOURCE: Information kindly furnished by the secretariat-general of the Council of Europe.

6. *European Convention on Establishment (Paris, 1955)* (see *Yearbook on Human Rights for 1956*, pp. 292-7)

During 1957, Norway became a party to the convention, by instrument of ratification deposited on 20 November.

SOURCE: Information kindly furnished by the secretariat-general of the Council of Europe.

VI. OTHER INSTRUMENTS

Geneva Conventions of 12 August 1949 (see *Yearbook on Human Rights for 1949*, pp. 299-309)

In 1957, the following ratified or acceded to the conventions: Iran (20 February), Haiti (11 April), Tunisia (4 May), Albania (27 May), Democratic Republic of Viet-Nam (28 June), Brazil (29 June), Democratic Republic of Korea (27 August), United Kingdom of Great Britain and Northern Ireland (23 September) and Sudan (23 September).

SOURCE: International Committee of the Red Cross: *Annual Report*, 1957.

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