YEARBOOK ON HUMAN RIGHTS FOR 1959

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INTRODUCTION

Eighty-eight States are represented in this volume, together with Trust and Non-Self-Governing Territories under the administration of five States. The *Yearbook* last published included information on sixty-eight States. These figures reflect in a general way the advance towards self-governing status of territories previously in a dependent status, a process which was particularly marked in 1959.

The same movement towards independence is partly responsible for the unusually high number of new constitutions adopted in 1959. Extracts appear in the present *Yearbook* from such constitutions, adopted in the Central African Republic, Chad, Dahomey, Gabon, the Ivory Coast, Madagascar, Mauritania, the Niger, Senegal, the Sudanese Republic (renamed the Republic of Mali in 1960) and the Upper Volta, as well as in Cuba, Nepal, Thailand, Tunisia and two Non-Self-Governing Territories, Basutoland and Brunei.

Extracts are also published herein from other texts of constitutional significance: the Agrarian Reform Act of 17 May 1959 of Cuba (a text supplementary to the constitution); the National Assembly Act, 1959, and the Representation of the People (Women Members) Act, 1959, of Ghana; the Indonesian constitution of 22 June 1945, to which return was made on 5 July 1959; the Basic Democracies Order, 1959, of Pakistan; the Nigeria (Northern Cameroons Plebiscite) Order in Council, 1959, affecting the Trust Territory of the Cameroons under United Kingdom Administration; and the Northern Rhodesia (Legislative Council) Order in Council, 1959. Extracts also appear from constitutional amendments adopted in 1959 in the Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Costa Rica, Portugal, the Federation of Nigeria and the Canadian Province of British Columbia. Constitutional amendments adopted in 1959 in Norway, Romania, and the Swiss Cantons of Neuchâtel and Vaud are described. In Monaco, 1959 saw a partial and temporary suspension of the constitutional regime.

The provisions on human rights contained in the above-mentioned new constitutions and quoted in this volume (usually short and framed in general terms) are too numerous to permit of their exhaustive separate mention in a brief introduction. The same applies to the provisions of the sixth schedule (entitled "Fundamental Rights") which was added to the Nigeria (Constitution) Order in Council, 1954 by the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1959. Some aspects of these constitutional provisions are, however, mentioned below.

The constitutional provisions, legislation and governmental decrees and orders extracts from which appear in this volume fall mainly into certain general categories, and are so grouped below. They relate to detention and other restrictions on movement; protection of life and inviolability of the person; judicial procedure, criminal investigation and treatment of offenders; nationality; the press and other media of expression; trade unions and other types of association; freedom of assembly; the right to vote and the right of recall; electoral propaganda; the right to be elected to legislative or executive office; social security; conditions of work; health standards; family law; and education. A variety of rights were affected by Act No. IV of 1959 of Hungary, which promulgated the Civil Code; by the state budgets for 1959 of the Byelorussian and Ukrainian Soviet Socialist Republics; and by the Public Order Act, No. 45/1959 of 30 July 1959 of Spain.

Matters relating to detention were touched upon by a Belgian Act of 25 July 1959, the Protective Custody Regulations of China, promulgated on 9 November 1935, as amended by an order of 21 December 1959, and the Preventive Detention (Temporary Provisions) Act, 1959, of Southern Rhodesia. Amendments adopted during 1959 to the Defence of the Sudan (General) Regulations, 1958, concerned the removal of certain suspects from specified areas, among other matters.

In connexion with the protection of life and personal inviolability, attention is drawn to the amendments to the penal codes of the Byelorussian and Ukrainian Soviet Socialist Republics, dated 3 July 1959 and 28 July 1959 respectively.

Aspects of judicial procedure were governed by the amendments of 20 November 1959 to articles 85 and 86 of the Constitution of the Byelorussian Soviet Socialist Republic, the Act of 20 November 1959 concerning the judicial system of the Byelorussian Soviet Socialist Republic, the Criminal Indemnification Act of China, promulgated on 11 June 1959, the Criminal Law Amendment Act, 1959, and Criminal Law Further Amendment Act, 1959, of the Union of South Africa, and Act No. 12688 of 29 December 1959 of Uruguay. The Belgian royal order of 10 June 1959 and the regulations on the duties of judicial police officers, put into effect on

31 December 1959 in the Republic of Korea, fell within the area of criminal investigation, while Act No. 3274 of 2 October 1957 of Brazil, which laid down rules for the penitentiary system, and legislative decree No. 39 of 1959, of Hungary, concerned the treatment of offenders.

Extracts from the following nationality laws appear in this *Yearbook*: Act No. 194/1949 of 13 July 1949 on Czechoslovak citizenship, as amended, the Act of 17 October 1958 on the same subject, the royal decree of 22 July 1959 of the Netherlands, Act No. 2098 of 29 July 1959 promulgating the grounds for the attribution and aquisition of Portugese nationality, and the citizenship of Western Samoa Ordinance, 1959.

Press laws are represented in this volume by legislative decree No. 6422 of 12 June 1957 of Argentina, Act No. 11 of 2 February 1956 concerning copyright and printing rights and Act No. 57 of 10 April 1956 concerning printing rights, of Iceland, the royal decree of 17 February 1959 of Saudi Arabia, the decree of 17 August 1959 regulating the exercise of the freedom of the press in the then Belgian Congo and Act No. 3 of 15 January 1959 of the Trust Territory of Somaliland. An amendment of 1959 to the Criminal Code of Canada concerned obscene publications and crime comics. Act No. 2100 of 29 August 1959 of Portugal amended article 23 of the Portugese constitution, relating to the press. The following affected the press, among other media of expression: decree No. 4965 of 27 April 1959 of Argentina; Act. No. 4280 of 17 September 1955 of the Dominican Republic; the Offences against the State (False Reports) Act, 1959, of Ghana; decree No. 26/1959/V.1 of Hungary; the Children's Protection and Adoption Amendment Act, 1959, of Southern Rhodesia; section 44 of the Prisons Act, 1959, of the Union of South Africa and the Obscene Publications Act, 1959, of the United Kingdom of Great Britain and Northern Ireland. In Morocco, dahir No. 1–59–173 of 18 May 1959 affected the operation of radio stations. In Venezuela, decree No. 13 of 30 January 1958 abolished the censorship boards set up in 1950.

Extracts from the following trade union laws appear in this *Yearbook*: the Trade Union (Emergency Provisions) Act, 1959, and the Labour Relations (Amendment) Act, 1959, both of the Canadian province of Newfoundland; Act No. 7286 of 29 May 1959 of Turkey and Act No. 59–4 of 10 January 1959 to Make Rules for Industrial Associations in Tunisia. Various types of association were affected by the Anti-subversion Act, Republic Act No. 1700, of the Philippines, the Unlawful Organizations Act, 1959, of Southern Rhodesia, and the decree of 17 August 1959 relating to the exercise of freedom of association, of the then Belgian Congo.

At this point mention may also be made of the Constitution Act Amendment Act (No. 2) of British Columbia, which governed picketing and similar activities, and the decree of 17 August 1959 relating to indoor public meetings, of the then Belgian Congo.

Freedom of the press, freedom of association and freedom of assembly were all the concern of a basic decree of 17 August 1959 of the then Belgian Congo.

Detailed provisions concerning the right to vote were contained in ordinance No. 3 of 30 April 1959 concerning the election of deputies to the Legislative Assembly, of the Congo (Brazzaville); decree No. 2345 of 14 May 1959 of Costa Rica; decree No. 2972 of 27 November 1959 of El Salvador; the Representation of the People (Amendment) Act, 1958, of India; the Basic Democracies Order, 1959, of Pakistan; the Electoral Code of 30 January 1958 of Panama; organic law No. 3 of 6 June 1959 of Madagascar; Act No. 59-86 of 30 July 1959 on the election of the President of the Republic and the members of the National Assembly, of Tunisia; the Promotion of Bantu Self-government Act, 1959, of the Union of South Africa; an Act of 18 May 1959 of the Swiss Canton of Vaud; the District Councils Elections Proclamation, 1959, of Basutoland; the Registration of Electors Law, 1959, of Cyprus; the Protectorate Elections Ordinance, 1959, of the Gambia; the Northern Rhodesia (Legislative Council) Order in Council, 1959; and section 26 of the Citizenship of Western Samoa Ordinance, 1959.

The right of recall was the subject of the Act of 20 November 1959 concerning the recall of deputies to the Supreme Soviet of the Byelorussian Soviet Socialist Republic; the Act of 20 November 1959 concerning the recall of deputies to regional, district, urban, village, and settlement soviets of workers' deputies of the Ukrainian Soviet Socialist Republic; and the Act of 30 October 1959 concerning the recall of deputies to the Supreme Soviet of the Union of Soviet Socialist Republics.

The above-mentioned enactments of El Salvador, Madagascar, Panama and Tunisia concerned also electoral propaganda. Those of El Salvador and Panama also affected political parties.

The right to be elected to legislative or executive office was defined in some detail in ordinance No. 3 of 30 April 1959 concerning the election of deputies to the Legislative Assembly, of the Congo (Brazzaville); the National Assembly Act, 1959, and the Representation of the People (Women Members) Act, 1959, of Ghana; decree No. 2972 of 27 November 1959 of El Salvador; the Representation of the People (Amendment) Act, 1958, of India; the Basic Democracies Order, 1959, of Pakistan; the Electoral Code of 30 January 1958 of Panama; organic acts Nos. 5 and 6 of 6 June 1959, dealing with elections to the National Assembly and the Senate respectively, of Madagascar; article 23 of the constitution of Nepal, promulgated on 12 February 1959;

Act No. 59-86 of 30 July 1959 on the election of the President of the Republic and the members of the National Assembly, of Tunisia; the Basutoland (Constitution) Order in Council, 1959; the District Councils Elections Proclamation, 1959, of Basutoland; sections 27 and 29-30 of part VI ("The Legislative Council") of the Constitution of Brunei, 1959; the Elections (President and Vice-President of the Republic) Law, 1959, and the Elections (House of Representatives and Communal Chambers) Law, 1959, of Cyprus; and the Northern Rhodesia (Legislative Council) Order in Council, 1959.

The Ceylon Constitution (Amendment) Act, No. 4 of 1959, included a provision facilitating the representation in Parliament of substantial concentrations in a province of citizens of Ceylon who are united by a community of racial interest different from that of the majority of the citizens of that province.

Extracts from the following social security laws appear herein, many others being summarized: Act No. 463 of 4 July 1959 of Italy, and ordinances Nos. 653 and 675 of Monaco, of 18 February 1959 and 2 December 1959 respectively.

Conditions of work were governed by the decree of 15 May 1959 of the Byelorussian Soviet Socialist Republic amending and adding to the Labour Code; decree No. 189 of 1 June 1959 promulgating the Labour Code, of Honduras; Act No. 16 of 9 April 1958 of Iceland; the Labour Act of 17 March 1959 of Iran; ordinance No. 677 of 2 December 1959 of Monaco; and the order of 27 January 1959 of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics concerning the procedure for the examination of labour disputes involving persons dismissed by the management with the concurrence of the factory, works, or local trade union committee.

Laws concerning health standards adopted in 1959 included the Hungarian legislative decree No. 8 of 1959 on the regulation of the activities of physicians and the Polish Act on combating tuberculosis of 22 April 1959.

Various branches of family law were the concern of the Belgian Act of 22 June 1959 amending the Civil Code, the French ordinance No. 59-274 of 4 February 1959, relating to marriages entered into in the *Departements* of Algeria, Les Oasis and La Saoura; the Family Law Revision (Maintenance) Law, 5719-1959 of Israel; the Haitian decree of 27 January 1959 abolishing all legal inequalities between natural and legitimate children; ordinance No. 659 of 23 March 1959 of Monaco, amending articles 227 and 232 of the Civil Code so as to extend the possibilities for the legitimation of natural and adulterine children; the Act of 25 February 1959 creating the offence of desertion of family, of Peru; the amendment to article 12 of the Portugese Constitution effected by Act No. 2100 of 29 August 1959; and the Children's Protection and Adoption Amendment Act, 1959, of Southern Rhodesia.

In relation to education, attention is drawn to the Belgian royal order of 15 July 1959; the amendment of 9 April 1959 to article 96 of the constitution of the Byelorussian Soviet Socialist Republic; the Act of 8 April 1959 concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Byelorussian Soviet Socialist Republic; Act No. 680 of 23 December 1959 of Cuba; the French Acts Nos. 59-960 and 59-1557 of 31 July 1959 and 31 December 1959 respectively; the Polish order of 16 January 1959 concerning state scholarships to students of higher schools; order No. 76 of 15 January 1959 concerning the allocation of funds to trade union organizations for mass cultural and physical cultural activities; and order No. 720 of 2 July 1959 concerning grants for students taking evening and correspondence courses in higher educational establishments and specialized secondary educational establishments, both of the Union of Soviet Socialist Republics; and the Venezuelan decree No. 458 of 5 December 1958 promulgating the Universities Act.

The summaries and commentaries furnished by various governments or government-appointed correspondents deal with further instances of legislation of the type just reviewed; for instance, the contribution of Morocco includes a resumé of the Code of Criminal Procedure of 10 February 1959, while those of Spain and Sweden include details of new legislation on social security. The summaries and commentaries of governments or correspondents also touch upon other categories of law, the most important of which are now briefly mentioned. In Ceylon, the Suspension of Capital Punishment Act, No. 20 of 1958, was repealed in 1959. In New Zealand, the Post Office Act, 1959, included provisions protecting the privacy of correspondence. Property legislation adopted in 1959 included the Libyan Act to protect women's right of succession and Acts of Yugoslavia dated 14, 16 and 22 April 1959, which dealt with legal relationships relating to dwellings. In connexion with freedom of conscience, attention may be drawn to the Finnish Act No. 219 of 15 May 1959 on the performance of unarmed compulsory military service. Laws on the promotion of the right to work adopted in 1959 included Act No. 246 of 2 June 1959 on the employment service, of Finland, and the Labour Services Law 5719-1959 of Israel. In Afghanistan, a legislative decree of 11 May 1957 enabled women to exercise the profession of lawyer on a footing of equality with men. The United States Government, among others, has reported legislation concerned with the promotion of housing. Provisions contained in a Swiss Federal Act of 25 June 1954 on patents entered into force during 1959. In Israel, the State Service (Appointments) Law 5719-1959

governed the selection and appointment of civil servants, while the State Service (Party Activity and Fund-raising Restrictions) Law, 5719-1959, restricted their political activity. The Norwegian Act of 19 June 1959 (No. 1) forbade the police to strike. Of legislation concerning aliens and refugees, mention may be made of the Aliens Act Amendment Act of 1958 of Queensland, Australia, and the Act on Refugees, No. 114 of 1959, of Iraq.

Certain of the constitutional and legislative provisions quoted from or described in this *Yearbook* concerned machinery for the protection of, or otherwise affected, human rights as a whole or a wide range thereof.

Thus, the Fundamental Law of the Republic of Cuba of 1959 included provisions whereby a division of the Supreme Court was to hear appeals on the ground of unconstitutionality against laws, ordinances, decrees, resolutions or acts denying, diminishing, restricting or impairing the rights and guarantees set forth in the Fundamental Law. Article 9 of the constitution of Nepal of 1959 laid down the right to file a petition in the Supreme Court for the enforcement of the rights conferred in part III of the constitution and specified the orders or writs which might be issued for such enforcement. Article 54 enabled an individual, alleging that any law is void for inconsistency with the constitution, to move the Supreme Court to declare that law to be invalid, to the extent of its inconsistency. Section 245 of the Nigeria (Constitution) Order in Council, 1954, which was inserted therein by the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1959, provided for the judicial enforcement of the rights set out in the new sixth schedule to the order of 1954. Act No. 613 of 27 October 1959 of Cuba amended the procedure for appeals to the President of the Republic against ministerial decisions. In Hungary, decision No. 1013/1959/IV.8 concerned the right of complaint of citizens laid down in Act No. IV of 1957, while legislative decree No. 9 of 1959 on the Procurator's Office provided in its section 4 that one aim of the Procurator-General's supervision of the observance of laws was to protect the rights guaranteed to citizens in the constitution. In Iran a royal order of 22 October 1958 set up the Royal Inspection Organization, to attend to the people's complaints. The Act of 20 July 1957 of Spain defined the liabilities of the State and of authorities and officials. The activities during 1959 of the United States Commission on Civil Rights in relation to denial of voting rights and discrimination in education and housing are referred to in the contribution of the United States Government to this *Yearbook*.

Provisions concerning the independence or irremovability of the judiciary are contained in the above-mentioned constitutions of the Central African Republic, Chad, Cuba, Dahomey, Gabon, the Ivory Coast, Madagascar, Mauritania, Nepal, the Niger, the Sudanese Republic (Mali), Thailand, Tunisia and the Upper Volta, as well as in the Act of 20 November 1959 concerning the judicial system of the Byelorussian Soviet Socialist Republic.

The Industrial Conciliation Act, 1959, of Southern Rhodesia and the Terms and Conditions of Employment Act, 1959, of the United Kingdom of Great Britain and Northern Ireland both made provisions affecting the role of industrial courts in the settlement of disputes.

In relation to the prevention of discrimination, attention should be drawn to developments in certain Canadian provinces: the Fair Accommodation Practices Acts enacted in New Brunswick and Nova Scotia and the amendments made to the Fair Employment Practices Acts of Nova Scotia and Saskatchewan. In the United States of America, California and Ohio enacted laws in 1959 prohibiting discrimination in employment, while Connecticut and New Mexico strengthened such laws adopted previously and Missouri passed a law prohibiting discrimination in state employment.

Examples of laws providing for the compulsory extension of the scope of collective agreements are provided by Act No. 741 of 14 July 1959 of Italy and Act No. 440 of 21 May 1958 of Venezuela. Decrees adopted in Mexico in 1959 also made certain collective agreements compulsory. The Act on Labour Inspection of 28 December 1959 of Yugoslavia is also of interest from the point of view of labour standards in general.

As in previous years, certain instruments adopted in 1959 made reference to the Universal Declaration of Human Rights of 10 December 1948. The Universal Declaration was referred to in the preambles to the above-mentioned constitutions of Dahomey, Gabon, the Ivory Coast, Madagascar, Senegal and the Sudanese Republic (Mali). In Act No. 680 of 23 December 1959 of Cuba, teaching about the Universal Declaration is mentioned among the objectives of primary education. In the United States of America, citizens were called upon to study the Bill of Rights of the United States and the Universal Declaration of Human Rights during Human Rights Week, 1959.

Reports on court decisions are included in the contributions to this volume of the governments or government-appointed correspondents of Australia, Austria, Brazil, Canada, Denmark, France, India, Ireland, Israel, Italy, Mexico, the Netherlands, New Zealand, Norway, the United States of America and Uruguay. These relate to a wide range of rights, and it would be difficult to summarize them briefly yet adequately. Mention may be made, however, of the decisions on aspects of equality delivered in Austria, Denmark, India, Israel, Italy, the United States of America and Uruguay.

Part III (International Agreements) of the present *Yearbook* consists of the texts of three conventions and one recommendation adopted by the International Labour Conference in 1959, together with a section entitled "Status of Certain International Agreements". This section contains information relating to 1959 on ratifications of, accessions to, and where applicable the entry into force of forty selected multilateral agreements (and protocols to some of these) adopted since the beginning of 1946 mainly under the aegis of the United Nations, the International Labour Organisation, UNESCO, the Organization of American States and the Council of Europe.

Like the last *Yearbook*, this volume also contains a bibliography of works on human rights prepared by the United Nations Headquarters Library on the basis of lists of titles furnished by governments under resolution 630 D (XXII) of the United Nations Economic and Social Council.

July 1961

PART I

STATES

AFGHANISTAN

NOTE[1]

I. GOVERNMENT POLICY IN THE SOCIAL FIELD

The movement for the abolition of veils for women, which is encouraged by the Government, has made particular progress since August 1959. This development, which is of vital importance in the social history of Afghanistan, is enabling a growing number of women to enter the various professions, including the civil service. Not only are women's salaries fixed at the same level as men's, but in both private firms and the civil service there is provision for monthly bonuses as an encouragement to women to take up different occupations, particularly office work.

Legislative provisions based on the ILO conventions relating to women's work are in course of preparation, so that this recent development will meet with a positive response.

II. LEGISLATION[2]

1. *Guardianship of children.* The legislative decree of 1 March 1957 specifies, *inter alia*:

(*a*) The guardian's duties regarding the administration of property belonging to the child;

(*b*) The need for the guardian to submit a half-yearly report on such administration to the competent judicial authority;

(*c*) The judicial authority's responsibility regarding supervision of the guardian's activity in this field;

(*d*) The need for the competent judicial authority to keep a special register in which to record the property belonging to the child in each case of guardianship.

2. Article 36 of the legislative decree of 11 May 1957 relating to the profession of advocate *permits women to exercise the profession of advocate* on a footing of equality with men.

3. The legislative decree on records, registries and legal documents of 24 April 1957 contains provisions which protect all individuals against *slander or libel* by prescribing appropriate penalties in this field.

4. *The Judicial Organization Code* (usûl-i ijra'ât muhâkamat), promulgated on 22 December 1958, contains 264 articles, several of which are directly or indirectly connected with human rights.

5. The *Code on the Functioning of the Courts* (usûl-i idâri mahâkim), which was promulgated on 2 March 1957 and contains 279 articles, was amended and supplemented in 1958 and 1959 as follows:

(*a*) Article 11 of the Code, regarding the place of the competent court, was supplemented:

(i) By the Act of 2 August 1959 authorizing a plaintiff who lives far from the place of domicile of the defendant to have recourse to a court not located in the district of domicile of the defendant;

(ii) By the Act of 2 August 1959, which recognizes as the domicile of the defendant the place in which he has resided for not less than one year;

(iii) By the Act of 12 November 1958 which permits foreign nationals to have recourse to Afghan courts, even if the offence was committed abroad.

(*b*) Article 14 of the Code, the last sentence of which relates to disputes regarding the validity of deeds registered, was clarified considerably by the Act of 8 August 1959.

(*c*) Article 144 of the Code regarding the appearance of witnesses was made more flexible by the Act of 12 October 1959.

6. *The Code relating to the Enforcement of Prison Sentences* (usûl-nâma-i mukâfât wa mujâzât-i mahbûsîn), the first part of which concerns the commuting of sentences and pardons and reprieves, was promulgated on 8 November 1959.

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

[2] Afghan codes and laws are published in the country's two official languages, Pushtu and Persian.

ARGENTINA

LEGISLATIVE DECREE No. 6422 OF 12 JUNE 1957

PARTICULARS OF PERSONS RESPONSIBLE FOR PUBLISHING OR EDITING PERIODICALS[1]

Art. 1. All newspapers, reviews and periodicals must state clearly, in a prominent position and in bold type, the name of the publisher or managing editor responsible for the publication, their entry number in the Register of Intellectual Property and their legal domicile.

Art. 2. Publications failing to comply with the provisions of this legislative decree, and any kind of printed material which does not bear the imprint required by article 2 of decree No. 32,883/47, shall be considered clandestine and may be confiscated, without prejudice to the penalties applicable to the printers of such material.

Art. 3. The publications subject to this legislative decree shall be granted a period of ten days in which to comply with the provisions thereof, after which the penalty set out in the preceding article shall be applicable.

. . .

[1] Published in *Boletín Oficial* of 19 June 1957. Translation by the United Nations Secretariat.

DECREE No. 4965 OF 27 APRIL 1959 PROHIBITING COMMUNIST AND COMMUNIST PARTY ACTIVITIES THROUGHOUT THE REPUBLIC[1]

Art. 1. The following shall be prohibited throughout the republic: communist activities; Communist Party activities; and the activities of groups, bodies and associations directly or indirectly connected with it in its actions.

Art. 2. This prohibition shall also apply to (*a*) newspapers, periodicals, reviews and other publications which serve as avowed or clandestine organs for the spread of communist activities and propaganda or which in any way support or encourage communist activities and propaganda; (*b*) the dissemination of communist propaganda material through any medium; (*c*) any attempts to make converts or to indoctrinate or to aid or request aid in the maintenance and spread of communism.

Art. 3. All the offices of the Communist Party and of the groups mentioned in article 1, and any premises in which activities prohibited by this decree take place shall be closed.

. . .

[1] Published in *Boletín Oficial*, No. 18924, of 29 April 1959. Translated by the United Nations Secretariat.

AUSTRALIA

HUMAN RIGHTS IN AUSTRALIA IN 1959[1]

I. Legislation

A. SOCIAL SERVICE RIGHTS

1. COMMONWEALTH

(i) *Social Services Act 1959* (social services — provision against old age, invalidity, widowhood and unemployment)

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

(*a*) General maximum rate of age and invalid pension and rate payable to married claimants or pensioners who are permanently blind and in receipt of a war pension were increased from £227 10*s*. to £247.

(*b*) Amount payable to age or invalid pensioners in benevolent homes was increased from £79 6*s*. to £84 16*s*. per annum.

(*c*) Rates of widow's pension were increased from £250 10*s*. to £260.

(*d*) Amount of pension payable to widows in benevolent homes was increased from £70 4*s*. to £76 14*s*. per annum.

(*e*) An aboriginal native is to be entitled to a pension, allowance, endowment or benefit under the Act, unless he follows a mode of life that is, in the opinion of the Director-General, nomadic or primitive. Other relevant restrictions on aboriginal natives have now either been repealed or modified.

(ii) *Income Tax and Social Services Contribution Assessment Act 1959 (No. 70)*

The limitation of £150 on the allowable deduction for medical expenses has been removed in the case of persons who reach 65 years of age on or before the last day of the year of income.

(iii) *Income Tax and Social Services Contribution Assessment Act 1959 (No. 71)*

Income tax is not now payable by aged persons (65 years for men, 60 years for women) unless their income is £429 or over per annum.

(iv) *National Health Act 1959*

This Act increases the amounts of Commonwealth benefit from £11 5*s*. to £22 10*s*. payable in the case of medical services that are not specified in the schedules of services in the principal Act in cases where two or more operations are performed.

2. QUEENSLAND

The Tuberculosis Further Agreement Act of 1958

This Act authorizes a further arrangement between the Commonwealth and the State for a period of five years for the continuance of services and facilities for the diagnosis, treatment and control of tuberculosis.

3. NEW SOUTH WALES

Tuberculosis Act, 1958

This Act authorizes a further arrangement between the Commonwealth and New South Wales for a period of five years for the continuation of the national campaign against tuberculosis. (The first Act was made in 1949.)

In this connexion, the *Public Hospitals Act, 1929*, has been further amended to provide that, while the arrangement is in force, no means test is to be imposed on and no charge is to be made in respect of tuberculosis sufferers occupying beds in public wards of hospitals, the maintenance expenditure of which by the State is subject to any such arrangement (section 32 B).

4. WESTERN AUSTRALIA

(i) *Tuberculosis (Commonwealth and State Arrangement) Act, 1958*

This Act authorizes the State to enter into, execute and carry out an arrangement with the Commonwealth respecting a campaign to reduce the incidence of tuberculosis in Australia (previous arrangement of 1948 superseded). The new arrangement is to be in force for five years.

(ii) *Cancer Council of Western Australia Act, 1958*

This Act, which commenced on 1 June 1959, constitutes the Cancer Council of Western Australia, a body corporate with the functions of co-ordinating, promoting and subsidizing research into the cause, diagnosis, prevention and treatment of cancer and allied conditions, and with power to establish and maintain cancer institutes, and to give effect to its functions.

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

(iii) *Health Education Council Act, 1958*

This Act, which commenced on 1 May 1959, constitutes the Health Education Council of Western Australia, with the functions of promoting, maintaining and improving, by means of health education, the health of the people of the state.

B. PERSONAL RIGHTS

(1) Equal Right to Marriage and its Dissolution

Commonwealth

Matrimonial Causes Act, 1959

Provision is made in this Act for a uniform system of marriage, divorce and matrimonial causes and, in relation thereto, parental rights and the custody and guardianship of infants. When the Act comes into force on a proclaimed date, it will supersede existing state laws in relation to those subject matters. The effect of the new Act is that husband and wife have generally equal rights and are placed on the same footing.

(2) Right to Recognition as a Person to Life, Liberty and Security

1. *Commonwealth*

Geneva Conventions Act, 1957 (date of commencement proclaimed: 1 September 1959)

This Act gives effect to four Geneva conventions made on 12 August 1949, relating to the amelioration of the condition of the wounded and sick in armed forces in the field, and at sea; to the treatment of prisoners of war; and to the protection of civilian persons in time of war. Breaches of the conventions are made criminal offences under the Act.

2. *New South Wales*

Mental Health Act, 1958 (assented to on 31 December 1958; commenced on 2 March 1959)

This Act supersedes, *inter alia*, the Lunacy Act, 1898–1955. It provides for the admission of mentally ill persons to admission centres, mental hospitals and authorized hospitals, their care and treatment therein, their discharge, and the management of their estates. The jurisdiction of the State Supreme Court in its "lunacy jurisdiction" is now exercised by the Court in its "protective jurisdiction". In related Acts the words "mentally ill" will be used for "insane" or "lunatic"; "protected person" for "insane person"; "mental hospital" for "hospital for the insane"; "admission centre" for "reception house".

(3) Right to own Property

Queensland

The Aliens Acts Amendment Act of 1958

This Act provides that an alien, as from 11 December 1958, may take, acquire, hold and dispose of any real property or any estate or interest therein in all respects as if he were a British subject. A title to real property or any estate or interest therein may be derived through, from or in succession to an alien, in the same manner in all respects as through, from or in succession to a national-born British subject.

(4) Right to participate in the Government of the Country

South Australia

Electoral Act Amendment Act, 1959

This Act provides for voting by post by members of religious orders of men or women the constitutions of whose orders do not permit them to go outside the precints of their institutions.

C. RIGHTS OF ABORIGINAL NATIVES

Western Australia

Natives (Citizenship Rights) Act Amendment Act, 1958

This Act, which commenced on 6 November 1959, varies the conditions relating to applications by adult natives for citizenship. Holders of certificates of citizenship acquire full citizenship rights in that State.

II. Court Decisions

A. RIGHT TO FAIR TRIAL

1. Balenzuela *v.* DeGail (1959)

(1958–1959) 101 *Commonwealth Law Reports* 226

High Court of Australia

New trial — Miscarriage of justice — Improper rejection of evidence — Principles governing grant of new trial at common law

At the trial of an action of damages for personal injuries caused by the negligent driving of a motor vehicle the precise place where the accident occurred was in question. Evidence was rejected erroneously although it tended to identify the place to which the evidence of a witness called at the trial referred.

Held: That there must be a new trial because the jury, proceeding according to law and reasonably, might possibly have been led by the rejected evidence to find a different verdict.

Dixon, C.J., said (at p. 236): "In the present case, as it seems to me, it would be contrary to principle to refuse a new trial on the ground that there was no substantial wrong or miscarriage. The basal fact is that material evidence was erroneously excluded from the consideration of the jury, evidence that touched the question upon which the case turned. It was something the party was entitled to lay before the jury for its consideration. It lies outside the province of the court to inquire into the effect which the evidence if admitted would produce upon the court if the court were the tribunal of fact, and it

lies outside the province of the court to speculate on the effect which it would have produced on the jury. It is enough that evidence definitely material to the determination of the case was excluded at the instance of the defendants. That leaves the unsuccessful plaintiff entitled to a new trial."

2. THOMAS *v.* THE QUEEN (1959)

33 *Australian Law Journal Reports* 413

High Court of Australia

Criminal law — Wilful murder — Defences of insanity and intoxication negativing intent — Burden of proof — Misdirection — Miscarriage of justice

At the trial of an accused for wilful murder in which the defences of insanity and intoxication negativing intent were raised, the summing up of the trial judge containing passages which came, on appeal, for review to the Court of Criminal Appeal in Western Australia, which dismissed the appeal. The High Court granted special leave to appeal and ordered a new trial.

Held: That certain passages of the summing up were a misdirection and a court of appeal could not be satisfied that a substantial miscarriage of justice did not occur. The summing up did not sufficiently direct the jury that the accused did not have the onus of satisfying them affirmatively that he was so much under the influence of drink as not to have the intention to cause the death. The burden of proving that he had the intention lay throughout on the Crown.

3. R. *v.* CHAIRMAN OF GENERAL SESSIONS AS HAMILTON: *ex parte* ATTERBY

(1959) *Argus Law Reports* 1449

Supreme Court of Victoria

Prohibition — Certiorari — Excessive interference by chairman in cross-examination — Refusal by chairman to allow certain questions in cross-examination — Denial of natural justice

In a maintenance appeal before a court of general sessions, the appellant wife gave evidence that she was forced to leave the matrimonial home because of her husband's cruelty and conduct towards her. In cross-examination, counsel for the husband sought to elicit that it was the appellant's mother who was the cause of her leaving, but the chairman refused several times to allow the cross-examination and interrupted and interfered excessively with the cross-examination.

The Supreme Court *held* that a new trial should be ordered.

4. R. *v.* THE STIPENDIARY MAGISTRATE AT CLONCURRY AND CORBETTE: *ex parte* PAGE

(1959) *Queensland State Reports* 75

Supreme Court of Queensland

A defendant, who pleaded guilty to a complaint of an unlawful assault of an aggravated nature on a female child, sought a writ of *certiorari* on the grounds that the conviction was obtained by fraud or duress on the part of the complainant, that no offence as alleged was in fact ever committed of which the applicant could have been guilty and that the plea of guilty was in relation to a non-existent offence and was inoperative and a nullity.

In refusing relief, the Court said: "If a prosecutor either himself or through another acting in concert or in collusion with him procures a conviction by fraud, *certiorari* will lie to quash the conviction if the fraud be proved affirmatively by the applicant beyond all reasonable doubt. It is a very heavy onus, and where there is a conflict of evidence the cases when the court will act by *certiorari* after a plea of guilty in open court must be indeed rare."

5. THE QUEEN *v.* WEST AUSTRALIAN NEWSPAPERS LTD.; *ex parte* THE MINISTER FOR JUSTICE

(1958–59) 60 *Western Australian Law Reports* 108

Supreme Court of Western Australia

Contempt of Court — Pending proceedings — Publication of matter calculated to prejudice a fair trial

One B. was arrested and charged with the murder of one H. In the course of proceedings before the coroner, evidence was given of a statement alleged to have been made by B. to a detective in which B. had said, "About a week before I killed her she started coming home late."

The *Daily News*, in a stop press report of the proceedings, stated that "in an alleged statement to police, B. confessed to have murdered Mrs. H. after an argument in her bathroom. . . ."

On motions for writs of attachment against the proprietor of the newspaper, the editor of that paper and the printer, each of the respondents admitted being guilty of criminal contempts of court. As to the appropriate punishment, it was

Held: 1. As neither the editor nor the printer was directly or personally responsible for the choice of the words as published, each should be censured only. 2. The proprietor should be fined £250.

Per curiam (at p. 109): "The part to which exception has been taken and to which this motion relates is, of course, the statement that B. confessed to having murdered the woman. . . .

"We have to view this matter in the light of the circumstances. These courts haves always been jealous to preserve the integrity and purity of justice, to see that no cause or case is pre-tried before the case comes before proper tribunals, and in exercising this inherent jurisdiction the court has, when occasion demanded it, meted out condign punishment to those who have done anything prejudicial to the course of justice. Included in that behaviour, of course, is circulation of matter in a newspaper which gives a false account of evidence to be adduced at the trial

or evidence which is likely to be adduced; or which abuses witnesses or puts a false complexion on a case or unduly criticizes an aspect of a case which may tend to prejudice the course of justice."

6. R. *v.* BOUNDY

(1959) 76 *Weekly Notes* (New South Wales) 395

Court of Criminal Appeal of New South Wales

Criminal law — Asides by judge — Trial — Conventional pattern — Necessity for judge to leave seat on bench — Physical disability — Explanation — Summing-up — Recommendation to mercy — Judge's suggestion — New trial

The accused was indicted on two charges of carnal knowledge of a girl, the defence in each case being that the girl was over fourteen years and consented and that the accused reasonably believed her to be over the age of sixteen years. The girl was described by the trial judge as a "wicked little wanton", although she was only fourteen years of age at the time of the alleged offences. The accused was a person of good character. Towards the end of the summing-up, the judge referred to the possibility of a recommendation for mercy. The judge "paced up and down" the court behind the bench. This was due, as he explained, to a physical condition, which made continual sitting for long periods at times painful, and he found some relief by rising from his chair and taking a few steps on the bench.

Held: That, used as these words were and in the light of the circumstances of the case, a direction of the jury with regard to a possible recommendation for mercy could be a ground for directing a new trial. The unconventional behaviour of the judge standing by itself would afford no ground for granting leave to appeal.

Per curiam: "It is eminently desirable that criminal trials should be conducted with no possibility of any extraneous considerations being brought to the attention of the jury and that they should confine their attentions strictly to the matters proved in evidence and the addresses and the summing-up of the judge. The uttering by the judge during the course of the trial of asides which could possibly operate to the prejudice of the accused is undesirable, even though an attempt be made later by the judge to explain their significance to the jury. It is irrelevant for the jury to take into account the possibility of a recommendation for mercy, which could have conveyed to the minds of the jurors that they need not fear to convict the applicant of the offence charged, because the judge would impose only a light penalty in accordance with such a recommendation. It is also eminently desirable that court practice should follow a conventional pattern. Where some physical disability renders it difficult or impossible for a judge at a criminal trial to sit continuously and he has to rise from his seat constantly to obtain relief, the possibility of any disturbance of the even flow of the trial by such unconventional behaviour should be removed by some explanation from the judge to counsel and to the jurors."

7. R. *v.* NICOLAISEN

(1959) 76 *Weekly Notes* (New South Wales) 71

Court of Criminal Appeal of New South Wales

Criminal law — Malicious wounding — Trial — Plea of self-defence — Summing-up — Should be clear to laymen — New trial

In a trial on indictment for malicious wounding with intent to inflict grievous bodily harm, there was evidence that the accused had used a knife.

At an early stage in his summing-up to the jury, the trial judge inadvertently misdirected the jury by omitting the word "not" in one passage, although he gave correct directions later on the same aspect; however, the passage was not clearly phrased, and possibly could have had a confusing effect. Also, the trial judge failed to direct the jury that, where a lethal weapon was involved, the plea of self-defence is available in relation to a situation where the accused was threatened with or might reasonably have apprehended serious injury, as well as being available where the accused is threatened by an act of violence likely to cause death.

Held, on appeal: That there should be a new trial, as the combined effect of these factors in the summing-up could have resulted in a miscarriage of justice.

Street, C.J. said at p. 72: "I think it is of vital importance that the summing-up to a jury at quarter sessions should be couched in language which is clear to laymen, considering the questions of law that are involved, and incapable of misinterpretation. There was, I think, a possibility that the jury in this case may have been confused. That particular passage in the summing-up needs to be read with care in order to be understood, and in all the circumstances and in view of the possibility that there might be some miscarriage of justice in the present case, I think it is preferable that any such possibility should be eliminated."

8. R. *v.* BAILEY

(1958) *South Australian State Reports* 301

Supreme Court of South Australia

Criminal law — Evidence — Admissibility of confession — Interrogation of accused person by police — Statement by accused person — Discretion of trial judge as to admissibility of statement — Application in South Australia of Judges' Rules as to interrogation of suspected persons

B. was arrested in Queensland and charged on a provisional warrant alleging that he had in South Australia obtained a motor-car by false pretences. He was cautioned by a police officer that, in respect of this charge, he need not say anything in answer to

the charge unless he wished, but that anything he did say might be used in evidence.

On the following day, the police officer, without giving any further caution to B., who was still in custody, commenced to question him concerning the murder in South Australia of a young man and two women. B., after being questioned for some time, said that he had shot the young man. He was then cautioned by the police officer, and made further admissions concerning the murders.

The police officer gave evidence that B.'s statement was a voluntary one; that no threat or promise had been made to B.; and that no unfair pressure had been used upon him to make the statement.

Subsequently B. made statements, both oral and in writing, to other police officers, in which, after having been cautioned, he admitted having killed the young man and the two women.

Held, on the facts: That the statements made by B. were rightly admitted in evidence against him.

The application in South Australia of the Judges' Rules, as to interrogation of accused persons, was discussed.

Per curiam (at pp. 309 *et seq.*): "The substance of the eight Judges' Rules is set out in *R.* v. *Voisin* (1918) 1 K.B. 531. They have been promulgated in substantially the same form in Victoria by the Chief Commissioner of Police, and appear in *R.* v. *Lee* (1950) 82 *Commonwealth Law Reports*, 133, at pp. 142–143. These rules are accepted in England, but they have never been adopted either by the judges or by the police authorities in South Australia, where the courts have hitherto been guided by the principles enunciated by the Full Court of South Australia in *R.* v. *Lynch* (1919) *South Australian Law Reports*, 325, and by Napier, J. (as he then was) in *Lonthall* v. *Curran* (1933) *South Australian State Reports*, 248, at pp. 262–263.

"The only effect of infringing the Judges' Rules ever stated by any court is that it is a matter to be taken into account with all other circumstances in deciding whether the evidence should be rejected. . . .

"In this case the Crown, in our opinion, proved beyond reasonable doubt that the confessions were not obtained under such circumstances as to render them non-voluntary and so inadmissible as a matter of law."

B. PERSONAL RIGHTS

(i) Freedom of expression

1. MacKay *v.* Gordon & Gotch (Australasia) Ltd.

(1959) *Argus Law Reports* 953; (1959) *Victorian Reports* 420

Supreme Court of Victoria

Freedom of expression — Limitations — Obscene publications

A person being an importer and wholesaler of periodicals, who sends bundles of magazines to retail newsagents on a sale or return basis, distributes them within the meaning of section 166 (*c*) of the Police Offences Act 1957 (now section 166 (*c*) of the Police Offences Act 1958) of the state of Victoria.

The importer and wholesaler was charged before a magistrate with the offence of distributing obscene articles — namely, copies of an issue of a magazine known as *Reveille*. Three items, in particular, in the magazine were objected to. The magistrate convicted the defendant.

Section 164 (1) of the Police Offences Act 1957 (now 1958) defines "obscene" as follows:

"'Obscene' (without limiting the generality of the meaning thereof) includes —

"(*a*) Tending to deprave and corrupt persons whose minds are open to immoral influences; and

"(*b*) Unduly emphasizing matters of sex, crimes of violence, gross cruelty or horror."

Section 164 (2), which is relevant here, provides as follows:

"(2) In determining for the purposes of this division whether any article is obscene the court shall have regard to —

(*a*) The nature of the article; and

(*b*) The persons classes of persons and age groups to or among whom it was or was intended or was likely to be published, distributed, sold, exhibited, given or delivered; and

(*c*) The tendency of the article to deprave or corrupt any such persons class of persons or age group — to the intent that an article shall be held to be obscene when it tends or is likely in any manner to deprave or corrupt any such persons or the persons in any such class or age group, notwithstanding that persons in other classes or age groups may not be similarly affected."

On an order *nisi* to the Victorian Supreme Court to review the conviction, the court upheld the magistrate's finding. It followed *Wavish* v. *Associated Newspapers Ltd.* (1956) *Argus Law Reports* 1199; *Victorian Reports* (1959) 57, against which an application to the High Court of Australia for special leave to appeal was refused; see *Associated Newspapers Ltd.* v *Wavish* (1956) 96 *Commonwealth Law Reports* 526; noted in *Yearbook on Human Rights for 1956*, page 14.

The Supreme Court of Victoria considered that one or more obscene items may constitute a magazine as a whole an "obscene article" and held that the expression "unduly emphasizing matters of sex" means dealing with them in a manner which offends against the standards of the community in which the article is published and distributed.

The court made observations on the general purpose and scope of the law of obscenity, and on the relevance of serious scientific, literary or social purpose in relation thereto. In the course of its judgement, the court said (at p. 959): "I agree that [the court] is not to be narrow or puritanical, and that

it is to recognize that it must allow for many tastes and many degrees and standards of education and of refinement, and for the grave lack of them in some quarters. On the other hand, the court is not called upon to overlook or minimize what is really obscenity, merely in order supposedly to show its own judicial broadmindedness or tolerance or imperturbability or even cynicism."

In examining the three items objected to in the magazine, the court said with respect to one of them (at p. 962) that "it overruns whatever limits the most liberal of Australian standards allow".

The Supreme Court was therefore of opinion that the article was clearly within the definition of "obscene", because the three items "unduly emphasized matters of sex".

2. MITCHELL AND OTHERS *v.* AUSTRALIAN BROADCASTING COMMISSION AND MIDDLETON

(1958) 60 *Western Australian Law Reports* 38

Supreme Court of Western Australia

Freedom of expression — Limitation — Radio broadcast — Libel or slander

The Australian Broadcasting Commission published on 27 August 1955, in connexion with a news broadcast, statements relating to some natives which were claimed to be defamatory of the natives. The freedom of information by way of radio broadcasts is subject to general principles of defamation, as is clearly shown by this decision of the court.

Although the Supreme Court deals with the limitation to the freedom of information of a broadcasting station by defamation as a matter of course, the case is interesting because it was held that that particular broadcast constitutes slander and not libel. The court followed *Meldrum* v. *Australian Broadcasting Commission* (1932) *Victorian Law Reports* 425, where the Victorian Supreme Court held that a broadcast reading from a script is slander only, although the Supreme Court of Western Australia was aware of the controversy which that decision has caused in England, the United States and Canada.

The Supreme Court referred to section 95A of the (Commonwealth) Broadcasting and Television Act 1942–1956, which section was enacted by the 1956 amendment to the Act and which provides that "for the purposes of the law of defamation, the transmission of words or other matter by a broadcasting station or a television station shall be deemed to be publication in permanent form" — that is to say, libel.

The Supreme Court, however, held that although that amendment clarified the position in Australia for the future, it clearly had no reference to the broadcast made in August 1955. Therefore, the words used, being slander, were not actionable *per se* and as no special damage had been alleged or proved, the damages were to be assessed without reference to that publication.

(ii) Right to work

1. COAL MINERS INDUSTRIAL UNION OF WORKERS OF WESTERN AUSTRALIA, COLLIE *v.* TRUE (1959)

33 *Australian Law Journal Reports* 224

High Court of Australia

Trade union — Unlawful expulsion of member — Conspiracy to deprive expelled member of work in industry — Liability of union for acts of members

A member of the apellant union was unlawfully suspended from membership for refusing to pay an illegal levy imposed by the union for the purpose of aiding and assisting other members at two other collieries who were then on strike. The member was suspended, and at a pit-top shift meeting a resolution was carried to the effect that members of the union were not prepared to work with the member, who was later on dismissed by the manager of the mine.

Held: That all the individual defendants and the union were liable in damages.

As per *Dixon*, C.J. (at p. 227): "The individual defendants all contemplated the dismissal of the plaintiff, or his inevitable resignation under pressure, if he continued his refusal to make his contribution to the levies, and . . . they combined their wills to that end. The means they used were a threat of a strike. As a strike is unlawful by the law of the state of Western Australia it was a threat of an unlawful act."

As per *Menzies*, J. (at pp. 229 and 230): "This is a case of concerted action to interfere with an existing employment by unlawful means, that is, by threat of strike, as well as to prevent further employment. . . ."

2. RYALL *v.* CARROLL (1959)

33 *Australian Law Journal Reports* 350

High Court of Australia

Observance of law ordinance 1911 (Northern Territory), s. 11 — Interference with right of person to carry on his normal occupation

Men picketing a wharf in pursuance of a trade union decision not to allow the discharge of cargo from a ship stood in front of a carrier's truck and prevented the driver from driving upon the wharf in order to take delivery of goods from the ship. Charges were laid against them under section 11(*a*) of the Observance of Law Ordinance 1921 (Northern Territory) in that they did by a physical act interfere with a right of the driver to carry on his normal occupation of driving a truck.

Held: That, in order to constitute the offence, the act must be directed against the occupation of the person or against his exercising that occupation, and accordingly the picketers were not guilty of the offence charged. He could have gone to another place of employment to follow his occupation.

3. ILLAWARRA DISTRICT COUNTY COUNCIL *v.* WICKHAM

(1959) *Argus Law Reports* 711

High Court of Australia

Re-establishment and Employment Act 1945–1956 — Re-establishment of service — Preference in employment — Validity of legislation

After the close of the world war in 1945, the Re-establishment and Employment Act 1945 provided that ex-servicemen should be entitled to preference in obtaining employment. This provision was extended from time to time and by Act No. 56 of 1955 it was extended to 2 September 1958.

Held: That, twelve years having elapsed since the cessation of hostilities, the grant of preference in employment could not be regarded as incident to the transition from war conditions to peace conditions and the provisions of Act No. 56 of 1955 were invalid as not within the legislative power of the Commonwealth with respect to defence.

Dixon, C.J. said (at p. 712): "It is, of course, true that provisions for the preference in employment of discharged servicemen may be enacted in the exercise of the defence power before a war is concluded and indeed at the height of the conflict. . . . But here the question concerns a completely general law covering almost every kind of service during the war in or in connexion with the armed forces, a general law derogating from the civil rights of all others in reference to employment and from the rights of employers, and the question is whether an extension of such a law into the thirteenth year after the cessation of hostilities can be sustained as an exercise of the defence power. . . . I think that it has become impossible to sustain it."

C. RIGHTS OF ABORIGINAL NATIVES

NAMATJIRA *v.* RAABE (1959)

33 *Australian Law Journal Reports* 24

High Court of Australia

Aboriginals — Declaration that person is a ward — Welfare Ordinance 1953–1957 (Northern Territory), s. 14

It is not necessary, before a person can be declared a ward under section 14(1), that he should have notice of the proposed declaration and an opportunity to show cause against it, or that there should have been examination or investigation of his individual case.

The power given authorizes the "block" declaration that persons are wards within the welfare ordinance which was in fact made.

When a person becomes a ward he occupies a particular status, the special status of pupillage, similar to the status of persons who stand in need of special care and assistance. A person declared a ward has a right of appeal should he choose and be in a position to exercise it. The status given is protective in its nature.

D. INDUSTRIAL RIGHTS

in re CLERKS (STATE) AND OTHER AWARDS

(1959) 135 *New South Wales Industrial Gazette* 886 (summary of proceedings); The Law Book Co.'s Industrial Arbitration Service, *Current Review*, December 1959 (No. 9), p. 174 (full text)

Industrial Commission (New South Wales)

Industrial Arbitration (Female Rates) Amendment Act, 1958 (New South Wales), s. 88D — Effect on jurisdiction of Commission — Female rates of pay

The Commission had before it applications, pursuant to the new section 88D of the Industrial Arbitration Act, 1940–1958 of New South Wales (inserted by the Industrial Arbitration (Female Rates) Amendment Act, 1958; see *Yearbook on Human Rights for 1958*, p. 4), relating to equal pay for males and females "performing work of the same or a like nature and of equal value".

The main principles laid down in the judgement were:

1. Section 88D, which relates to equal pay as between the sexes, applies to awards and industrial agreements made both before and after 1 January 1959, when the amending Act came into operation.

2. The onus is on an applicant for equal pay to satisfy the Industrial Commission or a conciliation committee that male and female employees bound by the award concerned are performing work of the same or like nature and of equal value.

3. It will be necessary to consider the particular work concerned in order to make valid comparison between work performed by females and work performed by males to determine whether it is work of the same or like nature. A submission that all work performed by persons subject to the Clerks' (State) Award was of the same or a like nature was rejected.

4. When considering whether the work performed by females is of equal value to the work performed by males it is not necessary to consider the profitability of the work to employers.

5. Equal pay for females will be brought about in annual stages. During 1959 the total wage will comprise the margin fixed plus 80 per cent of the basic wage fixed for adult males, and the basic wage component of the total wage will be increased by 5 per cent from 1 January in each succeeding year until January 1964, when the female basic wage will be equivalent to the adult male basic wage.

In the course of its judgement, the Commission made a comparison of the statutory provision (section 88D) and the Equal Remuneration Convention No. 100 adopted at the 1951 session of the International Labour Conference.

AUSTRIA

PROTECTION OF HUMAN RIGHTS IN LEGISLATION AND JUDICIAL DECISIONS IN 1959[1]

A. LEGISLATION (ACTS AND ORDINANCES)

I. FUNDAMENTAL FREEDOMS

1. *Right to own Property*

(*a*) Federal Act *BGBl.* No. 304/1959 amends the Act relating to damage sustained during the occupation (*BGBl.* No. 126/1958), and Federal Act *BGBl.* No. 305/1959 amends the Act relating to physical damage sustained during the war and as a result of persecution (*BGBl.* No. 107/1958). Under these Acts the State has undertaken to provide compensation to some extent for property damage sustained as a result of political persecution or as a result of events occurring during or after the war (cf. *Yearbook on Human Rights for 1958*, p. 9).

(*b*) Federal Acts *BGBl.* Nos. 62/1959 and 306/1959 embody several further amendments to the Act relating to reception organizations (*BGBl.* No. 73/1957) under which "collection agencies" were established for the purpose of receiving claims for the property, legal rights and interests specified in article 26, paragraph 1, of the Austrian State Treaty (cf. *Yearbook on Human Rights for 1957*, p. 13, and *Yearbook on Human Rights for 1958*, p. 9).

(*c*) The Ninth State Treaty Administration Act (*BGBl.* No. 233/1959) further regulates matters of property rights arising in connexion with the Austrian State Treaty.

2. *Right to Personal Freedom*

With a view to prohibiting forced labour in every conceivable form, article 12, paragraph 2, of the Administrative Penal Act of 1950 (*BGBl.* No. 172), which in its original form provided that persons serving a sentence imposed by an administrative authority could be required to engage in work against their will, has been amended under Federal Act *BGBl.* No. 231/1959.

3. *Right to a Proper Hearing*

Under an amendment to the introductory Act to the Administrative Procedure Acts (*BGBl.* No. 92/1959), the applicability of the Administrative Procedure Acts (General Administrative Procedure Act, Administrative Execution Act, Administrative Penal Act, all contained in *BGBl.* No. 172/1950) was extended, with the result that the procedure of a number of other authorities has become subject to detailed legal regulation.

4. *Right to Religious Freedom*

(*a*) Federal Act *BGBl.* No. 208/1959 and its related administrative ordinance (*BGBl.* No. 271/1959) guarantee the validity of marriages celebrated between 29 June 1945 and 30 April 1946 before a minister of a legally recognized church or religious community.

(*b*) Under Federal Act *BGBl.* No. 300/1959, the regulations laid down in Federal Act *BGBl.* No. 294/1958 for the implementation of article 26 of the Austrian State Treaty in respect of ecclesiastical property have been amended and amplified.

5. *The basic rights of minorities* were further safeguarded through the promulgation of the Carinthia Minority School Act (*BGBl.* No. 101/1959) and Federal Act *BGBl.* No. 102/1959 for the execution of the provisions of article 7, paragraph 3, of the Austrian State Treaty relating to the official language used before the courts.

II. SOCIAL RIGHTS

1. An ordinance issued by the Federal Ministry of Commerce and Reconstruction on 2 April 1959 (*BGBl.* No. 114) had laid down regulations on the measures to be taken by the mining industry for the safeguarding of life and health and the protection of property.

2. Regulations for the safeguarding of health are also contained in an ordinance issued by the Federal Ministry of Social Administration (*BGBl.* No. 124/1959) concerning the hours of work of persons engaged in repairing hot furnaces in iron and steel mills.

III. ECONOMIC RIGHTS

1. Under Federal Act *BGBl.* No. 49/1959, the Fair Prices Act (*BGBl.* No. 92/1950) has been put into force again.

2. An ordinance issued by the Federal Ministry of Commerce and Reconstruction on 1 June 1959 (*BGBl.* No. 138) deals with the certificate of qualification required for the exercise of publishing and book-lending activities.

3. Under the Flood Damage Fund Act (*BGBl.* No. 210/1959), a fund has been set up to finance measures designed to deal with flood damage.

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

B. JUDICIAL DECISIONS

FUNDAMENTAL FREEDOMS

1. *Equality before the Law*

(*a*) In its decision B160/1958, of 21 February 1959, the Constitutional Court ruled that for the purposes of determining whether the principle of equality before the law set forth in article 7 of the constitution has been infringed, the conduct of the authority in other cases shall be irrelevant. The determining factor is rather whether the authority acted arbitrarily towards the complainant. A decision reached by an authority on questionable grounds is arbitrary and therefore infringes the principle of equality.

(*b*) The decision of the Constitutional Court of 9 March 1959 (B175/1958) is also important because here, in confirmation of previous decisions, the court maintained that the principle of equality before the law also applies to Austrian bodies corporate.

(*c*) In its decision of 10 March 1959 (B257/1958), the Constitutional Court ruled that an individual right and hence the principle of equality before the law cannot be infringed by a mere notification which contains neither a decision nor an order.

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

According to the Constitutional Court's ruling B47/1959 of 15 June 1959, the right to a hearing by the competent tribunal is infringed (through a decision, etc.) if an administrative authority exercises the power of sentence in respect of an act which under the law is not subject to a penal judgement because it is not a legal offence.

3. *Right to Own Property*

In its decision B241/1959 of 5 December 1959, the Constitutional Court ruled that an illegal taxation order of an excessive amount is a violation of the property rights guaranteed by the constitution.

4. *Right to Personal Liberty*

(*a*) The principle of personal liberty is based on the protection of physical freedom — i.e., protection against arbitrary arrest (cf. the decision of the Constitutional Court, B208/1958, of 21 February 1959).

(*b*) According to the Constitutional Court's decision B79/1959, of 13 October 1959, the arrest of a person by the police without a legal warrant is a violation of the constitutional right to personal liberty.

5. *Right to Freedom of Opinion and Expression*

According to the Constitutional Court's decision B105/1959 of 16 October 1959, this right is not unrestricted. Thus, interference with the right to freedom of opinion and expression as the result of a decision is unconstitutional only if it is illegal or is based on an unconstitutional law.

6. *Protection of the Right to Privacy in the Home*

In its decision B77/1959 of 7 December 1959, the Constitutional Court ruled that the mere entry of premises by an administrative authority does not constitute an infringement of the right to privacy in the home.

7. *Right to Freedom of Association*

(*a*) In 1959, the Constitutional Court issued two rulings on the subject of the titles of associations. In its ruling of 9 March 1959 (B292/1958), it stated that a title which does not indicate the type and activities of an association — i.e., an imaginary title — is permissible. According, however, to its ruling of 10 March 1959 (B209/1958), the title of an association is illegal if it is false, misleading or liable to cause confusion with other legally constituted bodies and in particular other associations.

(*b*) According to its ruling of 9 June 1959 (B292/1958), the Constitutional Court is also competent to review the legality of an administrative procedure in the case of a complaint concerning an alleged infringement of the constitutional right to freedom of association.

C. INTERNATIONAL AGREEMENTS

I. FUNDAMENTAL FREEDOMS

The right to freedom of movement has been further extended as a result of agreements with a number of States for the abolition of visas or for the simplification or elimination of compulsory passport requirements. The countries with which such agreements — or amended agreements — have been concluded are the Grand Duchy of Luxembourg (*BGBl.* No. 27/1959), the Kingdom of Norway (*BGBl.* No. 28/1959), the Kingdom of Denmark (*BGBl.* No. 29/1959), the Kingdom of Sweden (*BGBl.* No. 30/1959), Finland (*BGBl.* No. 31/1959), the United Mexican States (*BGBl.* No. 44/1959), the Swiss Confederation (*BGBl.* No. 165/1959), Spain (*BGBl.* No. 223/1959) and the Republic of Peru (*BGBl.* No. 242/1959).

II. SOCIAL RIGHTS

International Labour Convention No. 63, concerning statistics of wages and hours of work in the principal mining and manufacturing industries, including building and construction, and in agriculture came into force for Austria on 26 November 1959 (*BGBl.* No. 14/1959).

BELGIUM

NOTE[1]

Individual Freedom[2]

Article 20 of the Act of 20 April 1874 on detention pending investigation and trial provided that persons held in custody on the charge of having committed a criminal offence could lodge an appeal with the *chambre d'accusation* against the warrant of arrest, but that, pending disposition of the appeal, "matters shall remain *in statu quo*" — i.e., the accused would continue to be held in custody. Since it was felt that, under this Act, the accused was apt to remain in custody for too long a time, the following is now provided by the Act of 25 July 1959 (*Moniteur belge*, 6 August 1959), which amends article 20 of the Act of 20 April 1874:

"Matters shall remain *in statu quo* pending a decision on the appeal, provided that such a decision is rendered within fifteen days from the date of the application; upon the expiration of this period, the accused shall be released.

"The said period shall be suspended for the duration of any postponement granted at the request of the defence."

Protection of the Person

The royal order of 10 June 1959 (*Moniteur belge*, 25 June 1959) establishes the procedure for determining, by means of a blood test, whether a person was intoxicated while driving a motor vehicle. Article 1 of the order states that "if the person required to undergo a blood test refuses to permit a sample to be drawn by the physican who is summoned, that fact shall be noted in the minute prepared by the authority which summoned the physician". In drawing a blood sample, the physician is required to take "all normal antiseptic precautions" (article 3) and to comply with the detailed regulations contained in the ministerial implementing order of 22 August 1959 (*Moniteur belge*, 31 August 1959). The person from whom a blood sample is taken has the right to be assisted by a physician of his own choice, who "shall be entitled to have noted in the minute any observations he deems it necessary to make" (article 5). The blood test is carried out by an expert designated by the judicial authority; the expert's findings are communicated to the person concerned within thirty days (articles 7–9). Under article 10, the person concerned may, within fifteen days after being notified of the findings, request that a second test should be carried out under the supervision of a technical adviser of his choice.

Rights of Married Women

The Act of 22 June 1959 (*Moniteur belge*, 26 June 1959), amending certain articles in the Civil Code, provides that a woman whose marriage is governed by the regime of separation of property "shall enjoy complete freedom of action under civil law without the necessity of obtaining the consent of her husband or of a court" (article 1449 of the Civil Code, as amended), and that, in particular, she "shall be entitled freely to manage and dispose of her property, both movable and immovable, and to make use of her income" (article 1536 of the Civil Code, as amended). Under the earlier system, a woman whose marriage was governed by the regime of separation of property could not "dispose of her immovable property without the consent of her husband or, if he withholds such consent, without the permission of a court" (article 1449 of the Civil Code, as previously worded).

Measures in Favour of the Family

The royal order of 27 February 1959 (*Moniteur belge*, 19 March 1959) provides for the payment of a supplementary family vacation grant in 1959, under certain conditions, to workers receiving family allowances. The grant is fixed at one-twelfth of the amount paid in family allowances during 1958.

The royal order of 15 July 1959 (*Moniteur belge*, 22 August 1959) authorizes the payment of government subsidies to approved organizations for the purpose of conducting courses, conferences and seminars designed to promote "the participants' education in family matters, particularly as regards married life, relations between members of the family, education, home-making, hygiene, the bringing up of children, and home management, exclusive of practical demonstrations for advertising purpose" (article 5). The granting of subsidies of this nature is subject to certain conditions, including approval of the programme of courses and conferences by the minister concerned.

The Working Week

Additional collective contracts reducing the length of the working week were concluded during the year. In 1959, the working week was reduced fairly generally to forty-five hours.

[1] Except as otherwise indicated, this note is based on information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the International Institute of Administrative Science, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Information furnished by the Government of Belgium.

BRAZIL

NOTE[1]

I. LEGISLATION

Act No. 3274, of 2 October 1957, laying down general rules for the penitentiary system, included the following provisions:

Art. 1. The penitentiary system shall be organized on the basis of the following rules concerning the execution of criminal penalties and provisional and preventive custody throughout the national territory:

I. The individualization of penalties with a view to ensuring that every prisoner receives appropriate penitentiary treatment in the light of knowledge of his personality.

II. The classification of prisoners serving sentences.

III. The confinement in appropriate institutions of persons in custody pending trial or in provisional custody.

IV. The compulsory employment of persons serving sentences, in accordance with the principles of psychological technique and the corrective and educational purpose of those principles.

V. The payment of wages, in keeping with the type, quality and amount of the work done, the conduct of the prisoner also being taken into account.

VI. The formation of prison savings, deducted from the wages earned for the work done.

VII. Insurance against accidents occurring in the course of work done inside or outside prison institutions.

VIII. The segregation of prisoners in suitable institutions, appropriate to the nature and gravity of the penalty — simple imprisonment, detention or rigorous imprisonment.

IX. The isolation and treatment in suitable establishments of prisoners showing symptoms of, or infected with, tuberculosis or leprosy.

X. The segregation of women prisoners in suitable institutions, taking into account the provisions of paragraphs VIII and IX of this article.

XI. The confinement in suitable institutions of young offenders over eighteen and under twenty-one years of age.

XII. The confinement in appropriate institutions of persons in preventive detention.

XIII. The moral, intellectual, physical and vocational education of convicts.

XIV. Conditional release, when the requirements of the criminal and procedural laws have been fulfilled.

XV. The provision of social assistance for prisoners, conditionally released prisoners, discharged prisoners, and the families of prisoners and of victims.

. . .

Art. 9. Prison labour (article 1, paragraph IV) shall be rationalized, taking into account the results of psychological and aptitude testing of the individual prisoner.

1. With a view to training the prisoner for apprenticeship or advanced training in a trade which will provide him with an honest means of livelihood when he is released, the work shall be adapted to the environment — i.e., rural or urban — where he will in future be employed.

2. In conformity with the provisions of the preceding paragraph, the work shall be either industrial, undertaken in the workshops of industrial reformatories; or agricultural, undertaken in agricultural reformatories or settlements; or fishing, undertaken in settlements designed for that purpose.

Art. 10. In the case of women, the types of work shall be primarily those appropriate to their sex, and the work shall be undertaken in suitable institutions (article 1, paragraph X), taking into account also the provisions of article 9 and its paragraphs.

Art. 11. In the case of delinquent minors (article 1, paragraph XI) the work shall be in accordance with the provisions relating to reformatory institutes or approved schools.

Art. 12. If it is found that prior to conviction a prisoner was engaged in intellectual or artistic work, he shall be allowed, in the institution where he is serving his sentence (article 1, paragraph IV) and in so far as is consistent with the respective regulations, to continue such work or be trained for some similar employment.

. . .

Art. 22. The entire education of prisoners (article 1, paragraph XIII), paying due regard to psychological and pedagogical requirements (article 9) and directed towards helping them to select a useful trade, shall be designed to readapt them to the social environment.

[1] Information kindly furnished by the Government of Brazil. Translation by the United Nations Secretariat.

Sole paragraph. The various syllabuses shall be arranged with this end in view, so that intellectual, artistic, vocational and physical education shall be given in balanced proportions, to ensure simultaneous sound development of the mental faculties with bodily health and strength.

Art. 23. The moral education of prisoners with a view to inculcating habits of discipline and order shall include principles of civic spirit and patriotism, together with the teaching of religion, the beliefs of the individual being respected.

II. JUDICIAL DECISION

Right of assembly — Parades and marches — Prohibition — Writ of security

The right of assembly, subject to the limitation laid down in article 141, paragraph 11, of the federal constitution, regarding the place of assembly, does not include the right to organize marches and parades on the public highway. It is not therefore an illegal act to prohibit such demonstrations in the public interest. Applicant: Rio Grande Municipal Committee of the Partido Trabalhista Brasileiro. Writ of Security No. 188. Reporting judge: Appellate Court judge Arturo O. Germany.

Decision. I. In compliance with the order of the Secretary of State for the Interior and Justice, the Deputy Director of Police issued an order in October 1955 informing police officers of the State that marching through the streets in connexion with election celebrations was prohibited "with the purpose of safeguarding public order, and on account of disturbances and disorders which have occurred in several towns in the interior", though public meetings are allowed for that purpose, if application for permission is first made to the authorities and the premises where the meeting is to be held are indicated. The applicant alleges that the said order is illegal and prejudicial to his clear and certain right of organizing in the public street of the city of Rio Grande popular demonstrations of rejoicing at the electoral victory of his candidate, the right being guaranteed by article 141, paragraphs 11 and 23, of the federal constitution, on which ground he applies for a writ of security against the said act, in order that he may organize such demonstrations in the form of both parades and meetings, without permission from the police, and without any formalities other than notification to them of the place where the demonstrations are to be held.

II. Of all outward manifestations of freedom, the right of assembly is the most likely to endanger social order, particularly in the street, as is suggested by Paul Errera, quoted by Carolos Maximilianio, in *Comentarios ã Constituição Federal*, volume III, page 76. It allows the infiltration of undesirable elements capable of inciting the crowd to do "terrible and irreparable acts". The fact is, as Sighele justly observed, that crowds in general are disposed to evil rather than to good. It is for this reason that this right cannot be exercised without precautionary restrictions arising from the need to ensure or to restore public order. Mario Massagao, during the work of the Constituent Commission of 1946 "explained that there were on the continent of Europe several forms of preventive police action in respect of the right of assembly". The system preferred by the Commission is, specifically, the British system — that is to say, the system adopted in one of the greatest democracies in the world. "Under the British system, the people can manifest its thought, make speeches and hear speakers, discuss public matters at meetings, but the crowd does not move from one place to another. At the meeting speakers may say anything they want to say. Everyone expresses his opinion freely. But the police, who are present to keep order, do not allow the crowd to start moving, because that is not essential to the manifestation of thought. The purpose of such movement is nearly always to commit acts injurious to the rights of others. The sub-commission did not include in the text freedom to parade, as did the recently vetoed French constitution" (Jose Duarte, *Comentarios ã Constituição Brasileira*, volume III, page 31). The present constitution empowers the police to designate the place for the assembly, always provided that in so doing they do not hinder or prevent the assembly from taking place. The choice of a place of meeting is limited. Parades, therefore, are not covered by the concept of the right of assembly, and can therefore be prohibited by the police authorities if those authorities have in their opinion sufficient grounds for so doing. The decision based on the order of which the applicant complains is not therefore a violation of the constitution. Marching in the streets is prohibited for reasons which are explained, and it is stated that the prohibition does not extend to assemblies which can be held subject to a request for designation of the place, as the reports of the Secretary for the Interior and Justice, the Chief of Police and the Deputy Chief of Police, as they appear in the records, make perfectly clear.

III. For the reasons given, the court in plenary session unanimously decided to deny the writ of security sought by the applicant. Costs to be borne by the applicant. (Porto Alegre, 2 April 1956.)

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC[1]

REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1959

EXTRACTS

The year 1959 was marked by the following improvements in the material prosperity and cultural level of the people:

Further successes were achieved in the development of housing. The plan approved for the construction and bringing into occupancy in 1959 of housing under the decision adopted by the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR on 20 November 1957 concerning the development of housing in the Byelorussian SSR was over-fulfilled. In 1959, a total of 1.2 million square metres of housing was brought into occupancy by state and co-operative organizations. A total of 900,000 square metres of housing was built by residents of cites, urban settlements, tractor repair stations, state farms and timber industry settlements at their own expense and with the aid of state credit. In addition, more than 28,000 dwellings were built during the year by collective farmers and the rural intelligentsia.

The 1959 plan for capital investment in housing financed from funds allocated under the State Plan was fulfilled to the extent of 102 per cent throughout the republic as a whole, while the plan for bringing living space into occupancy was fulfilled 100.2 per cent.

Capital investment in the construction of educational, cultural and health establishments and community facilities increased during 1959.

The average number of manual and non-manual workers employed in the national economy of the Byelorussian SSR in 1959 was 1.6 million, representing an increase of more than 110,000 for the year. The number of workers, engineering and technical personnel and other specialists employed in industry, construction, state farms, transport and communications increased by 117,000 as compared with 1958. The number of workers employed in schools, educational institutions, scientific and research institutes, cultural and educational establishments, medical and health-resort institutions, trade and community services increased by 20,000. Owing to the reorganization of the machine-tractor stations, the numbers of their manual and non-manual workers decreased by nearly 27,000, the workers of the tractor brigades and some of the agricultural specialists having been transferred to employment on collective farms.

During the year, more than 20,000 young skilled workers graduated from vocational and technical training schools and went into industry, construction enterprises, transport and agriculture. Over 180,000 manual and non-manual workers improved their qualifications and learnt new skills by taking courses and serving periods of individual and group apprenticeship.

Substantial progress was made in the change-over to the shorter seven- and six-hour working day, and in pay adjustments, for manual and non-manual workers. In the chemical industry, the cement industry and undertakings engaged in the production of ferro-concrete sections and structures, manual and non-manual workers were put on the shorter working day, with pay adjustments. Manual and non-manual workers in undertakings of the machine-building and metalworking industries and various other branches of industry are likewise changing over to a shorter working day, with simultaneous pay adjustments. Conversion to a shorter working day takes place without any reduction in the wages of manual and non-manual workers.

The sale to the public of particular types of goods in state and co-operative shops increased as follows:

	1959 sales as a percentage of 1958 sales
Meat, sausages and meat products	117
Fish and fish products	103
Animal oil	114
Milk and milk products	135
Cheese	112
Eggs	143
Sugar	111
Confectionery	108
Cotton fabrics	110

[1] Texts kindly furnished by the Permanent Mission of the Byelorussian Soviet Socialist Republic to the United Nations. Translation by the United Nations Secretariat.

	1959 sales as a percentage of 1958 sales
Woollen fabrics	116
Sewn articles, finished	109
Knitted goods	117
Hosiery	109
Footwear, leather	110
Furniture	127
Home refrigerators	142
Washing machines	146
Vacuum cleaners	182
Television sets	161

Buying on the instalment plan was instituted in towns on 1 October 1959.

The sale to the public and to collective farms of goods for industrial purposes, such as cement, slate, window-glass, wood products and sawn timber, increased in 1959 as compared with 1958.

The year 1959 was marked by further advances in socialist culture.

The number of students in schools of general education, including schools for young workers and rural youth and schools for adults, increased by 4 per cent compared with 1958. The number of secondary schools increased in 1959 by 9 per cent. A total of 56,100 students completed secondary-school education and received school-leaving certificates.

A hundred and fourteen thousand persons carried on studies (including correspondence courses) at higher and specialized secondary educational establishments. Of the students enrolled in the autumn of 1959 in day courses at higher educational establishments, 61 per cent had completed a period of practical work of not less than two years after finishing their secondary-school education. The number of persons pursuing studies at higher and specialized secondary educational establishments without interruption of employment amounted to 47,000, or 12 per cent more than in 1958.

Over 27,000 young specialists — including 8,700 engineers and other technicians for industry, construction, transport and communications, more than 5,500 agricultural specialists, 7,000 teachers and 2,600 medical workers — graduated from higher and specialized secondary educational establishments in 1959.

In application of the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Byelorussian SSR, work was started on the reorganization of general education in schools and of higher and specialized secondary education.

The number of scientific workers increased. There was also expansion in the field of films. Cinema attendance in 1959 increased by 10 per cent as compared with 1958.

The improvement and development of medical services for the population continued.

The network of hospitals, creches and kindergartens was expanded. The number of hospital beds increased by 6 per cent as compared with 1958, and the number of places in permanent creches by 12 per cent. The number of doctors rose by 7 per cent. Pioneer camps and children's playgrounds accommodated 10 per cent more children in 1959 than in 1958.

(Published in *Sovetskaya Belorussia*, 29 January 1960, No. 24 (8729).)

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC FOR 1959

of 17 January 1959

EXTRACTS

The Supreme Soviet of the Byelorussian Soviet Socialist Republic hereby resolves:

Art. 1. To approve the state budget of the Byelorussian SSR for 1959 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the Budget Commission of the Supreme Soviet of the Byelorussian SSR, providing for a total revenue of 10,037,540,000 roubles and a total expenditure of 10,023,737,000 roubles, revenue exceeding expenditure by 13,803,000 roubles.

Art. 2. To establish the revenue from state and co-operative undertakings and organizations under the state budget of the Byelorussian SSR for 1959 at the sum of 8,965,122,000 roubles.

Art. 3. To provide for investment in the national economy funds to the amount of 8,353,615,000 roubles, of which the sum of 5,117,647,000 roubles shall be appropriated under the state budget of the Byelorussian SSR for 1959 and the sum of 3,235,968,000 roubles shall be provided by undertakings and economic organizations from their own resources.

Art. 4. To appropriate under the state budget of the Byelorussian SSR for 1959 funds totalling 4,303,069,000 roubles for social and cultural expenditure — general education schools, specialized secondary schools, higher education institutions, scientific research establishments, libraries, clubs, theatres, the press and other educational and cultural activities; hospitals, creches, sanatoria and other public health and physical culture establishments; pensions and allowances.

(Published in *Sovetskaya Belorussia*, 20 January 1959, No. 16 (8414).)

ACT OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLES 85 AND 86 OF THE CONSTITUTION (FUNDAMENTAL LAW) OF THE BYELORUSSIAN SSR

of 20 November 1959

The Supreme Soviet of the Byelorussian Soviet Socialist Republic resolves to amend articles 85 and 86 of the Constitution of the Byelorussian SSR, to read as follows:

"*Art. 85.* People's judges in district (city) people's courts are elected by the citizens of the districts (cities) on the basis of universal, equal and direct suffrage by secret ballot for a term of five years.

"People's assessors in district (city) people's courts are elected at general meetings of manual and non-manual workers and of peasants held at their places of work or residence, and at general meetings of members of the armed forces held in their military units, for a term of two years.

"*Art 86.* Judicial proceedings in the Byelorussian SSR are conducted in the Byelorussian or the Russian language, persons not knowing such languages being guaranteed every opportunity of fully acquainting themselves with the material of the case through an interpreter, and likewise the right to use their own language in court."

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 16, November 1959.)

ACT CONCERNING THE JUDICIAL SYSTEM OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

of 20 November 1959

EXTRACTS

Art. 2. THE PURPOSES OF JUSTICE

The purpose of justice in the Byelorussian SSR is to protect from any encroachment:

. . .

(*b*) The political, labour, housing and other personal and property rights and interests of citizens guaranteed by the constitution of the USSR and the constitution of the Byelorussian SSR. . . .

Art. 5. EQUALITY OF CITIZENS BEFORE THE LAW AND BEFORE THE COURTS

In the Byelorussian SSR justice is administered on the principle of the equality of citizens before the law and before the courts, irrespective of their social origin, property or occupational status, nationality, race or religion. . . .

Art. 7. ESTABLISHMENT OF ALL COURTS ON AN ELECTIVE BASIS

In accordance with articles 83 to 85 of the constitution of the Byelorussian SSR, all courts in the Byelorussian SSR shall be established on an elective basis.

Art. 8. HEARING OF ALL CASES BY A FULL COURT

In all courts, cases shall be heard by a full court.

In all courts of first instance, cases shall be heard by a judge and two people's assessors. . . .

Art. 9. INDEPENDENCE OF JUDGES, WHO ARE SUBJECT ONLY TO THE LAW

In the administration of justice, judges and people's assessors shall be independent and subject only to the law.

Art. 10. LANGUAGE IN WHICH JUDICIAL PROCEEDINGS ARE CONDUCTED

In accordance with article 86 of the Constitution of the Byelorussian SSR, judicial proceedings in the Byelorussian SSR shall be conducted in the Byelorussian or the Russian language, persons not knowing such languages being guaranteed the opportunity of fully acquainting themselves with the material of the case through an interpreter, and likewise the right to use their own language in court.

Art. 11. PUBLIC HEARINGS OF CASES IN ALL COURTS

In accordance with article 87 of the constitution of the Byelorussian SSR, cases shall be heard in public in all courts of the Byelorussian SSR, unless otherwise provided for by law.

Art. 12. THE RIGHT OF THE ACCUSED TO DEFENCE

In accordance with article 87 of the constitution of the Byelorussian SSR, the accused shall be guaranteed the right to defence. . . .

Art. 16. REQUIREMENTS FOR ELECTION AS JUDGES AND PEOPLE'S ASSESSORS

Every citizen of the USSR who, by the day of the elections, has reached the age of twenty-five years shall be eligible for the office of judge or people's assessor.

Art. 17. EQUAL RIGHTS OF PEOPLE'S ASSESSORS AND JUDGES IN THE ADMINISTRATION OF JUSTICE

In discharging their duties in court, people's assessors shall enjoy all the rights possessed by the judge.

Art. 28. PROCEDURE FOR ELECTING DISTRICT (CITY) PEOPLE'S COURTS

In accordance with article 85 of the Constitution of the Byelorussian SSR, people's judges in district (city) people's courts shall be elected by the citizens of the districts (cities) on the basis of universal, equal and direct suffrage by secret ballot for a term of five years.

People's assessors in district (city) people's courts shall be elected at general meetings of manual and non-manual workers and of peasants held at their places of work or residence, and at general meetings of members of the armed forces held in their military units, by show of hands, for a term of two years.

The procedure for electing people's judges and people's assessors shall be defined in the order concerning the election of district (city) people's judges of the Byelorussian SSR, as confirmed by the Presidium of the Supreme Soviet of the Byelorussian SSR.

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 16, November 1959.)

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLE 214 OF THE PENAL CODE OF THE BYELORUSSIAN SSR

of 3 July 1959

The Presidium of the Supreme Soviet of the Byelorussian SSR resolves: To amend article 214 of the Penal Code of the Byelorussian SSR, to read as follows:

"*214.* Wilful homicide shall be punishable with deprivation of liberty for not more than ten years.

"Wilful homocide committed for purposes of gain, for vengeance, through hooliganism or from other base motives, or with particular cruelty or by a method endangering the lives of a great number of persons, or with the object of concealing some other crime, or against a woman known to be pregnant, or simultaneously against more than one person, or by a person having a previous conviction for homicide, shall be punishable with deprivation of liberty for not less than ten and not more than fifteen years, or with death."

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 7, July 1959.)

ACT OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONCERNING THE RECALL OF DEPUTIES TO THE SUPREME SOVIET OF THE BYELORUSSIAN SSR

of 20 November 1959

The right to recall a deputy, as one of the fundamentals of socialist democracy, was established in the Soviet State as a result of the great October socialist revolution, is an expression of the sovereignty of the workers, and guarantees the genuine responsibility of the deputy to the electors. Accordingly, the Supreme Soviet of the Byelorussian Soviet Socialist Republic, in conformity with article 117 of the Constitution of the Byelorussian SSR, enacts the following.

Art. 1. A deputy to the Supreme Soviet of the Byelorussian SSR may be recalled at any time, by decision of a majority of the electors in his electoral district, if he has failed to justify their confidence in him or has been guilty of actions unworthy of the high office of deputy.

Art. 2. The right to move the recall of a deputy to the Supreme Soviet of the Byelorussian SSR shall be enjoyed by public organizations and workers' associations (Communist Party organizations, trade unions, co-operative organizations, youth organizations and cultural associations) through their republic, regional, district or urban organs; and by general meetings of manual and non-manual workers, held in their undertakings or establishments; of peasants, held at their collective farms or in their villages; and of members of the armed forces, held in their units.

Art. 3. Public organizations moving the recall of a deputy shall inform the deputy to that effect, stating the reasons for their action.

The deputy shall have the right to submit to the

public organization or workers' meeting moving his recall an oral or written statement concerning the circumstances giving rise to the motion for his recall.

Art. 4. Motions passed by public organizations or workers' meetings for the recall of a deputy shall be transmitted to the Presidium of the Supreme Soviet of the Byelorussian SSR.

The Presidium of the Supreme Soviet of the Byelorussian SSR shall examine the material submitted and, if the recall of the deputy has been moved in conformity with the requirements of this Act, it shall order a ballot on the matter.

Art. 5. The motion for the recall of a deputy to the Supreme Soviet of the Byelorussian SSR shall be discussed and made the subject of a decision at meetings of the electors of the electoral district concerned, called by the public organizations mentioned in article 2 of this Act, and held in the undertakings, establishments, collective farms, military units or places of residence of the said electors.

The decision on the motion for the recall of a deputy to the Supreme Soviet of the Byelorussian SSR shall be taken by show of hands.

Art. 6. After the Presidium of the Supreme Soviet of the Byelorussian SSR has ordered a ballot on the recall of the deputy, every public organization and every citizen of the Byelorussian SSR shall have the right freely to campaign for or against the recall of the deputy, in accordance with the provisions of article 100 of the Constitution of the Byelorussian SSR.

Art. 7. In order to ensure due compliance with the provisions of this Act in the conduct of the ballot on the recall of a deputy, and in order to determine the results of such ballot, a district committee comprising representatives of public organizations and workers' associations and of general meetings of workers, and consisting of a chairman, a deputy chairman, a secretary and six members, shall be set up in the election district concerned.

The district committee in charge of the ballot on the recall of a deputy shall be confirmed by the executive committee of the regional soviet of workers' deputies or the executive committee of the soviet of workers' deputies of the city of Minsk, as the case may be.

Art. 8. The minutes of each meeting of electors shall indicate the time and place of the meeting, the number of electors present, and the number of votes cast for or against the recall of the deputy.

The minutes of each meeting of electors shall be signed by all the officers of the meeting and shall be transmitted within three days to the district committee in charge of the ballot on the recall of the deputy.

Art. 9. On the basis of the minutes of meetings of electors, the district committee in charge of the ballot on the recall of the deputy shall count the votes cast in the district for or against the recall of the deputy and shall determine the results of the ballot.

The district committee shall transmit a report on the results of the ballot on the recall of the deputy to the Presidium of the Supreme Soviet of the Byelorussian SSR.

Art. 10. A deputy to the Supreme Soviet of the Byelorussian SSR shall be considered to have been recalled if a majority of the electors of his electoral district has voted for his recall.

Art. 11. The results of the ballot on the recall of a deputy shall be published by the district committee in charge of the ballot on the recall of the deputy not later than five days after they have been determined.

Art. 12. Complaints of violations of this Act in the conduct of the ballot on the recall of a deputy to the Supreme Soviet of the Byelorussian SSR shall be examined by the district committee in charge of the ballot on the recall of the deputy.

Complaints of irregularities on the part of the district committee in charge of the ballot on the recall of a deputy shall be examined by the Presidium of the Supreme Soviet of the Byelorussian SSR.

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 16, November 1959.)

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONCERNING AMENDMENTS AND ADDITIONS TO THE LABOUR CODE OF THE BYELORUSSIAN SSR

of 15 May 1959

EXTRACTS

The Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

I. To make the following amendments and additions to the Labour Code of the Byelorussian SSR:

4. The following new article, numbered 47-b, is added to the Code:

"*47-b.* Manual and non-manual workers may not be dismissed from an undertaking, institution or organization by the management without the consent of the factory, works or local trade union committee."

12. Article 118 of the Code is amended to read as follows:

"*118.* The time, procedure and order for the taking of annual leave shall be fixed by agreement between the management of the undertaking, institution or organization and the factory, works, local or workshop trade union committee."

14. Chapter XVI of the Code is amended to read as follows:

"XVI. *Labour disputes*

"*116.* Labour disputes shall be examined by:

(*a*) Labour disputes boards;

(*b*) Factory, works and local trade union committees; and

(*c*) People's courts.

"The procedure for the examination of labour disputes by labour disputes boards and by factory, works and local trade union committees shall be governed by the regulations for the procedure to be followed in examining labour disputes, as approved by the decree of 31 January 1957 of the Presidium of the Supreme Soviet of the USSR and by this code.

"The procedure for the examination in the people's courts of cases involving labour disputes shall be determined by the aforesaid regulations, by this code and by the Code of Civil Procedure of the Byelorussian SSR. . . ."

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 5, May 1959.)

ACT OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR AMENDING ARTICLE 96 OF THE CONSTITUTION (FUNDAMENTAL LAW) OF THE BYELORUSSIAN SSR

of 9 April 1959

In view of the introduction of universal compulsory eight-year education, and of measures taken to establish a closer correspondence between education and life and to ensure the further development of the national educational system in the Byelorussian SSR, the Supreme Soviet of the Byelorussian Soviet Socialist Republic decides to amend article 96 of the Constitution of the Byelorussian SSR, to read as follows:

"*Art. 96.* Citizens of the Byelorussian SSR have the right to education.

"This right is ensured by universal compulsory eight-year education; by the broad development of general polytechnical education at the secondary level, of vocational and technical education, of specialized secondary education and of higher education, such education being directly related to daily life and production; by the fullest development of evening and correspondence courses; by the provision of all types of education free of charge; by the system of state stipends; by the use of the mother tongue as the medium of instruction in schools; and by the organization in factories, and at state farms and collective farms, of free vocational, technical and agronomic education for the working people."

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 4, April 1959.)

ACT OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONCERNING THE ESTABLISHMENT OF A CLOSER CORRESPONDENCE BETWEEN EDUCATION AND LIFE AND THE FURTHER DEVELOPMENT OF THE EDUCATIONAL SYSTEM IN THE BYELORUSSIAN SSR

of 8 April 1959

EXTRACTS

During the years of Soviet power, the Byelorussian people, under the leadership of the Communist Party and the Soviet Government, with the friendly help of the great Russian people and the other peoples of our country, made great progress in the development of industry and agriculture, and in improving the material well-being and cultural level of the workers.

In the pre-revolutionary period, Byelorussia was one of the backward areas of Czarist Russia. About 80 per cent of the population was illiterate; there was no higher educational establishment in Byelorussian territory, and the development of a national culture was frustrated and hampered in every possible way.

As a result of the consistent application of the Leninist policy regarding nationalities, the Byelorussian people now have schools where instruction is given in the native language; everyone has ready access to education and culture; universal seven-year schooling has been introduced; secondary, vocational

and technical, and higher education have been extensively developed; and rapid progress is being made in science, literature and the arts. A veritable cultural revolution has taken place in the Byelorussian SSR. The republic at present has over 12,000 general education schools with more than 1,250,000 pupils. There are more than 110,000 students attending 25 higher educational establishments and 105 specialized secondary educational establishments. There are 215,000 specialists with a higher or specialized secondary education employed in the various branches of the national economy of the Byelorussian SSR. The republic has an Academy of Sciences, an Academy of Agricultural Sciences and an extensive network of research institutions.

The Byelorussian SSR is far in advance of many highly developed capitalist countries with regard to the scale and level of development of national education and the rate and quality of the training of specialists. . . .

In accordance with the Act of the Union of Soviet Socialist Republics "concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the USSR", the Supreme Soviet of the Byelorussian Soviet Socialist Republic resolves:

Section I

SECONDARY SCHOOLS

Art. 1. The principal task of the school system of the Byelorussian SSR is to prepare students for life and for socially useful work; to promote a further rise in the level of general and polytechnic education; to produce educated men and women with a good knowledge of the rudiments of science; and to foster in the growing generation a deep respect for the principles of the socialist society and the ideas of communism.

Secondary schools shall maintain, as a guiding principle of education and training, a close relationship between education and work and the practical aspects of communist construction.

Art. 2. Universal compulsory eight-year education for all children and young people from seven to fifteen or sixteen years of age shall be introduced in the Byelorussian SSR in place of universal compulsory seven-year education.

The eight-year school shall be an incomplete secondary general and polytechnic workers' school, giving students a solid grounding in general and technical subjects, inculcating habits of industry and a willingness to serve society, and providing children with moral, physical and aesthetic education.

Instruction and training in the eight-year school shall combine study of the fundamentals of science, technical instruction and vocational training, together with a general orientation of pupils towards socially useful work appropriate to their age.

Art. 3. The executive committees of the regional, urban, district, village and settlement soviets of workers' deputies shall be responsible for the enforcement of compulsory universal eight-year education.

All state organs, public organizations and parents shall attach primary importance to the implementation of universal compulsory eight-year education as a vital public duty.

The obligation to send to school children subject to universal eight-year education shall lie with parents or with those acting in their stead.

The Statistical Board of the Byelorussian SSR and its local agencies, and the executive committees of regional, urban, district, village and settlement soviets of workers' deputies shall be responsible for the prompt and accurate registration of the children and young people subject to compulsory eight-year education.

The regulations concerning the registration of children and young people of school age shall be approved by the Council of Ministers of the Byelorussian SSR.

It is essential to increase the part played by workers' associations in undertakings, collective farms, state farms and institutions, as well as by public organizations, in the implementation of compulsory universal education. There shall be public discussions of cases where children and young people have been prevented from obtaining an education.

Any parents or persons acting *in loco parentis* and any officials who obstruct the compulsory universal education of children and young people shall be prosecuted in accordance with the law of the Byelorussian SSR.

The Council of Ministers of the Byelorussian SSR shall issue a decree concerning the responsibility of parents and persons acting *in loco parentis* for the compulsory education of children and young people in the eight-year schools.

Art. 4. With a view to providing the necessary conditions for the implementation of universal eight-year education:

(*a*) Semi-boarding accommodation in which hot meals are available shall be organized for pupils living at a distance of more than three to four kilometres from school, and regular free transportation shall be provided to and from school;

(*b*) The network of schools and groups offering an extended school day shall be enlarged;

(*c*) A compulsory education fund shall be established for each school, financed both from the budget and from the contributions of collective farms and trade union and co-operative organizations, and also from the income earned by school workshops, school allotments, training and experimental farms and other sources, for the purpose of providing material assistance to students (free meals, textbooks, clothing, shoes, etc.).

The Council of Ministers of the Byelorussian SSR shall approve the regulations concerning the compulsory education fund.

Art. 5. Upon completing the eight-year course, students shall receive a certificate in the form prescribed by the Ministry of Education of the Byelorussian SSR and shall be entitled to enter secondary general education schools, vocational and technical schools and specialized secondary educational establishments.

Art. 6. Complete secondary education for young people, beginning at the age of fifteen or sixteen, shall combine scholastic instruction with practical work, in order to ensure that all young people of the age referred to are drawn into work of value to society.

Art. 7. In the Byelorussian SSR, complete secondary education shall be provided in educational institutions of the following main types:

(*a*) Schools for young industrial and agricultural workers: evening secondary general schools, in which persons who have completed their eight-year schooling and are working in a branch of the national economy can obtain a secondary education and improve their skills. The period of training in these schools shall be three years. Schools shall also be organized in which young people can obtain a secondary education by means of correspondence or external courses;

(*b*) Secondary general and polytechnic workers' schools providing industrial training, in which persons who have completed their eight-year schooling can obtain, over a period of three years, a secondary education and vocational training for work in a branch of the national economy or culture.

The relative proportion of theoretical and practical work in industrial training and the alternation of scholastic instruction and practical work shall be determined in accordance with the type of special training the student is receiving and with local conditions. In rural schools the school year shall be organized with due regard for the seasonal nature of agricultural work.

Industrial training and socially useful work may be carried out in training or industrial workshops in the nearest undertakings, in apprentice brigades on collective and state farms, on training and experimental farms and in training workshops run by individual schools or groups of schools;

(*c*) Specialized vocational secondary schools and other spezialized secondary educational institutions, in which persons who have completed their eight-year schooling can obtain a general or specialized secondary education.

Art. 8. With a view to extending the responsibilities of society and assisting the family in the upbringing, the boarding school system shall be expanded. Boarding schools shall be organized on the same lines as the eight-year schools and secondary general and polytechnic workers' schools providing industrial training.

Art. 9. Special schools for physically or mentally handicapped children and young people shall be established, corresponding to the existing types of school, but providing for the special needs of the children and young people attending them.

Art. 10. Schools shall be established for the training of children in music, dancing and the fine arts.

Art. 11. The medium of instruction in all schools of the Byelorussian SSR shall be the pupils' mother tongue. With respect to the language of instruction, the decision to which school their children are to be sent shall rest with the parents.

At the wish of pupils and their parents, the Russian language shall be taught in schools where the language of instruction is Byelorussian, and the Byelorussian language shall be taught in schools where the language of instruction is Russian or some other language.

Art. 12. It is essential to improve the teaching of foreign languages in the schools of the republic. In a number of secondary general and polytechnic workers' schools providing industrial training, some subjects shall be taught in foreign languages.

A foreign language shall be included in the list of compulsory subjects in those schools where conditions are appropriate.

Art. 13. With a view to improving the teaching of the fundamentals of science and industrial training, every effort shall be made to develop the independence and initiative of pupils; greater use shall be made of visual aids such as the cinema, television and other modern scientific and technical facilities; technical inventiveness shall be extensively fostered in the schools, and pupils shall be encouraged to construct new instruments, models and technical devices, and to carry out agricultural experiments.

Art. 14. A serious improvement must be made in the moral training given in the schools. The schools must inculcate in pupils habits of study and industry, and respect for working people; they must develop a communist outlook in pupils and foster in them a spirit of complete devotion to the motherland and the people, and of proletarian internationalism.

It is the duty of the schools and extra-scholastic establishments to develop the various aptitudes and all-round interests of every pupil as a necessary condition for the harmonious development of the personality, an enlightened choice of vocation and better preparation for life in a communist society.

Teachers, parents and public organizations have the important duty further to improve efforts to inculcate habits of civilized behaviour in pupils at school, at home, in the street and in public places; for that purpose, educational propaganda among wide sections of the population must be made more effective and parents and other adults must be given a greater sense of their responsibility to society for the upbringing of children.

Art. 15. The transfer of schools from the seven-year to the eight-year compulsory curriculum and the organization of the various types of complete secondary school shall begin in the 1959/1960 school year and shall be completed within four years.

The existing ten-year schools (the senior grades) shall be converted into various types of urban and rural secondary general school. Pupils in the present eighth to tenth grades shall have the opportunity of completing the secondary-school course under the current curricula and programmes, with an increase in vocational training.

Secondary general and polytechnic workers' schools providing industrial training (ninth to eleventh grades) may be established either separately from or in conjunction with the eight-year schools.

Small centres of population shall continue to maintain primary schools consisting of grades 1 to 4. Pupils completing the course of such schools shall be transferred to the fifth grade of the nearest school.

In view of the fact that a number of young workers have not yet had a seven-year education, schools for young industrial and agricultural workers may for a time include all grades, beginning with the third. Where necessary, classes for adult education shall be organized in such schools.

In cases where the number of pupils does not warrant the establishment of an independent evening (shift) secondary general school, separate classes for the instruction of young workers shall be organized in the eight-year schools and the secondary general and polytechnic workers' schools providing industrial training.

The reorganization of the system of national education shall be carried out in a planned and orderly manner without any impairment of the school facilities available to the population.

Art. 16. Persons completing the evening (shift) secondary general schools and the secondary general and polytechnic workers' schools providing industrial training shall receive a certificate of secondary education in the form prescribed by the Ministry of Education of the Byelorussian SSR, and shall have the right to proceed to higher educational establishments. Persons completing the secondary general and polytechnic workers' schools providing industrial training shall, in addition, receive a certificate in the form prescribed for attesting to their proficiency in a particular trade.

Art. 17. The eight-year schools, evening (shift) secondary general schools and secondary general and polytechnic workers' schools providing industrial training shall follow curricula and programmes approved by the Ministry of Education of the Byelorussian SSR.

Art. 18. The Council of Ministers of the Byelorussian SSR shall approve the regulations concerning the compulsory eight-year schools, the evening (shift) secondary general schools, the secondary general and polytechnic workers' schools providing industrial training and the secondary general correspondence schools.

Art. 19. The commencement and termination of the school year, and the dates and duration of holidays in the eight-year and the evening (shift) secondary general and polytechnic workers' schools providing industrial training shall be determined by the Council of Ministers of the Byelorussian SSR.

Art. 20. The national education and public health authorities shall exercise strict supervision to ensure a correct alternation of work and relaxation for pupils in the eight-year and the secondary general and polytechnic workers' schools providing industrial training and shall not permit pupils to be overburdened with scholastic work, public activities or practical work; they shall ensure the observance in undertakings, on construction sites and state farms, in repair and servicing stations, in school and inter-school industrial training workshops and in collective farm work of the regulations concerning labour protection and safety techniques, and shall take the necessary steps to improve the health of the schoolchildren. Public organizations shall be widely drawn into these activities.

Art. 21. The State Planning Commission of the Byelorussian SSR, the Council of National Economy of the Byelorussian SSR, the ministries and departments of the republic, the executive committees of regional, city and district councils of workers' deputies, and the directors of undertakings, construction projects, state farms, repair and servicing stations, organizations and institutions shall make every effort to encourage young workers to acquire a secondary education; they shall draw up plans to provide tuition for young people who need to complete their education; they shall promote the advancement of young manual and non-manual workers who make satisfactory progress with their studies; they shall assist the teaching staff of schools to improve the teaching and education, particularly in the matter of improving the vocational skills of the young students; they shall not permit students to be assigned to work involving an interruption in their studies during the school year; they shall ensure that students are granted the usual leave at their place of employment during the vacation period as well as the statutory leave with pay for the purpose of taking examinations.

It is recommended that collective farms should provide the necessary conditions for young collective farm workers to combine productive work with scholastic instruction.

Art. 22. The trades taught to pupils of secondary general and polytechnic workers' schools providing industrial training shall be determined by the executive committees of regional, urban and district councils of workers' deputies, having regard to the available industrial facilities and the skilled workers required for the national economy.

Art. 23. The Council of Ministers of the Byelorussian SSR shall formulate and implement measures:

(*a*) To organize industrial training for pupils of general education schools and to provide training posts in which pupils of the senior grades of secondary schools may obtain vocational training and on-the-job experience;

(*b*) To improve the physical facilities of schools and to eliminate the multi-shift system;

(*c*) To organize and extend the production, in undertakings of the Council of National Economy of the Byelorussian SSR and of local industry, of visual aids, appliances and equipment for general education schools.

Art. 24. It is recommended that collective farms and co-operative organizations should organize industrial training for students in apprentice and collective farm brigades, and also participate widely in the construction of schools, training workshops, boarding schools, gymnasia, homes for teachers and hostels attached to the eight-year and secondary schools, such construction being financed from the funds of the collective farms and co-operative organizations.

Art. 25. The Council of Ministers of the Byelorussian SSR shall take steps to provide for the further training of teaching personnel, for the staffing of the schools with teachers whose qualifications are in keeping with the new tasks of the general education schools, for the further improvement of working and living conditions of teachers and for the raising of their ideological and theoretical standards.

Section II

VOCATIONAL AND TECHNICAL EDUCATION

Art. 26. The principal purpose of the vocational and technical education of young people is to train, on a planned and systematic basis, well educated, technically competent and skilled industrial and agricultural workers for all branches of the national economy, to give students a communist education, ensure their ideological development and imbue them with a communist attitude to work.

Art. 27. Urban and rural vocational and technical schools shall be established for the vocational and technical training of young people entering industry after completion of the eight-year school. Such schools shall specialize in various branches of industry and, in close co-operation with undertakings, construction projects, state and collective farms, shall provide instruction and training based on the active and systematic participation of young people in productive work.

Art. 28. Factory schools, trade, railway, and construction schools, schools for training the labour reserves in the mechanization of agriculture, vocational and technical schools, factory apprenticeship schools and other vocational training establishments under the supervision of the Council of National Economy of the Byelorussian SSR and the ministries and departments of the republic shall be reorganized as day and evening urban vocational and technical schools with a training period of one to three years, or as rural vocational and technical schools with a training period of one to two years, depending on the complexity of the trade being studied.

It is essential to attract more girls into the vocational and technical schools for industrial and agricultural trades and for commerce and communal services.

The reorganization of existing vocational educational establishments into urban and rural vocational and technical schools shall begin in the school year 1959/1960 and shall be completed in four years.

Art. 29. The Council of Ministers of the Byelorussian SSR shall formulate and implement measures to improve the material facilities of the vocational and technical schools.

Art. 30. The Council of National Economy of the Byelorussian SSR and the ministries, departments and undertakings shall make available to the vocational and technical schools industrial equipment for training workshops and paid employment in undertakings in order to give students practical experience at work, and shall also provide conditions for successful instruction and for the training of young people in new techniques, modern technology and efficient work methods.

Art. 31. With a view to gradually making the vocational and technical schools partially self-supporting, the Council of Ministers of the Byelorussian SSR shall draw up and carry out a series of measures to increase the income from the productive activities of educational establishments.

Having regard to the increased material security of the workers, it is desirable, in order to give students a greater incentive to obtain the best possible knowledge of the trade being studied, to alter the existing system of material provision for students and to introduce an apprenticeship wage instead of providing free clothing and food, the state continuing to assume full responsibility for students who are orphans or inmates of children's homes and for children of parents with large families.

It is recommended that the collective farms should consider the allocation of necessary funds for training young collective farm workers in vocational and technical schools.

Art. 32. The Council of Ministers of the Byelorussian SSR shall draw up long-term and annual plans for the vocational training and placement in employment of young people graduating from the eight-year general schools, the vocational and technical schools and the secondary schools providing industrial training, having regard to the established quotas for the employment of young persons in undertakings and the strict observance of the regulations relating to labour protection and safety techniques.

Art. 33. The Council of Ministers of the Byelorussian SSR shall take steps to provide for the training and further training, in specialized vocational secondary schools and higher educational establishments, of teachers and instructors of industrial subjects for vocational and technical schools and secondary general polytechnic workers' schools providing industrial training.

It is essential to improve the quality and increase the output of textbooks and visual aids, to expand the production of educational films on technical subjects and popular scientific films, and also to make wide use of radio and television in vocational and technical education.

Art. 34. The Council of Ministers of the Byelorussian SSR shall draw up measures for a radical improvement in the training of workers by means of individual and team instruction and training courses as well as by improving the qualifications of skilled workers employed in industry.

Section III

SPECIALIZED SECONDARY EDUCATION

Art. 35. It is essential to achieve further improvements in the system of specialized secondary education and in the training of specialists at the secondary level by establishing a close relationship between training and socially useful work and by greatly expanding evening and correspondence courses.

Art. 36. The principal task of specialized secondary educational establishments is the training of qualified specialists with a specialized secondary education for the different branches of the national economy, education, culture and public health.

To qualify for training as a specialist in a specialized secondary educational establishment, a student must have completed the eight-year course and, in certain fields, the full course of secondary education.

Art. 37. Students in specialized secondary educational establishments shall be given the necessary theoretical and practical training in a special field in addition to the general education normally provided in secondary schools, while students in technical and agricultural specialized secondary educational establishments shall also acquire a skill and be classed in a certain grade for that kind of work.

Art. 38. It is desirable to adopt the following forms of tuition and organization of instruction in the training of skilled specialists at the secondary level, depending on the field of specialization and the conditions of work:

(*a*) Evening or correspondence courses, without interruption of employment. Students enrolled in evening and correspondence courses shall primarily be persons working in trades which are closely related to their chosen field of specialization;

(*b*) Courses of varying length, with or without interruption of employment, theoretical studies in an educational establishment being combined with on-the-job training in undertakings and in institutions of various branches of the national economy, culture and public health.

Art. 39. The reorganization of specialized secondary education shall be carried out over a period of four years, beginning with the school year 1959/60, and in such a way as to ensure a steady increase in the number of specialists graduating annually and entering the national economy and culture in order to meet the growing demand.

Students at present studying at specialized secondary educational establishments shall be given an opportunity to complete their studies on the basis of the existing curriculum, but with increased practical training.

Art. 40. The Council of Ministers of the Byelorussian SSR shall formulate and implement measures:

(*a*) To reorganize the system of specialized secondary educational establishments, to bring them into closer relationship with production, having regard to the needs of the republic for trained personnel and to encourage extensive co-operation in the training of specialists with a secondary education among the undertakings under the aegis of the Council of National Economy of the Byelorussian SSR, the ministries and departments.

(*b*) To expand and improve correspondence and evening courses as the principal method of training specialists with a specialized secondary education, by increasing the material and technical facilities of evening and correspondence specialized secondary schools and organizing evening and correspondence departments attached to full-time educational establishments which have qualified teaching staffs and appropriate teaching equipment;

(*c*) To construct school buildings and student hostels, to organize in industrial technical training schools shops and departments where the students are responsible for the manufacture of an industrial product, and to organize in agricultural specialized secondary schools large-scale production units in which all the principal operations are undertaken by the students themselves; to establish laboratories and workrooms where they do not exist and to provide them with the necessary equipment;

(*d*) To make available paid jobs in undertakings, construction projects and institutions for students of specialized secondary educational establishments during the period of their training without interruption of employment, as well as places in which they can obtain theoretical and industrial experience.

Section IV

HIGHER EDUCATION

Art. 41. The future development and improvement of the system of higher education in the Byelo-

russian SSR must provide for better theoretical and practical training of specialists, a considerable intensification of the communist indoctrination of students and the active participation of all teachers in this work.

The principal tasks of higher education are to train highly qualified specialists, educated on the basis of Marxist-Leninist teaching, familiar with the latest scientific and technological achievements at home and abroad, with a sound practical knowledge of their particular field, capable not only of making full use of modern techniques, but also of creating the techniques of the future; to conduct scientific research designed to facilitate the solution of the tasks of communist construction; to train scientific and teaching personnel; to improve the qualifications of the specialists working in the various branches of the national economy, culture and education; to disseminate scientific and political knowledge among the workers.

Art. 42. To qualify for training as a specialist in a higher educational establishment of the Byelorussian SSR, a student must have completed his secondary education; such training shall involve a combination of academic study and socially useful work. The specific methods of combining academic study with practical instruction and work shall be determined in accordance with the type of higher educational establishment and the composition of the student body.

Admission to higher educational establishments shall be based on assessments by party, trade union, Young Communist League and other public organizations, the managers of industrial undertakings and the administrations of collective farms so that the best qualified and ablest men and women who have proved their worth in productive activity can be selected for enrolment in higher educational establishments by means of competitive examinations. Men and women who have completed a period of practical work shall be given preference in admission to higher educational establishments.

The directors of state undertakings, institutions, organizations, collective farms and co-operative organizations shall ensure the necessary conditions for young industrial and collective farm workers to prepare themselves for admission to higher educational establishments.

Art. 43. Every effort shall be made to improve and expand evening and correspondence courses at the higher education level in the Byelorussian SSR.

The Council of Ministers of the Byelorussian SSR shall take steps to consolidate and extend the system of evening and correspondence courses in full-time higher educational establishments, and to arrange evening and correspondence classes for specialists in large industrial and agricultural undertakings.

It is recommended that collective farms shall grant correspondence-course students who are members of collective farms and who are successfully completing their programme of study the same privileges as are enjoyed by correspondence-course students working in industrial undertakings.

Art. 44. The theoretical and practical training of specialists in higher educational establishments shall be improved.

The teaching of specialized subjects shall be based on a thorough training in general scientific and technical subjects, with the use of the latest achievements of national and foreign science and technology. For the purpose of improving the training of highly skilled specialists, students shall be extensively associated with the research work of the departments and laboratories of higher educational establishments.

Art. 45. It is essential, to improve the system of higher technical education, to bring the training of engineers into closer correspondence with the requirements of the national economy of the republic, and to increase the number of graduate specialists with a thorough knowledge of modern engineering. It is desirable to expand the system of higher technical education under which engineers in the various fields are trained for undertakings in the chemical, machine-building and oil refining industries and for construction and other branches of the national economy.

In the training of engineers, the combination of study and work shall be so organized that the practical work done by students contributes to a better knowledge of the field in which they are to specialize and allows them to make a thorough study of the technical processes of production.

Art. 46. The training of agricultural specialists in the Byelorussian Academy of Agriculture and the agricultural institutes shall be based on large state farms or large model training farms, where the agricultural work is done by the students themselves. The training of specialists shall be oriented to the particular conditions of the Byelorussian SSR, and the combination of study and practical work shall be organized having regard to the seasonal nature of production.

Art. 47. It is essential to achieve a further development of university education in the Byelorussian SSR, considerably to increase the number of graduates specializing in the new branches of mathematics, biology, physics and chemistry, to provide more intensive theoretical and practical training for students, and to allow the Byelorussian State University named after V. I. Lenin to play a considerably larger role in the solution of the most important problems in the natural sciences and the humanities.

The composition of the student body and the combination of university education with work shall be such that students, while pursuing a course of study, shall at the same time accustom themselves to work in their particular fields, and specialists in the humanities shall also gain a certain experience of work of value to society.

Art. 48. Steps must be taken to improve the training of teachers in the teacher-training institutes and in the Byelorussian State University named after V. I. Lenin; to extend the training of primary-school teachers in higher educational establishments with a view to all schools ultimately being entirely staffed by teachers with a higher education; to provide training for teachers of agronomy, animal husbandry, engineering and other special subjects to raise the scientific and theoretical standards of instruction in teacher-training institutes, and to increase the importance attached to industrial experience and teaching practice in the training of teachers.

In the admission of students to higher educational establishments for teacher-training, account shall be taken of the special features of the teaching profession; the part played by schools in the selection of future teachers shall be increased; admission to teacher-training institutes shall be reserved primarily for men and women with some experience of socially useful work and, especially, experience of work with children.

It is desirable that teacher-training institutes should organize departments for the further training of teachers.

Art. 49. In the training of doctors in medical higher educational establishments of the Byelorussian SSR, the specific requirements of the medical profession shall be taken into account; priority in admission to medical institutes shall be given to young people who have completed a period of practical work as junior assistants in medical and in therapeutic and preventive establishments; students shall combine academic work with continuous practical work in therapeutic and preventive institutions and public health establishments.

In the case of men and women who have completed a secondary education in medicine and a period of practical work in their chosen field, training in medical higher educational establishments shall be organized without interruption of employment.

Art. 50. It is essential to broaden the range of specialists being trained at the Byelorussian State Institute of the National Economy named after V. V. Kuybyshev. Greater stress shall be laid on training in economics in engineering/technical and agricultural higher educational establishments.

Art. 51. In order to qualify for training as specialist in higher educational establishments for cultural and artistic subjects, students must have both a general and a specialized secondary education.

Higher and secondary education for specialists in music, painting, the theatrical and other arts shall be carried out to a greater extent without loss of working time, so that the broad masses of the workers may have an opportunity to receive an education of this type, and talented persons may be discovered among the people.

The training of qualified teachers in drawing, singing and music at higher educational establishments for cultural and artistic subjects shall be expanded.

Art. 52. The training of specialists with a higher education in physical culture shall be expanded by means of evening and correspondence courses.

For the purpose of improving the training of teachers and instructors in physical culture and trainers in various types of sport, preference in admission to the Byelorussian State Institute of Physical Culture shall be given to young people who have a high standard of athletic training and wish to become trainers or instructors. The proportion of theoretical study and teaching practice in the training of teachers and trainers in physical culture shall be increased.

Art. 53. Faculties and departments shall be established in higher education establishments for the further training of specialists with a higher education who are working in branches of the national economy, science, culture and education.

The Council of National Economy of the Byelorussian SSR and the ministries and departments, in co-operation with the higher educational establishments shall organize faculties and departments of advanced studies for qualified specialists in undertakings and organizations and shall provide premises and equipment for that purpose.

Art. 54. The training of scientific and teaching personnel must be considerably expanded and improved through post-graduate work in higher educational establishments. The system of post-graduate correspondence courses must be extended, students being given the opportunity of leaving their employment and switching over to full-time academic work in order to complete their training. The quality of theses must be improved. Post-graduate students must be trained not only for work in scientific institutions and educational establishments but also for work in industrial and agricultural undertakings, institutions and organizations.

Art. 55. There must be an intensification of the ideological and political training of students and an improvement in the teaching of Marxist-Leninist theory; young people must be imbued with the spirit of collectivism and enthusiasm for work, of socialist internationalism and patriotism, and of the high ethical principles of our society, with the spirit of Marxism-Leninism.

In higher education for specialists, particular efforts shall be made to teach students to adopt scientific methods of seeking knowledge, a creative approach towards learning, a responsible attitude towards study, and independence in their work. Graduates of Soviet universities should set a good example in fulfilling public and social duties.

Art. 56. It is desirable to attract into teaching in higher educational establishments the most highly

qualified engineering and technical workers in undertakings, construction projects, designing offices and research institutes, and also agronomists, doctors, teachers, creative workers in culture and the arts and other practical workers capable of giving instruction, in which use is made of the most advanced methods of production and the latest achievements of science, technology and culture.

Art. 57. The part played by higher educational establishments in disseminating scientific and political knowledge among the population must be increased. Arrangements must be made for regular public lectures and talks by eminent scholars and for the publication of popular scientific literature by higher educational establishments, and wide use must be made of the radio and television network for lectures and talks on scientific and political subjects.

Art. 58. It is essential to ensure that the higher educational establishments play a much greater part in carrying out scientific research which is of a high theoretical level and of importance to the development of the national economy, science and culture.

For the purpose of bringing the scientific work of the higher educational establishments into closer correspondence with the needs of the national economy, culture and education of the Byelorussian SSR, much closer links must be established between the higher educational establishments and the industrial and agricultural undertakings and organizations, and the agencies responsible for directing the national economy must play a greater part in planning the scientific work of the higher educational establishments.

The Council of National Economy of the Byelorussian SSR and the ministries and departments of the republic shall give higher educational establishments systematic assistance in organizing industrial experiments and in introducing the results of scientific research into industry.

Scientific research institutes and experimental design offices and laboratories shall be organized under the auspices of higher educational establishments to carry out scientific research on topics arising from the needs of the national economy of the republic.

The Council of National Economy of the Byelorussian SSR and undertakings, institutions and organizations shall make available regular paid employment and engineering jobs for the students of higher and specialized secondary educational establishments and shall provide industrial training for such students, arrange the necessary living accommodation for them and supply them with protective clothing.

Art. 59. The Council of Ministers of the Byelorussian SSR shall formulate and implement measures to develop higher education in the republic, paying special attention to the following:

(*a*) Improving the planning of higher education for specialists, taking into account the plans for the development of the national economy, culture, education and public health of the Byelorussian SSR;

(*b*) Organizing higher technical educational establishments attached to factories;

(*c*) Expanding the material and technical facilities of higher educational establishments;

(*d*) Increasing the number of hostels at higher educational establishments to meet the need of higher educational establishments for accommodation for students from other towns; improving the organization of communal feeding for students;

(*e*) Producing the necessary laboratory and teaching equipment, visual aids, experimental installations and machinery for the higher educational establishments, consideration being given both to the use of workshops and departments attached to higher educational establishments and to the organization of specialized undertakings;

(*f*) Incorporating independent single-subject faculties and certain research institutions in higher educational establishments;

(*g*) Improving material and technical conditions with a view to expanding the publishing activities of higher educational establishments and ensuring the supply of textbooks for students;

(*h*) Consolidating the material and technical resources of institutions providing higher and specialized secondary education by evening and correspondence courses, so that wider use may be made of cinema, radio, television and other modern scientific and technical facilities.

Art. 60. The reorganization of higher education in the republic shall be completed in four years, beginning with the school year 1959/60, and shall be so arranged that the number of graduate specialists for the various branches of the national economy and culture of the Byelorussian SSR shall increase steadily in accordance with the growing requirements.

The Supreme Soviet of the Byelorussian Soviet Socialist Republic is confident that the reorganization of the system of national education will increase the part played by the schools in the education and training of young people, will raise the level of general education and practical skills, will improve the training of highly qualified personnel for all branches of the national economy, science and culture of the republic, and will promote to a still greater extent the successful completion of the tasks of communist construction.

(Published in *Sobranie zakonov, ukazov Prezidiuma Verkhovnovo Soveta Belorusskoi SSR, postanovlenii i rasporyazhenii Soveta Ministrov Belorusskoi SSR*, No. 4, April 1959.)

CAMBODIA

JUDICIAL ORGANIZATION REFORM ACT

Kram No. 320-NS dated 30 June 1959

SUMMARY[1]

The main element in the reform of the judicial organization in Cambodia enacted by Kram No. 320-NS dated 30 June 1959 is participation by the people in the administration of justice through juries called upon to sit in all cases before trial and examining courts. Only the high court, whose function it is to ensure uniformity in the interpretation of the law, has retained, because of the high degree of specialization required in its work, a composition restricted to professional judges; the desired safeguards have, however, been secured by substantially increasing the number of judges required to hand down judgements in the Supreme Court (*Sala Vinichhay*).

Furthermore, popular participation in the administration of justice has made it possible to abolish appeals from judgements in all criminal cases and to limit them in civil and commercial cases, and to reorganize the higher examining courts.

Section I of the Act is concerned with the judicial organization proper and section II with the lists of jurors and the drawing by lot of the jurors called upon to participate in the judgement of both criminal and civil cases.

In criminal matters, the single criminal court sitting at Phnom-Penh has been replaced by eight criminal courts each having jurisdiction in a portion of the territory of the kingdom, thus bringing criminal justice nearer to the individual. This procedure, by giving each criminal court fewer cases to try, allows each case to be examined more thoroughly and the heavy burden of criminal-jury service to be distributed more equitably among the citizens.

These criminal courts are presided over by a professional judge of a senior grade — at least a counsellor third class of the Supreme Court (*Sala Vinichhay*) — who sits with six jurors.

In correctional cases, the president of the court of first instance (*Sala Dambaung*) sits with four jurors chosen by lot.

In police matters hardly any changes have been made under the Act.

In civil matters the president of the court may, at the request of any one of the parties to the case, co-opt a jury of four members. If he does, he must dispose of all the preliminaries to ensure that the case is ready for hearing, so as to avoid delay.

In commercial cases, the two assessors provided for under the Commercial Code may be appointed to the bench if the number of merchants of Cambodian nationality involved in the case justifies such a step.

The examining judge's power of decision has been transferred to an examining court of which he is president, but which also comprises two jurors chosen by lot. All the powers of the examining judge other than those vested in him as an officer of the criminal police have been transferred to this examining court. In particular, the examining court with popular participation is alone competent to decide whether to dismiss a case or refer it to a trial court, and to order the remand in custody or provisional release of an accused person.

Appeals have been abolished in correctional matters, thus bringing into line the practice in the criminal trial courts, the criminal court and the correctional courts. The only remedy remaining is that of applying for rescission of the judgement.

Appeals may still be brought against decisions of the examining court and lie to the Arraignment Chamber (*Sala Kromchot*), which now consists of three professional judges and of four jurors drawn by lot. This court of appeal in preliminary examination matters is also responsible for reviewing decisions by the *Procureur du Roi* summarily dismissing cases and also decisions of *nolle prosequi*, irrespective of the identity of the beneficiary. This review, which is carried out in open court, is calculated to eliminate numerous abuses.

In criminal matters the assessment of guilt may readily be entrusted to the common sense and sense of public morality of a jury of laymen. The constant confrontation of justice and public opinion is not only possible, but highly desirable. The professional judge who presides over these new criminal courts is merely a specialist whose duty it is to guide his lay colleagues in matters relating to the application and interpretation of the law and in procedural matters.

The situation is different in civil and commercial cases, almost each of which raises numerous legal technicalities. It is more difficult to conceive of the assessment of such problems being left to a majority

[1] Summary kindly furnished by the Ministry of Foreign Affairs of the Kingdom of Cambodia. Translation by the United Nation Secretariat.

of laymen, particularly if there is no appeal from their judgement. Appeal must therefore be allowed in all cases involving important interests subject to rules of municipal or international law, which are often hard to interpret. Civil and commercial law, particularly Admiralty law, very frequently concern international relations and involve rules of international law.

Nevertheless, in order to retain the spirit of the reform, the number of appeals of a purely dilatory character has been limited so that justice can be administered more expeditiously and effectively. The limits for cases in which cantonal courts (*justices de paix*) and civil and commercial courts have final jurisdiction have been raised considerably. Cantonal judges now have final jurisdiction in cases involving amounts of up to 2,000 riels, civil courts in cases involving amounts of up to 20,000 riels and commercial courts in cases involving amounts of up to 30,000 riels.

The *ministère public* retains its functions, but its activities in the matter of prosecution and of remand in custody are subject to permanent supervision by the examining courts with popular participation.

There are new provisions amending the composition of the *Sala Vinichhay*, the high court responsible for interpreting the law and ensuring uniformity in the application of laws throughout the kingdom. The *Sala Vinichhay* must now have a bench of five judges or of nine judges when its chambers sit together (*chambres réunies*). Thus, the parties subject to its jurisdiction enjoy every safeguard of both technical competence and impartiality.

Section II of the Act lays down provisions for the selection of the jurors called upon to participate in the administration of justice. In criminal cases jurors are designated for each case, and in correctional and civil matters for each session. Jurors selected immediately before a session from a list of twenty-five names may not be approached or influenced before the judgement is handed down in the case or cases in question. Since the jurors may be put to considerable inconvenience, a *per diem* allowance is payable to them. Those failing to perform their civic duty for no valid reason are liable to a fine of 1,000 riels.

CANADA

NOTE[1]

I. FEDERAL LEGISLATION

1. *Unemployment Insurance*

The Unemployment Insurance Act was amended to raise contributions to bring revenues more into line with benefit payments and to make other changes related to the rise in wage and salary levels. Contributions by employers and employees were increased so that the over-all rise is about 30 per cent. Benefits in the higher earning levels were also increased, making the highest benefit rate $30, as formerly. The period during which benefits may be drawn was extended from 36 to 52 weeks. The salary limit of insurable employment was raised from $4,800 to $5,460. Those employed otherwise than on a salary basis continue to be covered by the Act irrespective of their earnings. The amounts an unemployed person may earn while receiving benefits have been increased to about 50 per cent of the weekly insurance benefits.[2]

2. *Appeals from Courts Martial*

An amendment to the National Defence Act[3] replaced the court martial appeal board (see *Yearbook on Human Rights for 1950*, p. 40) by a Court Martial Appeal Court composed of judges of the Exchequer Court of Canada or of a superior court of criminal jurisdiction. The effect is that members of the services will have their appeals heard by a tribunal of similar status to the courts of appeal which hear appeals of persons convicted under the Criminal Code. The right of appeal to the Supreme Court of Canada has been broadened. A person whose appeal has been wholly or partially dismissed by the Court Martial Appeal Court may now appeal to the Supreme Court of Canada against the decision of the Court Martial Appeal Court (*a*) on any question of law on which a judge of the Court Martial Appeal Court dissents, or (*b*) on any question of law if leave to appeal is granted by a judge of the Supreme Court of Canada.

3. *Freedom of Speech and Communication and Public Morals*

The Criminal Code, in a section under the heading "Offences tending to Corrupt Morals", makes it an offence to publish or offer for sale any obscene publication or a crime comic. A crime comic is defined as "a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially (*a*) the commission of crimes, real or fictitious or (*b*) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime". An amendment in 1959[4] authorizes seizure of any obscene publication or crime comic which is kept for sale or distribution, and inserts in the Code the following definition of obscene publication: "Any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects — namely, crime, horror, cruelty and violence — shall be deemed to be obscene." In introducing the bill, the Minister of Justice said that the effect of the definition was to provide a series of simple objective tests in addition to the subjective test which judges had previously applied derived from the case of *R. v. Hicklin* (1868): "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. . . ." He said further that the definition stopped short of any attempt to outlaw publications concerning which there may be any contention that they have genuine literary, artistic or scientific merit.

II. PROVINCIAL LEGISLATION

1. *Anti-discrimination Measures*

Three new anti-discrimination statutes were enacted, and existing legislation was strengthened in two provinces. In Ontario, an Anti-Discrimination Commission[5] was set up and began an educational and publicity programme designed to make the public aware of the province's anti-discrimination laws.

(i) *Equal Pay*

Prince Edward Island passed an Equal Pay Act,[6] bringing the number of provinces with equal pay laws to seven. The Act prohibits employers from paying a female employee at a lower rate than a male employee for the same work done in the same establishment. A difference in rates of pay based on any factor other than sex is permissible.

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

[2] *Statutes of Canada*, 1959, c. 36.

[3] *Statutes of Canada*, 1959, c. 5.

[4] *Statutes of Canada*, 1959, c. 41.

[5] See *Yearbook on Human Rights for 1958*, p. 23.

[6] *Statutes of Prince Edward Island*, 1959, c. 11.

(ii) *Fair Accommodation Practices*

Fair Accommodation Practices Acts were enacted in New Brunswick[1] and Nova Scotia,[2] prohibiting any person from denying accommodation and other facilities customarily available to the public to any person or class of persons because of race, creed, colour, nationality, ancestry or place of origin. The Acts also prohibit discriminatory signs or advertisements in newspapers, on the radio and by means of any other medium of communication.

(iii) *Fair Employment Practices*

The Nova Scotia Fair Employment Practices Act,[3] previously limited to employers employing five or more employees, was extended to all employers. Amendments to the Saskatchewan Fair Employment Practices Act[4] strenthened the provisions regarding discriminatory advertisements, application forms and inquiries in connexion with employment so as to prohibit not only any direct or indirect expression of discrimination, but also any expression of intent to discriminate on grounds of race, religion, colour or national origin.

2. *Conditions of Work*

(*i*) *Minimum Wage*

A Women's Minimum Wage Act[5] was enacted in Prince Edward Island, previously the only province without a minimum wage law. The Act, which covers all female employees except farm workers and domestic servants, provides for the fixing of minimum rates by the Labour Relations Board established under the Trade Union Act, subject to approval by the Lieutenant-Governor in Council.

(ii) *Annual Paid Vacations*

The Manitoba Legislature amended the Vacations with Pay Act,[6] effective 1 January 1960, to provide for a vacation of two weeks with pay after one year's service with an employer, in substitution for the former provisions for one week's vacation after one year of service and two weeks' after three years. The Saskatchewan Annual Holidays Act,[7] which provides for a three weeks' vacation with pay after five years' service, was amended to extend this benefit to a person with five accumulated years of employment, provided that no break in service exceeds 182 days.

3. *School Leaving Age*

In Prince Edward Island, an amendment to the School Act[8] raised the school-leaving age from 15 to 16 years.

[1] *Statutes of New Brunswick*, 1959, c. 6.
[2] *Statutes of Nova Scotia*, 1959, c. 3.
[3] *Statutes of Nova Scotia*, 1959, c. 47.
[4] *Statute of Saskatchewan*, 1959, c. 28.
[5] *Statutes of Prince Edward Island*, 1959, c. 33.
[6] *Statutes of Manitoba*, 1959 (2nd), c. 67.
[7] *Statutes of Saskatchewan*, 1959, c. 89.
[8] *Statutes of Prince Edward Island*, 1959, c. 23.

4. *Limitation on Trade Union Activities*

Two enactments of the Newfoundland Legislature in 1959 have given rise to much discussion and controversy. One was the Trade Union (Emergency Provisions) Act, 1959,[9] which revoked the certification of two locals of a certain union. Normally under Newfoundland legislation a trade union which has been certified as a bargaining agent loses its right to represent a group of employees only if it is established that the majority of the employees no longer want the union to represent them. Another Act, the Labour Relations (Amendment) Act, 1959,[10] added a new section 6A, which gave the Lieutenant-Governor in Council authority to dissolve a trade union where it appeared to him that officers of the union outside the province had been convicted of any heinous crime.[11] It has been claimed by trade unions that both these enactments constituted an infringement of the right of employees to form or join associations of their own choosing for the purpose of negotiating with employers.

British Columbia passed a new Trade Unions Act[12] which declares a trade union to be a legal entity open to damage actions; and, at the same time, removes trade unions from the law of civil conspiracy, by providing that no act done by two or more members is actionable, if done in contemplation or furtherance of a labour dispute, unless the act would be wrongful if done without any agreement or combination. The Act also places restrictions on picketing, limiting picketing to legal strikes and lockouts and to premises where an actual dispute is in progress, and further providing that only members of the union whose members are striking or locked out or other persons authorized by the union may carry on picketing activities. In such circumstances a union may, without acts that are otherwise unlawful, persuade or endeavour to persuade anyone not to enter the employer's place of business, deal in or handle the employer's products or do business with him. In all other cases, such activities are illegal, and a union which engages in them may be held liable in damages.

An amendment to the British Columbia Constitution Act,[13] to be proclaimed in force, makes it unlawful to "picket, watch or beset" any government buildings in the province.

[9] See below, p. 42.
[10] See below, p. 43.
[11] This latter provision was amended in 1960 to transfer the power of dissolution from the Lieutenant-Governor in Council to the Supreme Court of Newfoundland acting upon an application of the Attorney-General.
[12] *Statutes of British Columbia*, 1959, c. 90.
[13] *Statutes of British Columbia*, 1959, c. 17. See below, p. 43.

5. *Workmen's Compensation Legislation*

Six provinces amended their workmen's compensation laws,[1] increasing benefits to injured employees and payments to dependants of deceased workmen. In Nova Scotia, the percentage rate of earnings on which awards for disability are based was raised to 75, the level set in other provinces. The maximum annual earnings on which compensation is paid were increased in three provinces — British Columbia, Manitoba and Nova Scotia. The minimum weekly payment for temporary total disability was increased in Manitoba, New Brunswick, Nova Scotia and Saskatchewan. Manitoba and Saskatchewan also provided for similar increases in the minimum weekly payment for permanent total disability. The lump-sum payment to a widow was increased in five provinces — British Columbia, Manitoba, Nova Scotia, Prince Edward Island and Saskatchewan. A widow's monthly pension was raised in three provinces — British Columbia, Manitoba and Nova Scotia. Four provinces — British Columbia, Manitoba, New Brunswick and Nova Scotia — increased the monthly allowance to a dependent child. In Nova Scotia, the maximum monthly allowance which may be paid a widow and children was raised. In three provinces — British Columbia, Manitoba and New Brunswick — higher monthly allowances were provided for orphans. In Saskatchewan, the Workmen's Compensation Board was authorized to make a lump-sum payment not exceeding $50 to each orphan child and to make compensation payments to the age of 19 (previously 18) in respect of a child who is continuing his education. In British Columbia, higher monthly allowances were provided for dependants other than widows and children.

6. *Mothers' Allowances*

Four provinces — New Brunswick,[2] Nova Scotia,[3] Saskatchewan,[4] and Manitoba[5] — changed their mothers' allowances legislation to provide additional benefits. In New Brunswick, Saskatchewan and Manitoba, the definition of deserted mother was modified to enable mothers in circumstances not previously covered to qualify for allowances. In Manitoba, the age of children who may benefit was raised. In Nova Scotia, an amendment to the Mothers' Allowance Act raised the maximum payable on behalf of disabled children. The Nova Scotia Social Assistance Act,[6] which provides for allowances for mothers not covered under the Mothers' Allowance Act, was amended, raising the age of children who may benefit.

7. *Living Accommodation for the Aged*

Three provinces — Quebec,[7] Manitoba,[8] and Alberta[9] — passed legislation to provide additional financial aid to help municipalities provide homes for the aged. Loans under the federal National Housing Act are available for such projects.

III. JUDICIAL DECISIONS

In 1959 two decisions of the Supreme Court of Canada dealt with abuse of power by public officials. Both were rendered on 28 January 1959, and both were connected with the activities of the Jehovah's Witnesses. These decisions were *Lamb* v. *Benoit* (1959) 17 D.L.R. (2d), part 6, p. 369; and *Roncarelli* v. *Duplessis* (1959) 16 D.L.R. (2d), part 10, p. 689.

In the case of *Lamb* v. *Benoit*, the Supreme Court of Canada awarded damages in the sum of $2,500 against an officer of the provincial police of Quebec for false arrest and malicious prosecution of a member of the Jehovah's Witnesses. In this respect, the Supreme Court of Canada reversed a judgement of the Quebec Court of Queen's Bench, which had itself affirmed the trial court's dismissal of the action for false arrest and malicious prosecution.

A member of Jehovah's Witnesses, who was standing at a street corner holding religious pamphlets which were available to interested passers-by, was arrested and kept in a cell over two week-end nights without any information being lodged. On Monday, the person arrested was told that she would be released if she signed a statement that she would take no action by reason of the detention. When such statement was refused, the person was charged with seditious libel and released on bail. At the trial which followed, the charge was dismissed. Subsequently the police officers were sued for damages for false arrest and malicious prosecution. The action against two of them was dismissed on the ground that no fault was attributable to them and also dismissed against the one who was primarily responsible for arresting and laying the charge because of the six-month prescription stipulated by the Provincial Police Force Act, R.S.Q. 1941, c. 47, s. 24. The judgement was affirmed on appeal.

In the Supreme Court of Canada, the appeal succeeded against the police officer who was primarily responsible for false arrest and for malicious prosecution. In the opinion of the court, he knew that the arrest and detention were unlawful and he did not act in good faith in having the charge laid. The laying of a false charge was a means of getting relief from liability for the false arrest and imprisonment. In such circumstances, the police officer's liability was not prescribed by the Provincial Police Force Act. Further, the court stated that a police officer who improperly arrests and lodges a prosecution against another person

[1] *Statutes of British Columbia*, 1959, c. 95; *Statutes of Manitoba*, 1959 (2nd), c. 73; *Statutes of New Brunswick*, 1959, c. 79; *Statutes of Nova Scotia*, 1959, c. 46; *Statutes of Prince Edward Island*, 1959, c. 34; *Statutes of Saskatchewan*, 1959, c. 103.

[2] *Statutes of New Brunswick*, 1959, c. 61.

[3] *Statutes of Nova Scotia*, 1959, c. 28.

[4] Mothers' Allowances Regulations O.C. 860/59 under the Social Aid Act, *Statutes of Saskatchewan*, 1959, c. 59.

[5] *Statutes of Manitoba*, 1959 (2nd), c. 57.

[6] *Statutes of Nova Scotia*, 1959, c. 55.

[7] *Statutes of Quebec*, 1959, c. 33.

[8] *Statutes of Manitoba*, 1959 (2nd), c. 18.

[9] *Statutes of Alberta*, 1959, c. 29.

in the absence of any facts or any honest belief in the existence of facts which would justify the arrest and prosecution is not acting in good faith and cannot set up the six months' prescription to an action against him for false arrest and malicious prosecution.

In the case of *Roncarelli* v. *Duplessis*, the Supreme Court of Canada found Mr. Duplessis, the Premier and Attorney-General of the province of Quebec, personally liable in damages (assessed at $33,123.53) for procuring the cancellation of a liquor licence on grounds extraneous to the objects and purposes of the Licensing Act.

Roncarelli, proprietor of a restaurant, had his licence peremptorily cancelled because, as a member of Jehovah's Witnesses, he had been furnishing bail in cases of arrest of members of that religious body on charges of infractions of municipal by-laws governing distribution of literature, peddling and interference with traffic.

The court held that where, by statute, an independent licensing commission is established and given discretionary power to issue and cancel renewable licences conferring economic benefits upon the holders, the exercise of discretion to cancel a licence must be related to the administration and enforcement of the Act. Therefore, it was an actionable wrong for a superior political official, in this case the Premier and Attorney-General of the province, to procure the cancellation of a licence by the Commission on grounds extraneous to the objects and purposes of the Licensing Act. An allegation of good faith in the exercise of official functions is not a defence to such interference when there is no statutory authority entitling that official to direct the cancellation. Further, the court found that Mr. Duplessis, in procuring the cancellation of the licence, did not act "in the exercise of his functions" as Premier and Attorney-General of the province and was liable in damages.

THE TRADE UNION (EMERGENCY PROVISIONS) ACT, 1959[1]

AN ACT TO MAKE PROVISION FOR SAFEGUARDING THE PUBLIC INTEREST IN VIEW OF THE PRESENT UNSETTLED CONDITIONS IN THE WOODS LABOUR PART OF THE PULP AND PAPER INDUSTRY IN THE PROVINCE

of 6 March 1959

Whereas strikes have been called in the woods labour part of the pulp and paper industry of the province;

And whereas since those strikes were called many loggers have been convicted of offences against the Criminal Code arising out of the strikes and have been fined or sent to prison;

And whereas because of the lawlessness existing in connexion with the strikes many loggers who are willing and anxious to resume employment in the forests with the companies engaged in the pulp and paper industry in the province are reluctant to do so;

And whereas because of these things a state of grave emergency exists in the pulp and paper industry of the province and the economy of the province is in jeopardy;

And whereas in these circumstances it is necessary to take extraordinary steps in an endeavour to bring an end to the emergency;

BE IT THEREFORE ENACTED by the Lieutenant-Governor and House of Assembly in legislative session convened, as follows:

1. This Act may be cited as The Trade Union (Emergency Provisions) Act, 1959.

2. In this Act "trade union" means a trade union within the meaning of the Labour Relations Act, chapter 258 of the Revised Statutes of Newfoundland, 1952 (hereinafter referred to as the "said Act").

3. (1) Notwithstanding anything contained in the said Act or in any other statute or law, any certification as bargaining agent (hereinafter referred to as "certification") granted under the said Act to each trade union named in the schedule to this Act is revoked.

(2) Where certification granted under the said Act to a trade union is revoked by this Act, the union shall not without the consent of the Lieutenant-Governor in Council apply for certification under the said Act and the Labour Relations Board shall not without the like consent grant certification under the said Act.

4. Where certification granted under the said Act to a trade union is revoked by this Act, an agreement entered into and in force on the date of the passing of this Act between the union and an employer is void as from that date and no longer binds the parties to the agreement.

SCHEDULE

International Wood Workers of America, Local 2-254.

International Wood Workers of America, Local 2-255.

[1] *Statutes of Newfoundland*, 1959, c. 2.

THE LABOUR RELATIONS (AMENDMENT) ACT, 1959, s.2[1]

2. The Labour Relations Act, chapter 258 of the Revised Statutes of Newfoundland, 1952, is amended by inserting therein immediately after section 6 the following as section 6A:

"6A. (1) Notwithstanding anything contained in this Act or in any other statute or law, where it appears to the Lieutenant-Governor in Council that a substantial number of the superior officers, agents or representatives of a trade union or any body, group or organization of trade unions outside the province have been convicted of any heinous crime such as trafficking in narcotics, manslaughter, extortion, embezzlement or perjury and any or all of them remain as officers, agents or representatives of the trade union or body, group or organization of trade unions, the Lieutenant-Governor in Council may as from such date as he sees fit dissolve any trade union in the province which is a branch, local or affiliate of that other trade union or body, group or organization of trade unions.

"(2) A trade union which is dissolved in accordance with subsection (1), which, and any member, officer, agent or representative of the union who after its dissolution

(*a*) Does anything prohibited by this Act;

(*b*) Holds a meeting of the union;

(*c*) Collects dues from its members;

(*d*) In any way holds itself out to be a trade union within the meaning of this Act;

is, notwithstanding the dissolution of the union, guilty of an offence and is liable on summary conviction

(*a*) If a trade union to a fine not exceeding five thousand dollars; or

(*b*) If an individual to a fine not exceeding one thousand dollars or in default of payment to imprisonment for a term not exceeding six months.

"(3) Where a trade union which is dissolved in accordance with subsection (1) is a certified bargaining agent, the certification is revoked as from the date the union is so dissolved.

"(4) Where a trade union is dissolved under subsection (1), an agreement entered into and in force at the date of the dissolution between the union and the employer is not and shall not be deemed to be as from the date of the dissolution a collective agreement for the purposes of this Act.

"(5) The Lieutenant-Governor in Council may make such regulations as he deems necessary for carrying out the provisions of this section and in particular but without prejudice to the generality of the foregoing may make regulations providing for the disposition of the assets of a union dissolved in accordance with subsection (1)."

[1] *Statutes of Newfoundland*, 1959, c. 1.

CONSTITUTION ACT AMENDMENT ACT (No. 2) 1959[1]

2. Section 6 of the Constitution Act, being chapter 65 of the Revised Statutes of British Columbia, 1948, is amended by adding the following as subsection (3):

"(3) No person, association, or society shall picket, watch, or beset any building or place whatsoever in order to ask, counsel, persuade, endeavour to persuade or procure anyone temporarily to withdraw his services from the Crown in right of the Province or from any department, branch, or institution of the Executive Government of the Province, or from any Board or Commission, all the members of which are appointed by an Act of the legislature or the Lieutenant-Governor in Council (excepting, however, the British Columbia Power Commission, the Liquor Control Board, or the Pacific Great Eastern Railway Company), or otherwise to do or to refrain from doing anything in contravention of the oath of office taken and subscribed by him, or of the Statute from which his duties devolve."

3. This Act shall come into force on a day to be fixed by the Lieutenant-Governor by his proclamation.

[1] *Statutes of British Columbia*, 1959, c. 17.

CENTRAL AFRICAN REPUBLIC

CONSTITUTION OF 16 FEBRUARY 1959[1]

PREAMBLE

The Ubanghi people solemnly proclaim their devotion to human rights and to the principles of democracy and the self-determination of peoples.

By their vote on 28 September 1958 they freely adopted the Constitution of the Community based on the equality and solidarity of the peoples that form it.

On 1 December 1958, by a free and unanimous decision of the elected representatives of the people, Ubanghi-Shari decided to constitute itself the "Central African Republic", a State Member of the Community.

The Central African Republic intends to do all it can for the attainment of African unity. It aims to have its people develop in dignity and by labour. It solemnly proclaims the fundamental rights and freedoms of democracy:

The human person is sacred. It is the bounden duty of all those responsible for enforcing the law to respect and protect it.

The Republic recognizes that there are human rights which, as the foundation of all human society and of peace and justice in the world, are inviolable and inalienable.

Everyone has the right to the free development of his personality provided he does not violate the rights of others or infringe constitutional law and order.

Everyone has the right to life and bodily integrity. Freedom of the person shall be inviolable. There can be no derogation from these rights except in application of a law.

Consequently no person may be convicted of an offence except by virtue of a law which went into force before the offence was committed. The right to defence shall be inviolable at all stages and at all levels of prosecution proceedings.

All human beings shall be equal before the law.

Men and women shall be equal in law.

No one in the Central African Republic shall have an inferior status, nor shall there be any privilege by reason of place, birth, person or family.

Everyone shall have the right to unhindered access to the sources of knowledge.

Everyone shall have the right freely to express and disseminate his views by word, pen and picture, due regard being shown for the law and for the honour of others.

All citizens shall have the right freely to form associations and societies provided they abide by the laws and regulations.

The secrecy of correspondence and the secrecy of communication by post, telegraph and telephone shall be inviolable. No restrictions may be placed upon this inviolability except in application of a law.

All citizens shall have the right to freedom of movement and residence anywhere in the Republic, provided property is duly respected.

This right shall not be circumscribed except by law.

No one may be subjected to measures of detention except as provided by law.

Property is guaranteed by this constitution. It may not be interfered with except in case of public necessity, lawfully determined, and subject to the payment of fair and prior compensation.

The home shall be inviolable.

Searches may not be ordered except by a judicial authority or, in emergencies, by other authorities as specified by law; they may be carried out only in the manner prescribed by law.

Moreover, measures which infringe or curtail the inviolability of the home may be taken only in order to meet a common danger or to protect persons in peril of their lives, or again, in application of a law, in order to protect the public interest [ordre public] from an impending danger, in particular in order to forestall an epidemic or to protect youth in jeopardy.

Marriage and the family are the natural and moral basis of human society and shall be under the special protection of the State.

It shall be the common duty of the State and its subdivisions to safeguard the physical and moral health of the family and to foster it by social measures.

It is the natural right and the primary duty of parents to bring up their children to be physically, mentally and morally fit. In this task they shall have the support of the State and its subdivisions.

Children born out of wedlock shall have the same rights to assistance as legitimate children.

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de l'Afrique équatoriale française* of 1 May 1959. Translation by the United Nation Secretariat.

Youth shall be protected by the action and the institutions of the State and its subdivisions against exploitation and moral, mental and physical neglect.

It shall be the right and the duty of the State and its subdivisions to create the necessary conditions and to establish public institutions to ensure the education of children.

Provision shall be made for the education of youth in public schools, the establishment of which shall be the joint responsibility of the State and its subdivisions.

Private schools may be opened with the authorization of the State. They shall be under the State's supervision.

Authorization shall be granted if, in its curriculum and organization and in the training of its teachers, a private school meets the educational standards of the official or approved curriculum under conditions laid down by special legislation.

Freedom of conscience and the profession and free practice of religion shall be guaranteed to all, subject to public policy [ordre public].

Religious institutions and communities shall have the right to develop without hindrance. They shall be outside the State's control, and shall regulate and administer their affairs independently. They shall be recognized as agencies of moral training.

The law shall protect the right to work.

No one shall suffer in his work or employment by reason of his origin, opinion or belief.

Trade union rights may not be abridged except by law.

The right to strike shall be exercised within the framework of the legislation governing it and may not, in any circumstances, interfere with freedom of work or the free exercise of property rights.

Every worker shall participate through his representatives in the determination of working conditions.

The conditions governing the assistance and protection which workers shall receive from society shall be established by special legislation.

Accordingly, the Constituent Assembly of the Central African Republic adopts the following Constitution as the fundamental law governing the rights and duties of citizens:

TITLE I

THE STATE AND SOVEREIGNTY

Art. 1. The Central African Republic — indivisible, secular, democratic and social — is a State Member of the Community.

. . .

The principle of the Republic is government of the people, by the people and for the people.

Art. 2. Sovereignty is vested in the people, who shall exercise it through their representatives or by way of referendum.

No group of the people nor any individual person may arrogate to themselves or himself the exercise thereof.

The exercise of the franchise may be direct or indirect under conditions determined by special legislation.

It shall at all times be universal, equal and secret.

All citizens of the Community of both sexes who are of full legal age and in full possession of their civil and political rights shall be entitled to vote.

Political parties and groups shall compete in the elections. They shall associate and exercise their activities in freedom. They must respect the principles of the people's sovereignty and of democracy.

TITLE II

THE LEGISLATURE

Art. 3. The legislative assembly shall be elected for a term of five years by universal, direct and secret suffrage.

. . .

TITLE V

THE JUDICIARY

Art. 33. The judiciary is an authority independent of the legislative and executive authorities.

Justice shall be rendered in the territory of the State in the name of the people.

. . .

TITLE VII

TREATIES — AGREEMENTS AND CONVENTIONS

. . .

Art. 39. Treaties, agreements and conventions duly ratified and published shall take precedence over legislation.

TITLE VIII

REVISION OF THE CONSTITUTION

. . .

Art. 41. No revision procedure may be adopted which derogates from the republican form of government or the democratic principles governing the Republic.

. . .

CEYLON

NOTE[1]

1. *Ceylon Constitution (Amendment) Act, No. 4 of 1959*

By this Act, among other slight amendments which have no bearing on the question, section 41(3) of the Ceylon (Constitution) Order in Council, 1946, which read: "Subject to the provisions of subsections (4) and (5) of this section, each electoral district of a province shall have as nearly as may be an equal number of persons:" was amended by the substitution for the word "persons:" of the words "citizen of Ceylon:".

Section 41 (4), which read: "Where it appears to the Delimitation Commission that there is in any area of a province a substantial concentration of persons united by a community of interest, whether racial, religious or otherwise, but differing in one or more of these respects from the majority of the inhabitants of that area, the Commission may make such division of the province into electoral districts as may be necessary to render possible the representation of that interest. In making such division the Commission shall have due regard to the desirability of reducing to the minimum the disproportion in the number of persons resident in the several electoral districts of the province", was amended by the substitution, for the word "persons", wherever that word occurred, of the words "citizens of Ceylon".

Section 41 (5), which read: "Notwithstanding anything in subsection (1) of this section, the Delimitation Commission shall have power to create in any province one or more electoral districts returning two or more members:" was amended to read: "Notwithstanding anything in subsection (1) or subsection (4) of this section, the Delimitation shall have power to create in any province one or more electoral districts returning two or more members if the racial composition of the citizens of Ceylon in that province is such as to make it desirable to render possible the representation of any substantial concentration of citizens of Ceylon in that province who are united by a community of racial interest different from that of the majority of the citizens of Ceylon in that province:

2. *Employees' Holidays Act, No. 6 of 1959*[2]

The object of this Act was to provide the benefits of enjoying a certain number of public holidays to employed persons who did not come within the scope of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 19 of 1954, or the decisions of a wages board appointed under the Wages Boards Ordinance, No. 27 of 1941, relating to public holidays.

Under this Act, where a holidays order has been made by the Minister declaring a certain number of days which have already been declared by the Minister of Home Affairs as public holidays under the Holidays Ordinance (chapter 135), every person, other than a domestic servant or a personal chauffeur, employed by an employer under a contract of service in any trade, industry, business or occupation or in any prescribed establishment or institution, whether or not such establishment or institution carries on any trade or business, will be entitled to a holiday on each of such days. Where on account of the nature of a particular employee's occupation his employment on a public holiday is necessary, or where he is an essential worker employed in a trade, business, occupation, establishment or institution which is also essential to the life of the community, such an employee may, with the sanction of the Commissioner of Labour, be employed on a public holiday provided that he is granted an alternate holiday or is paid double remuneration for the work done by him on that day. Provision has also been made in the law for the effective enforcement of this law, and these provisions are based on similar provisions appearing in other labour legislation.

3. *Public Security (Amendment) Act, No. 8 of 1959*

Broadly speaking, the object of this enactment was to enable the Governor-General to bring the provisions of part II of the Public Security Ordinance, No. 25 of 1947, into operation in any part or parts of Ceylon. Further, the new section 12 empowers the Prime Minister by order to call out all or any of the armed forces for the purpose of maintaining public order in any area if he is of opinion that the police are inadequate to deal with such situation in that area. The members so called out will for that purpose have the powers of police officers other than the powers specified in chapter XII of the Criminal Procedure Code. The new Act also provided for special powers for police officers when authorized to do so by the Prime Minister to seize and remove any guns, explosives or offensive weapons found in the possession of any person in an area to which the Act applies. The

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

[2] The text of this Act and a translation into French have appeared in International Labour Office: *Legislative Series* 1959 — Cey. 1.

Act also empowered the Prime Minister to impose a curfew in any area whenever he considered it necessary to do so for the maintenance of public order. It also empowered the Prime Minister, when he considered it necessary in the public interest to do so for the maintenance of any service which in his opinion is essential to the life of the community, by order to declare that service to be an essential service and create certain offences in respect of an essential service. The Act also makes provision for the arrest without warrant of persons found committing offences under the Act. A safeguard was provided by the new section 21 in that

(*a*) Every order made by the Prime Minister as aforesaid shall be in operation for one month from the date of its publication in the *Gazette*;

(*b*) The occasion of bringing such an order shall be reported to Parliament; and

(*c*) Such an order may be amended or rescinded by a resolution of the House of Representatives or by another order.

A further important provision in this section prevented an order or the circumstances necessitating the making of such an order being called into question in any court. The Act also gave protection to officers acting in good faith under emergency regulations.

4. *Suspension of Capital Punishment (Repeal) Act, No. 25 of 1959*

This Act provided for the repeal of the Suspension of Capital Punishment Act, No. 20 of 1958.[1]

5. *Ceylon Parliamentary Elections (Amendment) Act, No. 11 of 1959 (to be read with the Ceylon (Parliamentary Elections) (Amendment) Act, No. 26 of 1959)*

The most important provision of Act No. 11 of 1959 was to reduce the age qualification of a voter from 21 to 18 years. It also sought to introduce identity cards for every voter which would contain a photograph of the voter, as well as his name, address and electoral district. A further provision of this Act enabled a political party to obtain an order from the Commissioner of Parliamentary Elections recognizing it as a political party for the purpose of section 29 of the Order in Council relating to the deposit to be made by candidates. The deposit made by a candidate of a recognized political party was to be Rs. 500 in consequence of the provisions of this Act, while the deposit to be made by a candidate who is not a member of a political party was to be Rs. 1,000. The Act also brought about another important change — namely, the facility of postal voting to a member of the Ceylon Army, Royal Ceylon Navy or Royal Ceylon Air Force, or an officer or servant in the public service, on the ground that he is unable or likely to be unable to vote in person at the polling station allotted to him by reason of the particular circumstances of his employment as such member, officer or servant, and to a candidate at a general election on the ground that he is unable to vote in person at the polling station allotted to him by reason of his candidature in some other electoral district. For this purpose an application has to be made by any person desiring to avail himself of the facility. Another important provision was to prohibit the display, for the purpose of promoting the election of a candidate, of any handbill, placard, poster, notice, sign, flag or banner on a public road or on a vehicle used for public transport or on any premises belonging to or in the possession of the Crown or the local authority except at a meeting held for such a purpose. The Act also prohibited the use, subject to certain exceptions, of vehicles and animals for the conveyance of electors to or from the poll. The Act also introduced a change in regard to the hearing of election petitions — namely, that the Governor-General was required to appoint, with the advice of the Judicial Service Commission, a panel of not less than five election judges. The Chief Justice was required to nominate from this panel an election judge for hearing of a particular election petition. The Act also provided for an appeal to the Supreme Court on a question of law against the determination of an election judge, and the Supreme Court was empowered in an appeal to vary the determination or decision of an election judge or order a new trial of the election petition either in its entirety or in regard to any matters specified by that court. Yet another new provision of the Act was to enable a candidate for an election to send free of charge for postage to each elector to be used at the election a postal communication containing matter relating to the election.

[1] See *Yearbook on Human Rights for 1958*, p. 27.

CHAD

CONSTITUTION OF 31 MARCH 1959[1]

PREAMBLE

The creation of broad political and economic groupings is the essential characteristic of this era, for an increase in the means of subsistence, an improvement in the level of living and a strengthening of the industrial potential of States are factors which make concerted action essential. Similarly, the protection of national interests is today inconceivable without the assistance and support of a common ideology based on respect for the rights of man and of the citizen, as embodied in the Declaration of 1789.

. . .

The basic principles of the constitutional organization of Chad are:

Defence of human rights and public freedoms in conformity with a single ideal of democratic justice;

Institution of a true democracy based on the system of the separation of the three powers, legislative, executive and judicial;

Solidarity of the States of the community to achieve a better co-ordination of their economic, social and cultural objectives.

TITLE I

THE STATE, SOVEREIGNTY AND PUBLIC FREEDOMS

Art. 1. Chad is constituted as a single and indivisible, secular, democratic and social republic. . . .

Art. 2. The republic expressly undertakes to safeguard the property and person of all citizens of the community. It shall respect other nations and shall refrain from all actions which might impair the freedom of any people.

Art. 3. The principle of the republic shall be government of the people, by the people and for the people.

Sovereignty shall be vested in the people, who shall exercise it through their representatives and by way of referendum. No section of the people or any individual may assume the exercise of sovereignty.

Art. 4. The vote, as the expression of the sovereignty of the people, shall be universal, equal and secret.

All citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote. The electoral system shall be determined by law.

Art. 5. The rights of citizens shall be guaranteed by the constitution. They shall be indefeasible and inviolable. They are based on the principles of freedom, humanity and equality, which are the essence of the democratic system.

Consequently:

No person may be arrested or detained except in accordance with the provisions of law and an order from the legitimate authority.

The residence of every person inhabiting the territory of the republic shall be inviolable. Such residence may be entered only in the manner and in the cases specified by law.

The oppression of one group of the people by another is proclaimed to be anti-constitutional and illegal.

The republic shall ensure equality of rights to all without distinction as to race, origin or religion. Every person may freely profess his religion and shall receive equal protection from the State for the exercise thereof.

Citizens shall have the right of association, of petition and of free expression of their thoughts. The only restrictions on the exercise of these rights shall be those imposed by the rights of freedom of others and by public security.

The press shall be free, whatever its method of expression. The conditions for the exercise of the freedom of the press shall be determined by law.

Public education shall be secular. Although the language of instruction shall be French, other languages or dialects may not be excluded from the curricula. The primary, secondary and technical education provided in the establishments of the republic shall be free of charge.

All citizens are proclaimed to be equal as regards eligibility for all public offices, preference being accorded to merit alone.

All distinctions of birth, class or caste shall be abolished.

Freedom to work shall be guaranteed within the framework of the social laws. The right to work, medical assistance and assistance to abandoned

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de l'Afrique équatoriale française* of 1 May 1959. Translation by the United Nations Secretariat.

children and to the aged and infirm without means of support shall be guaranteed by the constitution.

The equality of citizens with regard to taxation shall have its counterpart in their obligation to contribute to public expenses in proportion to their means and fortune.

Citizens shall be free to form political parties or groups in order to assist more effectively in the expression of universal suffrage.

The activities of such parties or groups shall be subject only to those restrictions which are imposed by the democratic principles of the Community and of the State.

. . .

TITLE III

THE LEGISLATIVE POWER

Art. 13. The people of Chad delegate legislative power to a single and sovereign assembly, which shall be called the Legislative Assembly and whose members shall be known as deputies to the Legislative Assembly and shall be elected by direct, universal suffrage in the conditions determined by the electoral law.

. . . .

Art. 21. A compulsory mandate shall be null and void.

. . .

TITLE VII

THE JUDICIARY

Art. 50. . . . Magistrates of the bench shall remain in office for life.

. . .

TITLE X

AMENDMENT

. . .

Art. 57. . . .

The republican form of the Government shall not be subject to amendment.

. . .

CHILE

NOTE[1]

I. LEGISLATION

Act No. 13353, of 28 July 1959 (*Diario Oficial* No. 24427, of 26 August 1959), the regulations for which were issued in supreme decree No. 5021 of 16 September 1959 of the Ministry of the Interior (*Diario Oficial* No. 24461, of 7 October 1959) lays down provisions governing the entry and stay in the country of aliens as immigrants, tourists, residents and official residents. It stipulates that ships engaged in tourist cruises which put in at Chilean ports shall be exempt from the payment of harbour dues.

[1] Information kindly furnished by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

II. SUPREME DECREES

Decree No. 591, of 25 November 1959, of the Ministry of Foreign Affairs (*Diario Oficial* No. 24524, of 22 December 1959) orders that the Cultural Convention between the republics of Chile and France, signed at Santiago, Chile, on 23 November 1955, shall be implemented as a law of the republic. This convention lays down, *inter alia*, that school-leaving certificates [diplomas de bachillerato] awarded by Chilean and French universities shall be given equal recognition.

Decree No. 244, of 25 March 1959, of the Ministry of Foreign Affairs (*Diario Oficial* No. 24351, of 26 May 1959), orders that the Cultural Convention between the Republic of Chile and the Federal Republic of Germany, signed at Santiago, Chile, on 20 November 1956, shall be implemented as a law of the republic.

CHINA

PROTECTIVE CUSTODY REGULATIONS

Promulgated by the joint order of the Ministry of Interior and the Ministry of Justice on 9 November 1935. Amended and promulgated by joint order of the Ministry of Interior and the Ministry of Justice on 21 December 1959[1]

Art. 1. Save as otherwise provided by law, protective custody shall be exercised in accordance with the present regulations.

Art. 2. Protective custody shall be exercised by the police authorities, local self-government bodies and charitable organizations of the place of residence of the person to be placed under protective custody, or of such other place as the circumstances may require; it may also be exercised by the nearest relative of the person to be placed under protective custody or by any other suitable persons if the circumstances so require.

Art. 3. The authorities or person exercising protective custody shall keep in constant touch with the person under protective custody and provide him with adequate care and supervision, observing his conduct, guiding him in his daily life, and affording him appropriate assistance and guidance in matters pertaining to his education and upbringing, medical care, employment and the general improvement of his conditions of life. In furnishing such assistance and guidance, the person exercising protective custody may request the help of the educational, health, civil and social authorities or of any other governmental organization.

Art. 4. In matters relating to protective custody, authorities or persons exercising protective custody in accordance with article 2 shall be subject to the supervision of the prosecutor of the court of the district in which protective custody is exercised.

In the case of a conditionally released prisoner, the authority issuing the certificate of conditional release shall authorize one of the authorities or persons specified in article 2 to exercise protective custody. The prosecutor of the place at which such protective custody is to be exercised shall be duly notified.

Art. 5. The prosecutor who supervises the exercise of protective custody shall inform the person placed under protective custody of the requirements with which he must comply, and shall order him to report by a specified date to the authorities or person exercising such protective custody and to notify his arrival.

The prosecutor shall furnish the authorities or person exercising protective custody with the court order data relating to the person to be placed under protective custody, together with particulars of his background and other relevant documents. Authorities or persons exercising protective custody shall immediately notify the supervising prosecutor in writing of their acceptance of the person to be placed under custody. Where there is reason to believe that there may be difficulty in exercising protective custody of the person placed under custody in accordance with article 92 of the Criminal Code, the authority or person concerned shall so inform the prosecutor and request that other arrangements be made for the custody of the person concerned.

Where, in accordance with the provisions of the preceding paragraph, the exercise of protective custody is entrusted to local self-government bodies, charitable organizations, relatives or other suitable persons, the prosecutor shall also notify the police authorities of the place of domicile or residence of the person placed under protective custody.

The provisions of the three preceding paragraphs shall apply, *mutatis mutandis*, to prisoners granted conditional release by prison wardens.

Art. 6. In addition to assuming responsibility for the control of the persons under their protective custody, authorities or persons exercising protective custody shall fulfil the following obligations in providing assistance and guidance in vocational and other matters in accordance with the needs of the individual case:

1. Where protective custody is substituted for committal to a reformatory institution, assistance and guidance in the form of education and moral instruction shall be provided.

2. Where protective custody is substituted for guardianship, assistance and guidance in the matter of medical care and preventive measures shall be provided.

3. Where protective custody is substituted for disintoxication treatment in the case of a drug addict

[1] The text of the Act was published in *Presidential Gazette* No. 1082, and was kindly furnished by the Permanent Mission of China to the United Nations. Translation by the United Nations Secretariat.

or alcoholic, assistance and guidance leading to complete cure shall be provided.

4. Where protective custody is substituted for compulsory labour, assistance and guidance in cultivating correct habits of work shall be provided.

5. Where a conditionally released offender or offender under suspended sentence is placed under protective custody, assistance and guidance leading to his correction and reform shall be provided.

In discharging their obligations under the preceding paragraph, authorities or persons exercising protective custody may give instructions to, or admonish, the persons under their protective custody. If the latter ignores their instructions or admonitions, they may report the matter to the supervising prosecutor, who shall take appropriate action. In the case of a conditionally released offender, the authorities or persons exercising custody shall notify the warden by whom protective custody was authorized.

Art. 7. Persons under protective custody shall comply with the following conditions during the period of protective custody:

1. They must be of good behaviour and refrain from any dealings with persons habitually engaging in misconduct.

2. They must obey the order of the prosecutor or warden and of the authorities or persons exercising protective custody.

3. They must refrain from any acts of provocation against the person injured by their offence, or against the persons who brought charges or laid information against them.

4. They must report not less than once a month to the authorities or persons exercising protective custody on their health and working and living conditions.

5. They must not leave the place of protective custody without the permission of the authorities or persons exercising protective custody. If an absence of more than ten days is requested, the authorities or persons exercising protective custody shall forward the request to the supervising prosecutor or warden, as appropriate, for approval.

Art. 8. Authorities or persons exercising protective custody shall report once every three months to the supervising prosecutor on the progress made in the process of reformation, guardianship or disintoxication, on the work habits of the person under protective custody and on other matters relevant to the latter's health, behaviour and livelihood. In the cases to which article 92, paragraph 2, and article 93, paragraph 3, of the Criminal Code refer they shall ascertain the particulars and submit an immediate report.

In the case of conditionally released offenders under protective custody they shall also notify the warden who authorized the protective custody.

Art. 9. The supervising prosecutor shall keep under continuous review the performance of protective custodial functions by authorities or persons exercising such custody and furnish assistance. If necessary, he may issue instructions to such authorities or persons and, if the instructions are not complied with, may formally demand compliance or issue a warning.

The prosecutor or warden may, when the circumstances so require, transfer the person under protective custody to the care of any other authorities or persons.

Art. 10. If the person under protective custody violates one of the conditions set out in sub-paragraphs 2, 3, 4 and 5 of article 7, the prosecutor may request the revocation of the order placing him in protective custody or suspending his sentence.

If a conditionally released offender placed under protective custody violates the conditions referred to in the preceding paragraph, the warden may request the revocation of the order for his conditional release.

Art. 11. The person under protective custody shall report any change in his domicile or residence to the competent prosecutor for approval through the authorities or persons exercising protective custody. The prosecutor shall inform in writing the prosecutor of the competent court of the place to which the person under protective custody moves of the particulars concerning his protective custody, forwarding relevant documents and papers, and requesting that he shall be continued under protective custody for the remainder of the specified period.

The provisions of the above paragraph shall apply, *mutatis mutandis*, to conditionally released offenders placed under protective custody.

Art. 12. If, because of a change of residence or other circumstances, a person exercising protective custody ceases to be able to exercise such custody he may request the supervising prosecutor or notify the warden who authorized such protective custody, as the case may be, to place the offender under the protective custody of another person. The same procedure shall be followed if, owing to a change of circumstances, the authorities or bodies in whose protective custody an offender has been placed can no longer exercise such custody.

Art. 13. The authorities or persons exercising protective custody shall, on the expiry of the period of protective custody, report this fact to the supervising prosecutor; in the case of a conditionally released offender placed under protective custody they shall also notify the warden who authorized such protective custody.

Art. 14. In the event of the escape of a person under protective custody, the authorities or persons exercising protective custody shall report the escape to the supervising prosecutor; in the case of a conditionally released offender placed under protective custody they shall also notify the warden who has authorized such protective custody. Where protective custody is exercised by the police authorities, the latter shall themselves pursue and apprehend the fugitive. Local self-government bodies, charitable

organizations, relatives or other suitable persons exercising such custody shall report the escape to the nearest police authorities, who shall pursue and apprehend the fugitive without delay.

If the police authorities apprehend the fugitive, they shall deliver him to the supervising prosecutor, or the prosecutor of the place of apprehension.

Art. 15. In the event of the death of a person under protective custody, or if he is called up for military service or active duty, or if he commits a further offence and is again brought to trial, the authorities or persons exercising protective custody shall immediately report the fact to the supervising prosecutor; in the case of a conditionally released offender placed under protective custody they shall also notify the warden who authorized such protective custody.

Art. 16. The present regulations shall enter into force on the date of their promulgation.

CRIMINAL INDEMNIFICATION ACT

promulgated by presidential order on 11 June 1959[1]

Art. 1. 1. In criminal cases dealt with in accordance with the laws governing criminal procedure, indemnification may be claimed from the State in accordance with the provisions of this Act by any person who has suffered injury by reason of the fact that:

(i) He was held in detention before his final discharge or acquittal;

(ii) He was held in detention or subjected to punishment before his final acquittal in a re-trial or in special appeal proceedings.

2. A person detained in contravention of the laws governing criminal procedure as referred to in the preceding paragraph shall also have the right to claim indemnification from the State in accordance with the provisions of this Act.

Art. 2. No claim for indemnification may be entertained in the case of a person held in detention before a decision ordering his discharge or acquittal:

(i) If the decision is based on the provisions of article 18, paragraph 1, or article 19, paragraph 1, of the Criminal Code;*

(ii) If the person committed an act in violation of public order or good morals or it is deemed necessary to place him in protective custody;

(iii) If he was held in detention or subjected to punishment by reason of wilful or serious negligence on his part;

(iv) If the person is charged with several offences punishable concurrently, and is found innocent on some of the counts but guilty on the remaining counts;

(v) If the order for his discharge is based on the provisions of article 231, sub-paragraphs (i) to (v), (vii) and (ix), or article 232 of the Code of Criminal Procedure;†

(vi) If a prosecution would have been instituted, had it been established that the circumstances mentioned in article 231, sub-paragraph (vi), did not exist.

Art. 3. 1. Indemnification in the case of detention pending trial, imprisonment or detention shall be awarded at the rate of four to six yuan a day for the period of such detention or imprisonment.

2. In the case of fines already paid, indemnification shall be awarded to an amount equivalent to the amount of the fine.

3. The provisions of paragraph 1 of this article shall apply, *mutatis mutandis*, to the award of indemnification to a person sentenced to hard labour in lieu of imprisonment.

4. Confiscated articles, other than articles ordered to be destroyed, shall be returned. Where confiscated articles have been sold at public auction, an amount

[1] The text of the Act was published in *Presidential Gazette* No. 1026, and was kindly furnished by the Permanent Mission of China to the United Nations. Translation by the United Nations Secretariat. The Government of China has written that "this is the first time that the system of compensation in cases of miscarriage of justice has been adopted in China."

* *Translator's note:* Article 18, paragraph 1, of the Criminal Code provides: "An act done by any person who has not completed the fourteenth year of his age shall not be punishable." Article 19, paragraph 1, provides: "An act done by an insane person shall not be punishable."

† *Translator's note:* Article 231 of the Code of Criminal Procedure provides:

"*Article 231.* No prosecution shall be instituted:

"(i) If a final judicial decision has already been rendered on the case;

"(ii) If the period of prescription of the right of prosecution has lapsed;

"(iii) If amnesty has been granted;

"(iv) If the act does not constitute a punishable offence under a law which comes into force after the commission of the act;

"(v) If, in the case of an offence which is liable to prosecution only on a complaint or request, the complaint or request has been withdrawn, or the time-limit within which such a complaint should be made has lapsed;

"(vi) If the accused has died;

"(vii) If the court has no jurisdiction over the accused . . .

"(ix) If the accused is entitled to immunity from legal penalties; . . ."

Article 232 of the Code of Criminal Procedure provides:

"*Art. 232.* 1. In dealing with cases involving any of the offences enumerated in article 61 of the Criminal Code, the procurator may decide, as he sees fit, not to institute prosecution by taking into account the factors mentioned in article 57 of the Criminal Code. . . ."

equivalent to the proceeds of the sale shall be awarded as indemnification.

5. Where a death sentence has been carried out, compensation shall be awarded in an amount of not more than 60,000 yuan or less than 40,000 yuan. In addition, indemnification shall be awarded in accordance with the provisions of paragraph 1 of this article in respect of the period of detention reckoned from the day of arrest.

Art. 4. 1. The authorities which make the order for discharge or acquittal shall have jurisdiction to consider the claim for indemnification save that in the case of claims made under article 1, paragraph 2, the competent district court shall have jurisdiction.

2. If a claimant considers himself aggrieved by decisions of the authorities referred to in the preceding paragraph, he may apply to the Criminal Indemnification Review Board of the Judicial Yuan for review of the decisions.

Art. 5. 1. The Criminal Indemnification Review Board shall be composed of the Chief Justice of the Supreme Court and a number of members to be appointed by the president of the Judicial Yuan from among Supreme Court justices. The Chief Justice of the Supreme Court shall preside over the meetings of the Board.

2. The rules of procedure of the Criminal Indemnification Review Board shall be laid down by the Judicial Yuan.

3. The staff of the Criminal Indemnification Review Board shall be seconded from the Judicial Yuan.

Art. 6. A claim for indemnification shall be made in writing. It shall be submitted to the competent authorities referred to in article 4, paragraph 1, and shall contain the following particulars:

(i) The name, sex, age, occupation and address or place of residence of the claimant;

(ii) The name, sex, age, occupation and address or place of residence of the representative, if any;

(iii) The purpose of the claim;

(iv) The pertinent facts and reasons, accompanied by the original copy of the ruling or decision concerned;

(v) The authorities having jurisdiction over the claim;

(vi) The date of submission of the claim.

Art. 7. Where the injured party has died or has been executed, his legal successor shall be entitled to claim indemnification.

Art. 8. The person entitled to claim indemnification in accordance with the provisions of the preceding article may not make a claim contrary to the express wishes of the deceased or of any other person having priority in the line of succession.

Art. 9. 1. A claim for indemnification may be withdrawn before action has been taken on it by the competent authorities.

2. A claim for indemnification, once withdrawn, may not be submitted again.

Art. 10. 1. Where the claim is submitted by a successor, the latter shall state his relationship with the deceased and indicate whether there are other persons having the same priority in the line of succession.

2. If there are several successors, a claim for indemnification submitted by any one of them shall be deemed to be a claim on behalf of all. Such a claim may not be withdrawn without the consent of the other successors.

Art. 11. A claim for indemnification shall be submitted to the competent authorities referred to in article 4, paragraph 1, within two years from the date of final discharge or acquittal. In the case of claims submitted in accordance with the provisions of article 1, paragraph 2, the two-year period shall be reckoned from the date of release from detention.

Art. 12. A claim for indemnification may be made by an authorized representative.

Art. 13. 1. The authorities competent to consider the claim for indemnification shall make an order, in writing, within the three months following the receipt of the claim. A copy of the decision shall be transmitted to the Procurator's Office of the Supreme Court and to the claimant.

2. If the claim is upheld, indemnification shall be awarded. If the claim is not upheld or if it is submitted after the expiry of the time limit, it shall be rejected by an order.

3. Where the claim for indemnification covers both injury caused by detention and injury caused by the execution of sentence, separate decisions shall be made in respect of the two aspects of the claim. The decisions shall be set out in the operative part of the order.

4. The provisions of the Code of Criminal Procedure shall apply, *mutatis mutandis*, to the notification of orders as provided in paragraph 1 of this article.

Art. 14. If the claim for indemnification is found not to be in the form prescribed by law, it shall be returned with an order requiring the necessary corrections to be made within a specified period. If the order is not complied with, the claim shall be rejected.

Art. 15. 1. Application for review of an order relating to a claim must be made, in writing, within twenty days of the date of notification of the order. The application shall state the grounds on which the application for review is based and shall be submitted to the Criminal Indemnification Review Board of the Judicial Yuan through the authorities referred to in article 4, paragraph 1.

2. The Procurator's Office of the Supreme Court may also request the review of any order which is, in its opinion, contrary to the provisions of articles 1 and 2.

Art. 16. 1. Indemnification funds shall be disbursed from the national treasury.

2. If the injury giving rise to the claim for indemnification is attributable to wilful or serious negligence or unlawful action on the part of a public official in the exercise of his functions in connexion with the cases referred to in article 1, the Government shall have a right to claim against the public official concerned.

Art. 17. 1. Requests for the payment of indemnification shall be made in writing and shall be submitted, together with a copy of household registration records, to the authorities referred to in article 4, paragraph 1.

2. The right to request payment of indemnification shall lapse one year after notification of the order awarding the indemnification.

3. The provisions of article 10 shall apply, *mutatis mutandis*, where the request referred to in paragraph 1 of this article is made by a successor.

4. If the injured party has received compensation in respect of the same injury under other legislation, such compensation shall be deducted from the amount of the indemnification awarded under this Act.

Art. 18. Neither the right to claim indemnification nor the right to request the payment of indemnification shall be transferable.

Art. 19. 1. If a motion for re-trial has been made in the criminal case to which the claim for indemnification is related, the claim proceedings shall be suspended pending a final decision in the re-trial.

2. If the re-trial mentioned in the preceding paragraph results in conviction, the claim shall be rejected.

Art. 20. 1. If a motion for re-trial is made after the award of indemnification, the payment of indemnification shall be stopped pending a final decision in the re-trial.

2. If the re-trial mentioned in the preceding paragraph results in conviction, the original order awarding indemnification shall be deemed null and void.

Art. 21. 1. If, in the circumstances described in paragraph 2 of the preceding article, payment of indemnification has already been made, the authorities making the original order shall issue an order to recover the amount of the indemnification paid.

2. The order mentioned in the preceding paragraph shall be enforceable.

Art. 22. The authorities making the order awarding indemnification shall, within ten days following the date on which the order becomes final, give public notice of the full text and summary of the operative part of the order and shall cause the text and summary to be published in the official gazette and in local newspapers in the area in which the injured party resides.

Art. 23. The payment of indemnification and the return of fines or confiscated articles shall be effected within fifteen days following the date on which a written request to that effect is received.

Art. 24. No legal fees shall be charged in connexion with proceedings involving a claim for indemnification.

Art. 25. The provisions of this Act shall be applicable to aliens, provided that the State of which the alien is a national grants the same rights of claim to Chinese nationals in accordance with international agreements or its national legislation.

Art. 26. This Act shall enter into force on 1 September 1959.

COLOMBIA

LEGISLATIVE ACT No. 1 OF 1959

of 15 September 1959

amending the National Constitution (Alternation of the parties in power)[1]

Art. 1. In the three constitutional periods comprised between 7 August 1962 and 7 August 1974, the office of President of the Republic shall be filled, alternately, by citizens belonging to the two traditional parties, Conservative and Liberal, so that the President elected for any one of the aforesaid periods shall belong to a different party from that of his immediate predecessor. Consequently, to initiate the alternation referred to in this article, the office of President of the Republic during the constitutional period comprised between 7 August 1962 and 7 August 1966 shall be filled by a citizen belonging to the Conservative Party.

Any election of a President of the Republic which contravenes the provisions of this article shall be null and void.

Art. 2. Any person who, in conformity with articles 124 and 125 of the Constitution, replaces the President in case of default of the latter, shall be of the same political affiliation as the President.

Art. 3. In case of absolute default of the President of the Republic, the designate acting as President shall continue to exercise that authority until the end of the presidential term without holding new elections.

Art. 4. When the designate acts as President because of the absolute default of the President of the Republic, the Congress shall elect a new designate.

Art. 5. If the person acting as President is a minister or governor, he shall immediately convene Congress to a meeting to be held within the next following ten days for the purpose of electing the designate. Should the minister or governor fail to convene such meeting, Congress shall meet of its own right within thirty days of the date on which the presidential vacancy occurred.

Art. 6. Article 2 of the Constitutional Reform approved by the plebiscite of 1 December 1957 shall remain in force up to and including the year 1974.

The rule contained in article 3 of the aforesaid Constitutional Reform approved by plebiscite shall apply in the corporations elected in accordance with that article.

Art. 7. Articles 124, 125 and 127 of the national constitution are hereby amended accordingly.

Art. 8. This legislative Act shall enter into force as soon as it is approved.

[1] Published in *Diario Oficial*, year XCVI, No. 30051, of 18 September 1959. Translation by the United Nations Secretariat.

CONGO

(Capital: Brazzaville)

ORDINANCE No. 3 OF 30 APRIL 1959 CONCERNING THE ELECTION OF DEPUTIES TO THE LEGISLATIVE ASSEMBLY[1]

TITLE I

SUFFRAGE

Art. 1. Suffrage shall be direct and universal. The ballot shall be secret.

. . .

TITLE II

VOTERS AND ELECTORAL ROLLS

Art. 3. All citizens of the Community of both sexes who have attained the age of twenty-one years and are in full possession of their civil and political rights shall be entitled to vote.

. . .

Art. 5. The following persons may not be registered on an electoral roll:

1. Persons convicted of a serious offence [crime];

2. Persons sentenced to imprisonment under a sentence not subject to suspension, or to imprisonment under a suspended sentence for a term of more than one month, with or without the addition of a fine, for: theft, false pretences or fraudulent conversion; a less serious offence [délit] subject to the penalties for theft, false pretences or fraudulent conversion; misappropriation committed by trustees of public funds; perjury; false certification as referred to in article 161 of the Penal Code; corruption and influence-peddling as referred to in articles 177, 178 and 179 of the Penal Code; or sex offences as referred to in articles 330, 331, 334 and 334 *bis* of the Penal Code;

3. Subject to the provisions of article 7, persons sentenced to imprisonment for a term of more than three months under a sentence not subject to suspension, or to imprisonment for a term of more than six months under a suspended sentence, for a less serious offence [délit] other than those enumerated in sub-paragraph 2;

4. Persons in contempt of court;

5. Undischarged bankrupts who have been declared bankrupt either by a French court or by a judgement issued abroad but enforceable in the Community;

6. Persons under disability.

Art. 6. Subject to the provisions of article 7, a person who has been convicted of a less serious offence [délit] referred to in article 5, sub-paragraph 3, and has been sentenced to imprisonment for a term of not less than one month and not more than three months under a sentence not subject to suspension or to imprisonment for a term of not less than three and not more than six months under a suspended sentence, or who has been convicted of any less serious offence [délit] whatever and been sentenced to a fine, not subject to suspension, of more than 200,000 francs, may not be registered on an electoral roll for a period of five years from the date on which the conviction became final.

However, in pronouncing the sentences referred to in the preceding paragraph, the courts may exempt the convicted person from this temporary loss of the right to vote and to stand for election.

Subject to the provisions of article 5 and of the first paragraph of this article, those persons who have been judicially deprived of the right to vote and to stand for election in accordance with the laws authorizing such deprivation may not be registered on an electoral roll during the period prescribed by the relevant judgement.

Art. 7. No obstacle to registration on an electoral roll shall be constituted by:

1. A conviction for a less serious offence [délit] committed through negligence, except where the offender has fled;
3. A conviction for an offence — other than an offence under the Companies Act of 24 July 1867 — which is classified as a less serious offence [délit] but is punishable without proof of bad faith and is subject to the penalty of a fine.

Art. 8. An electoral roll shall be set up in each district and, where appropriate, in each commune.

The electoral roll shall be deposited in the district or commune registry office and may be consulted by any interested person. No person may be registered on more than one roll in the Congo. . . .

TITLE III

ELIGIBILITY

Art. 10. All voters of both sexes who have attained the age of twenty-three years, who have not been committed to a trustee, who have been domiciled

[1] Text published in the *Journal officiel de la République du Congo*, 2nd year, No. 11, of 1 May 1959. Translation by the United Nations Secretariat.

and have been registered on an electoral roll in the Congo for at least two years before election day, who know how to read and write French and who have satisfied all the requirements of law concerning active military service shall be entitled to stand for election to the Legislative Assembly.

Art. 11. The following persons shall be barred from standing for election in any electoral district while they are in office or within six months after they have left office by reason of resignation, dismissal, change of residence or otherwise:

1. Representatives of the President of the Community, members of their staff, and heads of the departments and agencies under their authority;
2. The Secretary-General of the Government, directors and heads of departments and agencies of the Central Government of the Republic of the Congo, inspectors of administrative affairs, labour inspectors, inspectors and assistant inspectors of primary education, and heads of administrative districts or their deputies to the level of administrative officer;
3. Judges, magistrates and their deputies;
4. Officers of the armed forces (land, sea and air);
5. Police commissioners and police officers of higher rank;
6. Heads of inter-state departments and agencies, and their representatives in the republic;
7. Heads of custom houses;
8. Department heads of the direct or indirect tax administration;
9. Principal and assistant accountants and chief clerks of the Treasury, and heads of departments and agencies for the collection of direct or indirect taxes or the disbursement of public expenditure of any kind, who are in the service of the republic.

Art. 12. The following persons shall be barred from standing for election in any district in which they are in office and for six months after they have left office by reason of resignation, dismissal, change of residence or otherwise:

(*a*) Court clerks;

(*b*) Members of the armed services below officer rank;

(*c*) Officers of lower rank and agents of the police and security forces.

The ineligibility of the persons holding the offices specified in the present and the preceding articles shall apply in the same conditions to persons who are performing or have performed the relevant functions for at least six months without holding or having held the corresponding office.

. . .

TITLE IV

INCOMPATIBILITY OF OFFICES

Art. 14. A deputy may not hold a non-elective public office other than that of member of the Government.

Consequently, any person holding a non-elective public office who is elected to the Assembly shall be superseded in that office and be given the status provided for in such circumstances by the regulations governing that office eight days after assuming his parliamentary functions or, in the case of a disputed election, after the decision of the commission provided for in article 1, third paragraph, of Constitutional Act No. 4, of 20 February 1959.

A deputy may likewise not hold an office that comes under the jurisdiction of the Community, a state member of the Community, a foreign state or an international organization and is remunerated from its funds.

Art. 15. Persons entrusted by the Government or by the President of the Community with a temporary assignment may combine such assignment with their parliamentary office for a period not exceeding six months.

Art. 16. A member of the Assembly may not at the same time hold the office of chairman or member of the board, or of director-general or deputy director-general, of a state enterprise or state public establishment. The incompatibility specified in this article shall not apply to deputies or to members of the Government appointed as *ex officio* members of the board of a state enterprise or a state public establishment under the statutes of such enterprise or establishment.

Art. 17. A member of the Assembly may not at the same time hold the office of general manager, chairman of the board of directors, managing director, director-general, deputy director-general or manager of:

1. A company, enterprise or establishment receiving benefits in the form of guaranteed interest rates, subsidies or the like from the State or a community, save where such benefits derive from the automatic application of a general law or a general regulation;
2. A company whose purpose is exclusively financial and which invites the public to deposit savings and to invest capital;
3. A company or enterprise principally engaged in carrying out work or providing supplies or services on behalf or under the supervision of the State, a community, a public establishment or a state enterprise; or a company or enterprise of which more than half the registered capital has been subscribed by companies or enterprises engaged in the aforementioned activities.

. . .

Art. 21. A member of the Assembly who at the time of his election holds one of the incompatible offices referred to in this title shall, within eight days after assuming his parliamentary functions or, in the case of a disputed election, after the decision of the commission provided for in article 1, third paragraph, of Constitutional Act No. 4, of 20 February 1959,

furnish evidence that he has resigned from the office which is incompatible with the said functions or, if he holds a government post, that he has applied to be given the special status provided for by the regulations governing that office. If he fails to do so, he shall be declared to have resigned from his parliamentary functions without further formalities.

. . .

TITLE VI

ORGANIZATION OF ELECTIONS

. . .

Art. 43. Any voter suffering from infirmities which clearly make it impossible for him to put his ballot-slip into the envelope and to put the envelope into the ballot-box shall be permitted the assistance of a voter chosen by himself.

. . .

TITLE IX

PENAL PROVISIONS

. . .

Art. 72. Any person who, by means of false information, slanderous rumours or other fraudulent devices, had tricked voters into voting or not voting in a certain way, or has induced one or more voters to abstain from voting, shall be liable to imprisonment for a term of one month to one year and to a fine of 5,000 francs to 100,000 francs.

Art. 73. Persons who, by unlawful assembly, clamour or threatening demonstrations, have disturbed the proceedings of an electoral board, or have impaired the exercise of the franchise or the freedom to vote, shall be liable to imprisonment for a term of three months to two years and to a fine of 5,000 francs to 100,000 francs.

. . .

COSTA RICA

DECREE No. 2345 OF THE LEGISLATIVE ASSEMBLY of 14 May 1959[1]

Single article. Articles 93, 95, 100 and 177 of the Political Constitution[2] are hereby amended and shall read as follows:

"*Art. 93.* Suffrage is a fundamental and obligatory civil function and shall be exercised before the electoral boards in direct and secret ballot by citizens entered in the civil register.

"*Art. 95.* The exercise of the suffrage shall be regulated by law in accordance with the following principles:

(1) Independence of the electoral function;

(2) Duty of the State to enter citizens in the civil register *ex officio* and to furnish them with identity cards to enable them to vote;

(3) Effective guarantees with regard to freedom, order, incorruptibility and impartiality on the part of the government authorities;

(4) Prohibition of voting by citizens in places other than their place of domicile;

(5) Identification of the elector by means of an identity card with photograph; and

(6) Guarantees respecting the representations of minorities.

"*Art. 100.* The Supreme Electoral Tribunal shall normally consist of three judges and three alternates appointed by the Supreme Court of Justice by a vote of not less than two-thirds of all its members.

"Their qualifications shall be the same as those of members of the Supreme Court and their responsibilities shall be the same as those established for members of that court.

"The conditions of employment and minimum hours of work of judges of the Supreme Electoral Tribunal shall, *mutatis mutandis*, be those laid down in the Judiciary Act for judges of the Court of Cassation, and their remuneration shall be the same as that established for such judges.

"*Art. 100. Transitional provision.* The present judges of the Supreme Electoral Tribunal may continue to serve until the expiry of their present term of office, under the conditions of employment in effect when they were appointed or may elect to accept the amended conditions."

. . .

[1] Published in *La Gaceta*, year LXXXI, No. 118, of 28 May 1959. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1949*, page 44.

CUBA

FUNDAMENTAL LAW OF THE REPUBLIC

of 7 February 1959[1]

TITLE I

THE NATION, ITS TERRITORY AND FORM OF GOVERNMENT

Art. 1. Cuba is an independent and sovereign State organized as a unitary and democratic republic for the enjoyment of political liberty, social justice, individual and collective well-being and human brotherhood.

Art. 2. Sovereignty resides in, and all public powers emanate from the people.

. . .

TITLE II

NATIONALITY

. . .

Art. 10. Every citizen is entitled:

(*a*) To reside in his country without being subjected to discrimination or extortion of any kind, regardless of his race, class, political opinions or religious belief;

(*b*) To vote as statute directs at all elections and referenda called in the republic;

(*c*) To receive the benefits of public co-operation and, after proof of poverty, those of social assistance;

(*d*) To perform public duties and hold public office;

(*e*) To enjoy the priority granted by the Fundamental Law and by statute with respect to employment.

Art. 11. Cuban citizenship is acquired by birth or by naturalization.

Art. 12. The following persons are Cuban nationals by birth:

(*a*) All persons born in the territory of the republic, except children born to aliens in the service of their governments;

(*b*) Persons born in foreign territory of a Cuban father or mother, by the mere fact of taking up residence in Cuba;

(*c*) Persons born outside the territory of the republic, of a native-born Cuban father or mother who has lost Cuban nationality, if they claim Cuban citizenship in the manner and subject to the conditions prescribed by statute;

(*d*) Aliens who have served for one year or more in the Army of Liberation and remained in it until the termination of the war for independence, provided that they evidence such service and permanence by producing an authentic document issued by the national archives;

(*e*) Aliens who have served for two years or more in the ranks of the Revolutionary Army in the struggle against the tyranny which was overthrown on 31 December 1958 and held the rank of commandant for at least one year, provided that they furnish proof of such service and rank in the manner prescribed by statute.

Art. 13. The following persons are Cuban nationals by naturalization:

(*a*) Aliens who, after five years of continuous residence in the territory of the republic, and not less than one year after having declared their intention to acquire Cuban nationality, obtain citizenship papers in accordance with statute, provided that they are familiar with the Spanish language.

(*b*) An alien who marries a Cuban woman, and an alien woman who marries a Cuban national, if children are born of that union or if the persons in question reside in the country continuously for two years after being married, provided that they first renounce their original nationality.

(*c*) Aliens who have served in the armed struggle against the tyranny which was overthrown on 31 December 1958 and who at the end of that struggle held the rank of officer in the Revolutionary Army, provided that they furnish proof of such service and rank in the manner prescribed by statute.

. . .

Art. 15. A person shall lose Cuban citizenship if:

(*a*) He acquires a foreign citizenship;

(*b*) Without the permission of the Council of Ministers he enters the military service of another

[1] Published in *Folletos de Divulgación Legislativa*, Editorial Lex, La Habana, kindly furnished by Dr. Jorge Tallet, Chief of the Department of Cultural Affairs, Ministry of State, Cuba. The text of the *Ley Fundamental* appears in Volume II of this series, while the texts of the laws amending articles 24 and 25 and adding the sixth additional provisional article appear in vols. XV, VIII and XIII respectively. The text of the *Ley Fundamental* appears also in *Gaceta Oficial*, No. 13 Extraordinary, of 7 February 1959. Translation by the United Nations Secretariat.

nation or accepts an office imparting authority or jurisdiction.

(*c*) Being a Cuban national by naturalization, he resides for three consecutive years in the country of his birth, unless every three years he makes a declaration before the competent consular authority to the effect that he wishes to retain Cuban citizenship.

The offences or causes of disgrace for which citizenship acquired by naturalization shall be revoked by final judgement of a competent court may be prescribed by statute.

(*d*) Being a naturalized citizen, he accepts a double citizenship.

Loss of citizenship for the reasons specified in paragraphs (*b*) and (*c*) of this article shall not become effective unless ordered by final judgement in a contested hearing, before a court of justice as provided by statute.

Art. 16. Neither marriage nor dissolution of marriage shall affect the nationality of the spouses or their children.

A Cuban woman married to an alien shall retain Cuban nationality.

An alien woman who marries a Cuban national and an alien who marries a Cuban woman shall retain their nationality of origin or shall acquire Cuban nationality by option in accordance with the Fundamental Law, a statute, or an international treaty.

Art. 17. Cuban citizenship may be recovered in the manner prescribed by statute.

Art. 18. A person who is a Cuban national by naturalization may not perform on behalf of Cuba official functions in his country of origin.

TITLE III

ALIENS

Art. 19. Aliens resident in the territory of the republic shall be equal with Cubans with respect to

(*a*) The protection of their person and property;

(*b*) The enjoyment of the rights recognized in this Fundamental Law, except those granted exclusively to nationals;

The Government may, however, compel an alien to leave the national territory in the cases and manner laid down by statute.

An alien with a Cuban family established in Cuba may be deported only by judgement of a court in accordance with statute.

The organization of associations of aliens shall be regulated by statute without prejudice to the rights of Cuban members of such associations.

. . .

(*g*) The enjoyment of civic rights, subject to the conditions and limitations prescribed by statute.

TITLE IV

FUNDAMENTAL RIGHTS

First Section

RIGHTS OF INDIVIDUALS

Art. 20. All Cuban citizens are equal before the law. The republic does not recognize special jurisdictions [fueros] or privileges.

Any discrimination by reason of sex, race, colour or class or any other discrimination injurious to human dignity is hereby declared illegal and a penal offence.

Penalties for breach of this provision shall be prescribed by statute.

Art. 21. Penal statutes shall have retroactive effect in favour of the offender. Public officers and employees committing offences in the discharge of their duties, and persons committing electoral offences and offences against the individual rights guaranteed by this Fundamental Law shall, if guilty of fraud, lost the benefit of this provision. Persons found guilty of such offences shall be subject to the penalties and classifications of the law in force at the time of the offence. In the case of offences committed in the service of the tyranny which was overthrown on 31 December 1958, the offenders may be tried in accordance with the penal statutes promulgated for the purpose.

Art. 22. No other statute shall have retroactive effect unless it itself expressly so provides for reason of public order, social utility or national necessity by words enacted by a vote of two-thirds of the total number of members of the Council of Ministers. If the provision purporting to be retroactive is challenged as unconstitutional, the matter shall be decided by the Tribunal of Constitutional and Social Guarantees, which may not refuse to act for a formal or any other reason.

In every case the statute itself shall prescribe the degree, manner and form of compensation to be given for its retroactive effect upon any right lawfully acquired by virtue of an earlier enactment.

A statute passed in virtue of this article shall not be valid if it produces effects contrary to the provisions of article 24 of this Fundamental Law.

Art. 23. Civil obligations arising from contracts, or from other acts either of commission or of omission, may not be set aside or varied either by the legislature or by the executive, and consequently no enactment shall retroactively affect their enforcement. Actions based on such obligations may be suspended during a grave national crisis for so long as is reasonably necessary by enactment subject to the same conditions and challenge as are referred to in the first paragraph of the preceding article.

Art. 24 (as amended by the Constitutional Reform Act of 22 December 1959). Confiscation of goods is forbidden, but is authorized in the case of the property of the tyrant who was deposed on 31 December 1958

and his collaborators, that of individuals or bodies corporate responsible for offences against the national economy or the public finances, or who are enriching themselves, or have enriched themselves, unlawfully under the protection of the public authorities, and that of persons who have been convicted of offences classified by statute as counter-revolutionary or who, to escape the jurisdiction of the revolutionary tribunals, leave the national territory by any means, or having left the national territory, engage in conspiratorial activities abroad against the Revolutionary Government. No other individual or body corporate may be deprived of his property except by a competent judicial authority for duly established reasons of public utility or social interest, and in every case after payment in cash of proper compensation, the amount of which shall be determined by the court. In case of failure to comply with these requirements, a person whose property has been expropriated shall be entitled to protection by a court of justice and, in a proper case, to restitution of his property. If the reasons of public utility or social interest, or the necessity of expropriation, are contested, the court shall decide the matter.

Art. 25 (as amended by the Constitutional Reform Act of 29 June 1959). The penalty of death may not be awarded. An exception shall be made in the case of members of the armed forces, of the repressive organs of the tyranny, of the auxiliary groups organized by the latter, of the armed groups privately organized to defend it and of spies guilty of offences committed in establishing or defending the tyranny which was overthrown on 31 December 1958.

An exception shall also be made in the case of persons guilty of treason or subversion of the national institutions or of espionage on behalf of the enemy in time of war with a foreign nation; and persons guilty of counter-revolutionary offences classified as such by statute and of offences injurious to the national economy or to the public finances.

Art. 26. The Criminal Procedure Act shall contain provisions to ensure that every charge shall require proof by evidence independent of that of the accused, of his spouse, and of his relatives within the fourth degree of consanguinity and the second of affinity. Every accused person shall be deemed innocent until found guilty.

In every case the authority shall draw up a warrant for detention stating the authority issuing it, the reasons for its issue, and the place to which the detained person is to be taken, and shall notify the prisoner of all these particulars, and the prisoner shall sign the warrant.

The registers of detained persons and prisoners shall be open to public inspection.

Any attack upon the physical integrity, safety or honour of a detained person shall, until the contrary is proved, be attributed to the officer arresting the person or holding him in custody. A subordinate may refuse to carry out an order conflicting with this guarantee. A guard employing arms against a detained person or a prisoner attempting to escape shall be charged and shall be called to account, according to law, for any offence he may have committed.

Persons detained or imprisoned for political or social offences shall be segregated from ordinary offenders, and shall not be required to do any work or be subjected to the penal regulations applying to ordinary prisoners.

No detained person or prisoner shall be held *incomunicado.*

Only the ordinary courts shall hear cases of breach of this provision, regardless of the place or circumstances of detention or the persons involved.

Art. 27. Every detained person shall be released or delivered to the competent judicial authority within the twenty-four hours following his arrest.

Every detained person shall be released from custody, or committed to prison by a judicial order incorporating a statement of reasons, within seventy-two hours after being brought before the competent judge. Within the same period the detained person shall be notified of the order made.

Persons remanded in custody shall be kept in places distinct and completely separate from those used for persons serving sentences, and shall not be required to do any work or be subjected to the penal regulations applying to persons serving sentences.

Art. 28. No person shall be tried or sentenced except by a competent judge or court under laws enacted before the commission of the crime, and in compliance with the procedure and the guarantees established by such laws. No sentence shall be pronounced against a defendant in his absence; nor shall any person be convicted in a criminal action without being heard. No person shall be obliged to testify against himself, or against his spouse or his relatives within the fourth degree of consanguinity or the second of affinity.

No violence or coercion of any kind shall be practised on any person in order to force him to make a statement. A statement obtained in violation of this provision shall be null and void, and those responsible shall incur the penalties prescribed by law.

Art. 29. Any person detained or imprisoned otherwise than in accordance with the Fundamental Law or a statute, or in breach of the procedure or guarantees provided thereby, shall be released upon his own application or upon that of any other person, without need of a legal representative by summary *habeas corpus* proceedings before an ordinary court of justice.

In no case and for no reason may the court disclaim jurisdiction or allow its competence to be contested or defer its decision, which shall have priority over all other matters.

It is absolutely obligatory that any person detailed or imprisoned by any authority, officer, person or body

whatsoever shall be brought before the court issuing the writ of *habeas corpus*, and no plea of obedience to a superior authority may be admitted.

Any provision impeding or retarding the presentation of the person deprived of liberty, or delaying *habeas corpus* proceedings, shall be null and void, and the judicial authority shall be bound so to declare it.

A court seized of a writ of *habeas corpus* shall, if the detained person or prisoner is not brought before it, order the arrest of the person in default, who shall be tried in accordance with law.

A judge or magistrate who rejects an application for a writ of *habeas corpus* or who fails to comply with any other provision of this article shall be dismissed from office by the Chamber of Government of the Supreme Court.

Art. 30. Subject to the law governing immigration and to the powers of the authorities relating to crime, any person may enter and remain in the national territory, leave it, move from one place to another, and change residence without need of a letter of safe conduct, passport or other similar requirement.

No person shall be obliged to change his domicile or residence except by order of a judicial authority in the cases and subject to the requirements specified by statute.

No Cuban may be expatriated or prohibited from entering the territory of the republic.

Art. 31. The Republic of Cuba offers and extends the right of asylum to persons persecuted for political reasons, provided that the persons thus sheltered respect its national sovereignty and laws.

The State shall not authorize the extradition of persons guilty of political offences, or seek extradition of Cubans guilty of such offences who have taken refuge in foreign territory.

An alien political refugee expelled from the national territory in conformity with the Fundamental Law and with statute shall not be sent to the territory of the State claiming him.

Art. 32. The secrecy of correspondence and other private documents is inviolable, and neither may be seized or examined except by a public officer or agent in virtue of an order, incorporating a statement of reasons, issued by a competent judge. In all cases secrecy shall be maintained regarding particulars irrelevant to the reasons for the seizure or examination. The privacy of telegraphic, telephonic and cable communication is similarly inviolable.

Art. 33. Every person shall be free, without previous censorship, to express his thoughts in speech or writing or by any other graphic or oral mode of expression, and may use for that purpose any available means of dissemination.

A book, pamphlet, gramophone record, film, periodical or publication of any nature may be withdrawn from circulation only if defamatory to a person or prejudicial to law and order, and then only in virtue of an order, incorporating a statement of reasons, issued by a competent judicial authority, and without prejudice to liability for the criminal offence.

In the cases referred to in this article, the premises, equipment and instruments used by the organ of publicity may not be seized, nor their use prevented, except in case of civil liability.

Art. 34. The domicile is inviolable; in consequence whereof no person may enter the domicile of another person at night without that person's consent except in order to aid victims of a crime or disaster, or by day except in the cases and in the manner determined by law.

In case of suspension of this guarantee, the domicile of a person may on no account be entered except by the proper competent authority in virtue of a written warrant or order, a true copy of which shall be delivered to the occupant or his family or his nearest neighbour, as the case may require. The same shall apply where the authority acts through an agent.

Art. 35. The profession of any religion and the exercise of any kind of worship shall be free, subject only to respect for Christian morality and public order.

The Church shall be separate from the State, which shall not support with money any form of worship.

Art. 36. Every person has the right to address petitions to the authorities; to have them considered and determined within a period not exceeding forty-five days; and to be notified of the result.

On the expiry of the statutory time-limit or, if there be none, of the period aforesaid, the petitioner may appeal in the manner authorized by law as though his petition had been rejected.

Art. 37. The inhabitants of the republic have the right to assemble peaceably without arms, and the right to hold processions and to associate together for all lawful purposes of life in conformity with the pertinent rules of law, subject only to such restriction as is absolutely necessary to ensure public order.

The formation and existence of organizations opposing the democratic system of government of the republic or seeking to diminish the national sovereignty are unlawful.

Art. 38. Any act prohibiting or restricting participation by a citizen in the political life of the nation is hereby declared a penal offence.

Art. 39. Public functions involving the exercise of jurisdiction shall be discharged only by Cuban citizens.

Art. 40. A legal, governmental or any other enactment regulating the exercise of the rights guaranteed by this Fundamental Law shall, if it diminishes, restricts or impairs any of those rights, be null and void.

Resistance adequate to protect the personal rights hereinbefore guaranteed is lawful.

Proceedings for breach of any provision of this title shall be public and shall require no security or any kind of formality, but shall be instituted by simple information.

The enumeration of the rights guaranteed in this title does not exclude other rights established in this Fundamental Law or of like nature or derived from the principle of the sovereignty of the people or from the republican form of government.

TEMPORARY PROVISIONS RELATING TO THE FIRST SECTION OF TITLE IV

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3. In the case of compulsory expropriations carried out for the purpose of implementing the agrarian reform and consequent redistribution of land, prior payment of compensation shall not necessarily be in cash. Other methods of payment may be established by statute, provided that they incorporate the necessary guarantees.

4. In the case of members of the armed forces, of the repressive organs of the tyranny which was overthrown on 31 December 1958, of the auxiliary groups organized by the latter, of the armed groups privately organized to defend it and of spies, guilty of offences committed in establishing or defending the tyranny, the offenders may be convicted under laws enacted after the offence was committed.

Laws enacted after the offence was committed may also be applied against the tyrant, his collaborators, and individuals or bodies corporate responsible for offences against the national economy or the public finances and against those who have enriched themselves unlawfully under the protection of the public authorities.

5. Notwithstanding the provisions of article 38 of this Fundamental Law, statutes may be enacted to restrict or prohibit participation in the political life of the nation by those citizens who, by their public activities and their participation in the electoral processes of the tyranny, assisted in maintaining it.

Second Section

FUNDAMENTAL GUARANTEES

Art. 41. The guarantees of the rights recognized in articles 26, 27, 28, 29, 30 (first and second paragraphs), 32, 33, 36 and 37 (first paragraph) of this Fundamental Law may be suspended in all or in part of the national territory for a period not exceeding forty-five natural days, when the security of the State so requires, or in case of war or invasion of the national territory or of grave disturbance or other events profoundly disturbing the public tranquillity.

Suspension of the fundamental guarantees may be ordered only by a special law enacted by the Council of Ministers or by executive decree; in the latter case, however, the decree of suspension shall provide for a report to the Council of Ministers which, within a period not exceeding forty-eight hours, shall ratify or refuse to ratify the suspension by majority decision arrived at by roll-call vote. If the Council of Ministers thus assembled votes against the suspension, the guarantees shall be automatically re-established.

Art. 42. The territory in which the guarantees referred to in the preceding article are suspended shall be governed by the Public Order Act; but neither that statute nor any other may provide for the suspension of guarantees other than those mentioned; nor may any new offences be declared or any penalties imposed other than those established by statute at the time of suspension.

Persons detained for the reasons which determined the suspension shall be kept in special places set aside for persons charged with or convicted of political or social offences.

The executive may not detain any person for more than ten days without bringing him before the judicial authorities.

TITLE V

THE FAMILY AND CULTURE

First Section

THE FAMILY

Art. 43. The family, motherhood and marriage are under the protection of the State.

A marriage ceremony shall be valid only if performed by an officer legally empowered to do so. A judicial marriage ceremony shall be performed without charge and shall be upheld by statute.

Marriage is the legal basis of the family and is founded on the absolute equality of the rights of husband and wife; the economic relationship between the spouses shall be governed by this principle.

A married woman shall enjoy full civic capacity. She shall not require her husband's permission or authority to manage her property, engage freely in trade or industry or practise a profession, art or craft or dispose of the proceeds of her work.

A marriage may be dissolved by consent of the spouses or on the petition of either spouse on the grounds and in the manner specified by statute.

The courts shall determine the cases in which a union between persons with legal capacity to contract marriage shall, because of its permanence and exclusiveness, be fairly deemed to be a civil marriage.

Allowances for the maintenance of the wife and children shall have priority over any obligation, and this priority may not be frustrated by the freedom from attachment of any property, salary, pension or income of any kind whatsoever.

Unless the wife is proved to have means of subsistence or is the guilty party, she shall be granted an allowance commensurate with the means of her husband, regard being had to her station in life. The

allowance shall be paid and guaranteed by the divorced husband, and payment shall continue until she contracts a new marriage, without prejudice to the allowance established for each child, which shall also be guaranteed.

Suitable penalties shall be provided by law for persons who, in the event of divorce, separation, or another circumstance, attempt to evade this responsibility.

Art. 44. Parents shall be bound to support, assist, bring up and educate their children, and children shall be bound to respect and assist their parents. Fulfilment of these obligations shall be enforced by suitable guarantees and penalties.

Children born out of wedlock to a person who at the time of conception had the legal capacity to contract marriage shall have the same rights and duties as those laid down in the preceding paragraph, subject to the law governing inheritance. For this purpose, similar rights shall accrue to a child born out of wedlock to a married person when that person acknowledges or a judgement of affiliation declares that he is that person's child. The investigation of paternity shall be governed by statute.

All classification of parentage is hereby abolished. No registration of birth, or certificate of birth or of baptism, or certificate referring to parentage, shall contain any statement importing a difference between births or relating to the marital status of the parents.

Art. 45. Taxation, social security and social assistance shall be administered in accordance with the rules of this Fundamental Law governing protection of the family.

Children and young persons shall be protected against exploitation and moral and material desertion. The State, the provinces and the municipalities shall organize appropriate institutions for this purpose.

Art. 46. Subject to the limits laid down in this Fundamental Law, a Cuban citizen may bequeath one-half of his estate as he chooses.

Second Section

CULTURE

Art. 47. Culture in all its manifestations constitutes a primary interest of the State. Scientific investigation, artistic expression and the publication of their results, and education, are free, without prejudice to such inspection and regulation of education as the State may be empowered by statute to execute.

Art. 48. Primary education is compulsory for young persons of school age, and the State is bound to provide it, without prejudice to the co-operation required of local authorities.

Kindergarten, primary and vocational education and necessary teaching materials shall, when provided by the State, a province or a municipality, be free of charge.

Elementary secondary education and all higher education, except special intermediate and university courses, provided by the State or a municipality shall be free of charge.

Provision may be made by statute for the commencement or continuation in existing or future pre-university institutions of a small registration charge as a contribution towards the expenses of their upkeep.

As far as possible, the State shall award scholarships to enable young persons who show outstanding aptitude and ability, but are handicapped by insufficient means, to benefit by state education not provided free of charge.

Art. 49. The State shall maintain a system of schools for adults for the special purpose of eliminating and preventing illiteracy, and of rural schools intended mainly for practical instruction to serve the needs of small agricultural, maritime and other communities, and of schools of arts and crafts and of technical schools of agriculture, industry and commerce, planned to meet the requirements of the national economy. All tuition therein shall be provided free of charge, and provinces and municipalities shall contribute to the maintenance thereof in accordance with their means.

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Art. 51. Public education shall be so organized that all grades, including the higher, are duly co-ordinated and continuous with one another. The state system shall ensure the special encouragement and development of all occupations, with due regard to the cultural and practical needs of the nation.

All education, both public and private, shall be patterned on Cuban ideals and the spirit of human brotherhood and aimed at inculcating in pupils a love of their country, of its democratic institutions, and of all persons who have fought for either.

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Art. 55. Public education shall be secular. Centres of private education shall be subject to regulation and inspection by the State, but shall in every case retain the right to provide, separately from technical education, such religious education as they desire.

Art. 56. Instruction in Cuban literature, history and geography and in civics and the Fundamental Law shall be given in all public and private centres of learning by Cuban-born teachers from the writings of Cuban-born authors.

Art. 57. A person may teach only if he has obtained the qualifications described by statute.

The non-teaching professions, arts and crafts requiring the possession of a qualification for their practice, and the manner in which such qualification is to be obtained, shall be specified by statute. In filling public posts the State shall give priority to citizens who have undergone the appropriate official training.

Art. 58. The State shall regulate by statute the conservation of the cultural treasures and artistic and historic wealth of the nation and shall likewise give special protection to national monuments and to places notable for their natural beauty or for their recognized artistic or historic value.

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TITLE VI

LABOUR AND PROPERTY

First Section

LABOUR

Art. 60. Every person possesses an inalienable right to work. The State shall employ the resources at its disposal to furnish employment to every unemployed person, and shall assure to every manual or professional worker the economic conditions necessary to a decent way of life.

Art. 61. Every manual or professional worker employed in a public or private undertaking by the State or a province or a municipality shall be guaranteed a minimum wage or salary fixed according to the conditions prevailing in each region and to his reasonable material, moral and cultural needs, and considering whether he is the head of a family.

The method of periodical adjustment, by joint committees, of minimum wages and salaries for each branch of work according to the standard of living and special conditions prevailing in each region and each branch of industry, commerce and agriculture shall be established by statute.

The minimum wage per working day for piecework, work for an agreed price or work done on contract shall be properly guaranteed.

The part of a wage or salary representing the minimum shall be exempt from attachment except to secure maintenance allowance in the manner prescribed by statute. Implements belonging to a worker shall likewise be exempt from attachment.

Art. 62. For equal work under identical conditions an equal wage shall always be paid, irrespective of persons.

Art. 63. No deductions not authorized by law may be made from the wages or salaries of manual or professional workers.

Moneys due to workers on account of payments and wages in respect of the preceding year shall have priority over all other liabilities.

Art. 64. Payment by vouchers, tokens, goods or any other symbols in substitution for legal tender is totally prohibited. Any breach of this provision shall be a penal offence.

Day labourers shall draw their wages within a period not to exceed one week.

Art. 65. Social insurance is established as an absolute right of the workers, which cannot be waived or lapse; it shall be maintained by the equitable participation of the State, the employers and the workers themselves for the effective protection of the workers against disability, in old age, against unemployment and other labour risks in a manner to be determined by statute. The right to a retirement pension and to survivors' pensions in the event of death is likewise established.

The branches of social insurance mentioned in the preceding paragraph shall be administered and managed by joint bodies elected by the employers and workers and including a representative of the State, in the manner laid down by statute, unless a social insurance bank is set up by the State.

Insurance against industrial accidents and occupational diseases is likewise declared to be compulsory; its cost shall be borne solely by the employer, and its operation shall be supervised by the State.

Social insurance funds or reserves may not be transferred, or used for purposes other than those for which they were established.

Art. 66. The maximum daily hours of work shall not exceed eight. This maximum may be reduced to six hours a day for persons over fourteen but under eighteen years of age.

The maximum weekly hours of work shall be forty-four, and for the purpose of calculating the wage or salary shall be deemed to be forty-eight; but industries which by their nature are obliged to operate without interruption at a particular season of the year shall be exempt from this rule until special provision is made for them by statute.

The employment and apprenticeship of persons under fourteen years of age are prohibited.

Art. 67. All manual and professional workers shall be entitled to one month's holiday with pay in respect of eleven months' work in each calandar year. Workers who, on account of the nature of their work or for some other reason, have not worked for eleven months shall be entitled to a holiday with pay proportionate to the period of work completed.

The employers of workers ceasing work on account of a national holiday or a day of mourning shall pay them their wages for that day.

Industrial and commercial establishments and places of public entertainment shall be closed on four days only of national holiday or mourning. Other such days shall be days of official holiday or mourning and shall be celebrated without suspension of the business of the nation.

Art. 68. No difference may be established between married and single women in regard to employment.

The protection of working mothers, including office workers, shall be governed by statute.

A pregnant woman may not be dismissed, or required to do work requiring considerable physical effort, within three months before confinement.

A mother shall be granted compulsory leave at her ordinary rate of pay during the six weeks immediately preceding and the six weeks immediately following confinement, and shall retain her employment and all the rights pertaining thereto and specified in her labour contract. During the nursing period she shall be allowed two special daily rest-periods of one half-hour each to feed her child.

Art. 69. The right of employers, salaried employees in private undertakings, and workers to form associations for the exclusive purpose of their economic and social activities is hereby acknowledged.

The competent authority shall decide within a period of thirty days on the grant or refusal of registration to an employers' or employees' association. Registration shall endow an employers' or employees' association with legal personality. The recognition of such associations by employers and employees shall be governed by statute.

Such associations may be dissolved only by final judgement of a court.

Every member of the governing body of such an association shall be a Cuban citizen by birth.

Art. 70. An official association shall be formed for every profession for the practice of which a university degree is required. The constitution and operation within each such association of a national governing body and of such local governing bodies as may be necessary shall be so regulated by statute that the association may be governed with full authority by a majority of its members.

The obligatory formation of associations for other professions officially recognized by the State shall likewise be governed by statute.

Art. 71. The right of workers to strike and of employers to lock out in accordance with statutory provision is hereby acknowledged.

Art. 72. A system of collective labour agreements binding on both employers and workers shall be established by statute.

A condition permitting waiver, diminution, impairment or relinquishment of any right granted to workers by this Fundamental Law or by statute shall, even if embodied in a labour contract or any other agreement, be null and void and shall not bind the parties.

Art. 73. Cuban citizens by birth shall, in a manner to be determined by statute, constitute the majority of the workers in each class of employment and receive the larger part of the aggregate of all wages and salaries.

Likewise, naturalized Cuban citizens with families born in the national territory shall be given protection with priority over other naturalized Cuban citizens and over aliens.

The provisions of the preceding paragraphs shall not apply to aliens for the purpose of filling indispensable technical posts, provided that the relevant statory provisions are observed and that the admission of Cuban citizens by birth to apprenticeships in the technical work of those posts is facilitated.

Art. 74. The Ministry of Labour shall ensure, as one of the essential principles of its permanent social policy, that no discrimination of any kind is practised in allotting employment in industry and trade. Where staff is changed, new posts are established or new factories, industries or commercial undertakings are opened, employment shall, subject always to the engagement of suitable staff, be allotted without regard to race or colour. It shall be provided by statute that any other practice shall be a penal offence for which proceedings may be instituted by the State directly or at the instance of an aggrieved party.

Art. 75. The formation of commercial, agricultural, distributive and other co-operative undertakings shall be encouraged by statute, but their scope, constitution and operation shall be so regulated that they shall not provide means of evading or frustrating the provisions of this Fundamental Law governing labour.

Art. 76. Immigration shall be governed by statute with due regard for the national economic system and the requirements of the community. The importation of contract labourers and any form of immigration likely to worsen conditions of employment are prohibited.

Art. 77. No undertaking may discharge an employee without the preliminary proceedings and other requirements of statute, which shall determine the proper grounds for dismissal.

Art. 78. The employer shall be liable for compliance with the provisions of law governing social welfare even where he contracts with an intermediary for the actual performance of work.

Apprenticeship in the manner laid down by statute shall be compulsory in all industries and types of work in which technical knowledge is necessary.

Art. 79. The State shall promote the building of cheap housing for workers.

Those undertakings which, because they employ workers at a distance from centres of population, shall be bound to provide suitable housing accommodation, schools, hospitals and other services and facilities requisite for the physical and moral well-being of the worker and his family as shall be specified by statute.

The conditions to be satisfied by workshops, factories and workplaces of all kinds shall also be laid down by statute.

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Art. 82. Professions requiring an official qualification may, save as provided in article 57 of this Fundamental Law, be practised only by Cuban citizens by birth or by Cuban citizens naturalized not less than five years before the date of the application for licence to practise. The Council of Ministers may, however, by special legislation, temporarily suspend

this provision when the co-operation of alien skilled or technical workers is necessary or advisable in the public interest for the development of public or private undertakings of national importance. The enactment providing the suspension shall specify the extent and duration of the licence.

In giving effect to this provision, and where the practice of a new profession, art or craft is governed by a statute or order, the acquired right to work of existing practitioners of the profession, art or craft shall be respected and the principles of international reciprocity shall be observed.

Art. 83. The manner of moving factories and shops from place to place shall be regulated by statute in order to prevent the worsening of working conditions.

Art. 84. Problems arising out of the relations between capital and labour shall be referred to conciliation boards consisting of representatives of employers and employees in equal numbers. The judicial officers who shall be chairmen of these boards and the national court which shall hear appeals against their awards shall be specified by statute.

Art. 85. In order to ensure the enforcement of social legislation, the State shall provide for the supervision and inspection of undertakings.

Art. 86. The rights and benefits enumerated in this section shall not exclude others derived from the principle of social justice, which others shall accrue equally to all persons taking part in the process of production.

Second Section

PROPERTY

Art. 87. The Cuban State recognizes the existence and lawfulness of private property conceived in the broadest sense as a social function and limited only by provisions of law enacted for reasons of public necessity or social interest.

Art. 88. The subsoil belongs to the State, which may grant concessions for its exploitation in accordance with statute. A mining concession not worked within the statutory period shall be declared void, and the property shall revert to the State.

Land, forests, and concessions for the use of subsoil, waters or means of transportation or for any other public service undertaking shall be so worked as to promote the welfare of society.

Art. 89. The State shall have the right of preemption in any public auction or forced sale of immovable property or of instruments representing immovable property.

Art. 90. The ownership of large estates [latifundio] is prohibited, and for the purpose of its abolition the area of land which an individual or corporation may possess shall be limited by statute for each class of use with due regard to the particular requirements thereof.

Statutory provisions shall be enacted to restrict the acquisition and possession of land by alien individuals and companies and to restore land to Cuban ownership.

Art. 91. The father of a family who lives upon, cultivates, and himself works a farm owned by him and not exceeding 8,000 pesos in value and indispensable for his housing and subsistence may settle it on the family in perpetuity, and it shall then be exempt from taxes and attachments and inalienable except for liabilities incurred before this Fundamental Law. Appreciation in excess of the aforesaid sum shall be subject to tax in accordance with statute. To enable him to use the property, the owner may charge or pledge sowings, plantings, fruits or products thereof.

Art. 92. Every author or inventor shall enjoy exclusive ownership of his work or invention, subject to statutory limitations of time and procedure.

Permission to use an industrial or commercial trademark, or any other means of business identification indicative of Cuban origin shall be void if used in any way to protect or cover articles manufactured outside the national territory.

Art. 93. No property may be subjected to encumbrance in perpetuity by irredeemable charges [censos] or the like; wherefore their establishment is hereby prohibited. The Council of Ministers shall enact legislation regulating the liquidation of such existing encumbrances.

The provisions of the preceding paragraph shall not apply to existing or future irredeemable charges or encumbrances established for the benefit of the State, a province or a municipality, a public institution of any kind, or a private charitable institution.

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TITLE VII

SUFFRAGE AND PUBLIC OFFICE

First Section

SUFFRAGE

Art. 97. Universal, equal and secret suffrage is hereby established as a right, duty and function of all Cuban citizens.

This function shall be obligatory, and any person who without lawful excuse fails to vote in an election or referendum shall be liable to the penalties provided by law and shall be disqualified from holding a judicial, administrative or any other public post for a period of two years from the date of the offence.

Art. 98. The opinion of the people concerning a question submitted to it shall be expressed through a referendum.

In every election or referendum a majority of the validly cast votes shall prevail, except in the cases laid down by this Fundamental Law. The result shall be made public officially as soon as it is known to the competent authority.

A vote shall be credited solely and exclusively to the person in whose favour it has been cast, and may not be allocated to any other candidate. In elections based on proportional representation, votes cast in favour of a candidate shall be counted in order to determine the party quotient.

Art. 99. All Cubans of either sex who have attained the age of twenty years are entitled to vote, except

(*a*) Persons in institutions;

(*b*) Persons declared by a court to be mentally incapacitated; and

(*c*) Members of the armed forces or police, on active service.

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Art. 101. Any form of coercion to compel a citizen to join a party, vote, or display his choice in any electoral proceeding is a penal offence.

This offence shall be punished and, where the coercion is committed by a public authority or his agent, subordinate or employee, personally or through an intermediary, the penalty shall be doubled and the offender shall be disqualified permanently for public office.

Art. 102. Political parties or associations may be organized freely, but no political group may be formed of persons of any particular race, sex or class.

An application to establish a new political party must be accompanied by a statement showing a membership equivalent to not less than 2 per cent of the relevant electoral roll, according to whether the application relates to a national, provincial or municipal party. Where in a general election or by-election a party does not obtain the number of votes equivalent to that percentage, it shall cease to exist as a party and shall be officially struck from the register of parties. Candidates may be presented only by political parties having a membership not less than the number specified in this article, and which have been organized or reorganized, as the case may be, before the election. Political parties shall be reorganized on a single day, six months before each presidential election or election of governors, mayors or councillors, or election of delegates to a constituent convention. The Superior Electoral Tribunal shall officially strike from the register of parties those which are not reorganized at that time.

Party congresses shall retain their full authority and may not be dissolved except by lawful reorganization. They shall be, in every case, the only bodies empowered to make nominations, and that authority may in no case be delegated.

Art. 103. Statutory rules and procedures shall be enacted to ensure the participation of minorities in drawing up the electoral rolls and in organizing and reorganizing political associations and parties and in other electoral acts, and their representation in the elective bodies of the State, provinces and municipalities.

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TEMPORARY PROVISION RELATING TO THE FIRST SECTION OF TITLE VII

Article 97 of this Fundamental Law shall not apply to persons to whom temporary provision No. 5 of title IV of this Fundamental Law refers.

Second Section

PUBLIC OFFICE

Art. 105. Public officials, employees and workers are those who, having proved their capability and complied with the other requirements and formalities established by statute, are appointed by a competent authority to perform public functions or services, whether or not they receive a salary or wage chargeable to the budgets of the State, a province or a municipality, or an autonomous corporation.

Art. 106. Civil public officials, employees and workers in all departments of the State, the provinces, the municipalities or autonomous corporations are exclusively the servants of the general interests of the republic and the permanency of their status is guaranteed by this Fundamental Law, with the exception of those who hold political offices and positions of trust.

Art. 107. The following hold political offices and positions of trust:

(*a*) Ministers and under-secretaries of State; ambassadors, envoys extraordinary and ministers plenipotentiary, and directors-general in cases where their positions are not classified by statute as technical posts.

(*b*) All personnel appointed to the immediate private offices of ministers and under-secretaries of State.

(*c*) Private secretaries to public officials.

(*d*) Secretaries of provincial and municipal administrations, heads of departments of those bodies, and personnel appointed to the immediate private offices of governors and mayors.

(*e*) Civil public officials, employees and workers employed on a temporary basis and chargeable to contingent appropriations, the duration of whose employment is less than the fiscal year.

Art. 108. Entry into, and promotion in, the public service, with the exception of those offices and positions mentioned in the preceding article, shall be open only to candidates who have complied with the requirements and have undergone competitive tests of aptitude and capability as established by statute, except in those cases which, by reason of the nature of the functions involved, are declared exempt by statute.

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TITLE IX

THE LEGISLATURE

First Section

Art. 119. The legislative power shall be exercised by the Council of Ministers.

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Fourth Section

INITIATION AND DRAFTING OF LEGISLATION, ITS APPROVAL AND PROMULGATION

Art. 122. Legislation may be initiated by:

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(*f*) The citizens. In this case, it shall be an essential requirement that the initiative be exercised by at least 10,000 citizens, who must be qualified electors.

Any proposed legislation shall be in the form of a bill and shall be presented to the Council of Ministers.

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TITLE X

THE EXECUTIVE

First Section

EXERCISE OF THE EXECUTIVE POWER

Art. 125. The President of the Republic is the Head of State and represents the nation. The executive power shall be exercised by the President of the Republic in accordance with the provisions of this Fundamental Law.

Second Section

THE PRESIDENT OF THE REPUBLIC, HIS ATTRIBUTES AND DUTIES

Art. 126. To be President of the Republic, a person shall be required:

(*a*) To be a Cuban by birth, but a person possessing this status under the provisions of article 12, paragraph (*d*), of this Fundamental Law shall be required to have served in Cuba for at least ten years, in its wars of independence.

(*b*) To have reached the age of thirty-five years;

(*c*) To be in full enjoyment of civil and political rights;

(*d*) Not to have been a member of the armed forces of the republic on active service during the six months immediately preceding the date of his nomination as a presidential candidate.

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Art. 129. The President of the Republic shall have the following powers:

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(*g*) To suspend the exercise of the rights enumerated in article 41 of this Fundamental Law in the cases and in the manner established therein.

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TITLE XI

THE COUNCIL OF MINISTERS

Art. 135. The President of the Republic shall be assisted in the exercise of the executive power by a Council of Ministers, composed of a number of members which shall be established by statute. . . .

Art. 136. To be a minister, a person shall be required:

(*a*) To be a Cuban by birth;

(*b*) To have reached the age of twenty-five years;

(*c*) To be in full enjoyment of civil and political rights;

(*d*) To have no business relationship with the State, a province or a municipality.

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TITLE XII

THE JUDICIARY

First Section

GENERAL PROVISIONS

Art. 148. Justice is administered on behalf of the people and shall be dispensed free of charge throughout the national territory.

Judges and law officers in the performance of their duties are independent and owe obedience to the law only.

Justice may be administered only by permanent members of the judiciary. No member of the judiciary may practise any other profession.

The registers of births, marriages and deaths shall be kept by members of the judiciary.

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Second Section

THE SUPREME COURT

Art. 150. The Supreme Court shall comprise the divisions prescribed by statute.

One of these divisions shall be the Tribunal of Constitutional and Social Guarantees. . . .

Art. 152. The Supreme Court shall exercise the following functions, in addition to those prescribed by this Fundamental Law and by statute:

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(*d*) To decide the constitutionality of laws, ordinances, decrees, regulations, decisions, orders, provisions and other acts of any body, authority or official.

. . .

Third Section

THE TRIBUNAL OF CONSTITUTIONAL AND SOCIAL GUARANTEES

Art. 160. The Tribunal of Constitutional and Social Guarantees shall be competent to hear or take cognizance of the following matters:

(*a*) Appeals on the ground of unconstitutionality against laws, ordinances, decrees, resolutions or acts which deny, diminish, restrict or impair the rights and guarantees set forth in this Fundamental Law or which impede the proper functioning of organs of the State.

(*b*) Requests of judges and courts for rulings concerning the constitutionality of laws, ordinances and other provisions which they have to apply in legal proceedings;

(*c*) *Habeas corpus* proceedings, on appeal, or in cases where an appeal to other authorities or courts has proved ineffective;

(*d*) The validity of constitutional procedure and reform;

(*e*) Questions of political law and questions concerning social legislation brought to its attention under the Fundamental Law or under statutes;

(*f*) Appeals against abuses of power.

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Seventh Section

UNCONSTITUTIONALITY

Art. 172. A declaration of unconstitutionality may be sought:

(*a*) By parties to legal proceedings, suits or petitions which are dealt with by the ordinary and special courts.

(*b*) By twenty-five citizens who prove their status as such.

(*c*) By a person affected by the provision which is considered unconstitutional.

Judges and courts are required to resolve any conflict between a statute in force and the Fundamental Law, applying the principle that the latter shall always prevail over the former.

Where a judge or court considers any law, ordinance, decree or provision to be inapplicable because, in his or its opinion, it violates the Fundamental Law, he or it shall suspend the proceedings and submit the matter to the Tribunal of Constitutional and Social Guarantees, which shall declare the provision in question constitutional or unconstitutional and return the case to the remitter with instructions to continue the proceedings, specifying such safeguards as may be appropriate.

. . .

A law, ordinance, decree, regulation, order, provision or measure which has been declared unconstitutional may not be applied in any case or in any form, under penalty of disqualification to hold public office.

A decision declaring a legal provision or an administrative measure or order unconstitutional shall make it obligatory for the body, authority or official responsible for the provision thus voided to revoke it immediately.

In every case, the legislation, regulation or administrative measure declared unconstitutional shall be considered null and void and without force or effect as from the date on which the decision is announced in court.

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Eighth Section

JURISDICTION AND PERMANENCE IN OFFICE

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Art. 175. In no case may courts, commissions or bodies be created with special competence to deal with cases, proceedings, suits, matters or petitions which are within the jurisdiction granted to the ordinary courts.

. . .

TITLE XV

NATIONAL FINANCES

. . .

Fourth Section

THE NATIONAL ECONOMY

Art. 222. The State shall direct the national economy for the benefit of the people in order to ensure for each individual a decent standard of living.

It shall be a primary function of the State to develop the agriculture and industry of the nation and to take measures to diversify them as sources of public wealth and collective benefit.

Art. 223. The ownership and possession of land and the operation of agricultural, industrial, commercial, banking and any other type of enterprise or business by aliens established in Cuba, or carrying on their business in Cuba although established abroad, are obligatorily subject to the same conditions as are established by statute for Cubans, which must, in every case, be in keeping with the economic and social interests of the nation.

. . .

Art. 227. Laws and provisions which create private monopolies, or which regulate commerce, industry and agriculture in such a manner as to produce that result, shall be null and void. In particular, it shall be established by statute that commercial activities in centres of agricultural and industrial operations shall not be monopolized in the interest of individuals.

. . .

ADDITIONAL TEMPORARY PROVISIONS

. . .

3. Application of articles 27, 29, 174 and 175 of this Fundamental Law to persons subject to the jurisdiction of the Revolutionary tribunals established under the penal system of the High Command of the Revolutionary Army, members of the armed forces, of the repressive groups of the tyranny which was overthrown on 31 December 1958, of the auxiliary groups organized by the tyranny and of the armed

groups privately organized to defend it, and spies, shall be suspended for a period of ninety (90) days from the date of promulgation of this Fundamental Law. Furthermore, those constitutional provisions shall not apply to those persons subject to investigation and detained by the military authorities, who are accused of offences committed for the establishment and defence of the tyranny and against the national economy or public finances.

4. Article 152, paragraph (*d*), and article 160, paragraph (*a*), of this Fundamental Law shall be suspended for the same period in cases where questions of constitutionality and unconstitutionality are raised by the persons to whom the preceding temporary provision applies, or by public action on behalf of those persons.

. . .

6 (as added by the Constitutional Reform Act of 29 October 1959). Articles 27, 29, 152, paragraph (*d*), and 160, paragraph (*a*), of this Fundamental Law shall not apply, so long as the revolutionary tribunals function, to those persons accused of acts which, because of their counter-revolutionary nature, are within the competence of those tribunals in accordance with the law.

AGRARIAN REFORM ACT OF 17 MAY 1959

Text supplementary to the constitution[1]

CHAPTER I

LAND IN GENERAL

Art. 1. Latifundia shall be abolished. The maximum area of land that may be possessed by a natural or juridical person shall be thirty *caballerías*.[2] Lands owned by any natural or legal person in excess of that limit shall be expropriated for distribution among landless peasants and agricultural workers.

[Exceptions to article 1 appear in articles 2 and 4, but no one may own more than one hundred *caballerías*.]

. . .

Art. 15. Rural property may henceforth be acquired only by Cuban citizens or by companies formed by Cuban citizens.

Exempt from the preceding provision shall be farms not exceeding thirty *caballerías* in area which in the opinion of the National Agrarian Reform Institute may appropriately be assigned to foreign undertakings or bodies for purposes of industrial or agricultural development considered advantageous to the development of the national economy.

In the case of hereditary assignments of rural holdings to heirs not of Cuban nationality, such holdings shall be considered as expropriable for the purposes of the Agrarian Reform whatever their area may be.

CHAPTER II

REDISTRIBUTION OF LANDS

Art. 16. There is established as a "vital minimum" for a peasant family of five persons an area of two *caballerías* of fertile unirrigated land remote from urban centres for the cultivation of crops of average economic yield.

The National Agrarian Reform Institute shall be entrusted with regulating and specifying in each case the necessary "vital minimum", starting from the basis aforesaid and having regard to the average annual income target for each family.

Lands constituting the "vital minimum" shall enjoy the advantages of being not liable to seizure and inalienable within the meaning of article 91 of the Act of Constitution of the Republic.

Art. 17. Privately owned lands subject to expropriation pursuant to the provisions of this Act and state-owned lands shall be granted in the form of jointly owned areas to co-operatives recognized by this Act or shall be distributed among the beneficiaries in parcels not in excess of two *caballerías*, the ownership of which shall be conferred without prejudice to such adjustments as may be made by the National Agrarian Reform Institute with a view to determining the "vital minimum" in each case.

All lands, regardless of who the beneficiaries may be, shall be liable for payment of taxes levied by law as contributions to national and municipal expenditure.

. . .

Art. 22. Lands available for distribution in accordance with the provisions of this Act shall be distributed in the following order of priority:

(*a*) Peasants who have been evicted from the lands cultivated by them;

(*b*) Peasants resident in the district in which the lands subject to distribution are situated and who are landless, or who cultivate an area which is less than the "vital minimum";

(*c*) Agricultural workers working and living on the lands subject to distribution;

(*d*) Peasants from other districts, preferably neighbouring districts, who are landless and to whom

[1] Published in vol. VII of *Folletos de Divulgación Legislativa*, Editorial Lex, La Habana, kindly furnished by Dr. Jorge Tallet, Chief of the Department of Cultural Affairs, Ministry of State, Cuba. The Act also appears in *Gaceta Oficial* of 3 June 1959. Translation as published by the Food and Agriculture Organization of the United Nations in *Food and Agriculture Legislation*, 1959, vol. VIII, No. 2.

[2] 1 *caballería* = 33½ acres approximately.

only an area less than the "vital minimum" is available;

(*e*) Agricultural workers from other districts, preferably neighbouring districts;

(*f*) Any other person making the required application, preference being given to one showing himself to possess agricultural knowledge or experience.

Art. 23. Within the groups referred to in the preceding article preference shall be given to:

(*a*) Fighters in the Insurgent Army or their dependent relations;

(*b*) Members of auxiliary corps of the Insurgent Army;

(*c*) Victims of the war or of persecution by the tyranny;

(*d*) Dependent relations of persons deceased as a result of their participation in the revolutionary struggle against the tyranny.

Heads of families shall receive priority in each case.

. . .

Art. 29. The constitutional right of the owners affected by this Act to receive an indemnity for expropriated property shall be recognized. The indemnity aforesaid shall be fixed in relation to the sale value of the holdings as shown in the municipal tax assessments prior to 10 October 1958. The assignable installations and structures existing on the holdings shall be subject to independent assessment by the authorities entrusted with the application of this Act. The standing crops shall also be assessed independently for purposes of indemnifying their legitimate owners.

. . .

Art. 31. Indemnity shall be paid in the form of redeemable bonds. To that end, an issue of Cuban republic bonds shall be made to the amount and subject to the time limits and conditions to be established as appropriate. The bonds shall be designated "Agrarian Reform Bonds" and shall be considered as public securities. The issue or issues shall be made for a term of twenty years at an annual rate of interest not exceeding four and a half per cent (4½%). The sums necessary to meet interest, redemption and funding issuance charges payments shall be included each year in the budget of the republic.

. . .

FINAL SUPPLEMENTARY PROVISION

Pursuant to the constituent power vested in the Council of Ministers, this Act is declared to form an integral part of the Act of Constitution of the Republic to which it is supplementary.

Accordingly constitutional force and authority are given to this Act.

. . .

ACT No. 613 OF 27 OCTOBER 1959

AMENDING THE PROCEDURE FOR APPEALS TO THE PRESIDENT OF THE REPUBLIC AGAINST MINISTERIAL DECISIONS[1]

Art. 1. Article 57 of the Executive Power Act shall be amended to read:

"*Art. 57.* A party affected by an order or decision of a minister of government in an administrative matter may contest the order or decision by an appeal to the President of the republic within ten working days of the date of notification of the order or decision and the President's ruling shall be final for the purposes of contentious administrative proceedings.

"The appeal shall be submitted in triplicate to the minister who made the contested order or decision and the minister shall transmit the appeal together with the records of the case through the office of the President to the President of the republic within three days of the date of submission of the appeal, the procedure being suspended. The admissibility of the appeal may not be challenged unless the appeal is made out of time.

"Appeals shall in all cases be decided by the President of the republic, freely, within 45 working days of the date of their submission and the ruling shall be notified to the persons concerned within the ten days next following.

"If an express ruling is not given within the time limit referred to in the preceding paragraph, the appeal shall be deemed tacitly disallowed and the appellant shall be so notified within ten days. The time-limit for the lodging of such further appeal as may be open to the appellant shall be deemed to run from the day following the date of receipt of the notification.

"Even if not so notified, the appellant may make the further appeal open to him and such appeal shall be admissible provided no ruling by the President of the republic or notification has been given within the prescribed time limits.

. . .

"Within the first fifteen days of the time limit allowed for giving a ruling, the President of the republic may authorize or order such proceedings as he may deem necessary, *ex officio*, or oppose the request of a party and the proceedings shall be completed

[1] Published in vol. XIII of *Folletos de Divulgación Legislativa*, Editorial Lex, La Habana, kindly furnished by Dr. Jorge Tallet, Chief of the Department of Cultural Affairs, Ministry of State, Cuba. Translation by the United Nations Secretariat. The Act also appears in *Gaceta Oficial* of 30 October 1959.

within twenty days, the ruling being required to be given within the ten days next following.

"The foregoing provisions shall not apply in cases in which the law expressly provides that the decisions of a Minister of Government are final or another remedy is open to the appellant.

"If the appeal is not admitted, the appellant may submit a petition of protest directly to the President of the Republic within ten days from the date on which the appellant was notified that the appeal was not admissible.

"Proceedings shall not be suspended by reason of the submission of the petition and the Minister who ruled that the appeal was not admissible shall be heard. A ruling shall be given within thirty days of the submission of the petition and the petitioner shall be notified within the ten days next following. If the production of evidence is considered necessary, the evidence shall be taken in the form and within the time limit laid down in the case of appeals."

Art. 2. Any provisions of statutes or regulations contrary to the provisions of this Act, which shall enter into force on the date of its publication in the *Gaceta Oficial* of the Republic, are hereby repealed.

PRESIDENTIAL DECREE No. 2129 OF 27 OCTOBER 1959. REGULATIONS UNDER ACT No. 613 CONCERNING THE PROCEDURE FOR APPEALS AND PETITIONS TO THE PRESIDENT OF THE REPUBLIC AGAINST MINISTERIAL DECISIONS[1]

CHAPTER I

APPEALS

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CHAPTER II

PETITIONS

XVII. If an appeal is rejected as inadmissible by the authorities, a petition of protest may be made to the President of the Republic. The original and one copy of the petition shall be submitted to the office of the President within the ten working days following the date on which the appellant was notified of the order rejecting his appeal.

XVIII. A file shall be opened and registered by the Appeals and Legal Affairs Section within the three days following the submission of the petition, and the copy of the petition shall be sent to the authority by which the appeal was rejected and that authority shall forward the records of the case and its report thereon within a period of not more than five days.

XIX. Within ten days of receipt of the report of the department concerned, the Director of Appeals and Legal Affairs shall submit his report to the secretary of the office of the President.

XX. The secretary of the office of the President shall take such steps as he considers necessary and shall submit to the President a draft of the ruling which he considers appropriate.

XXI. If the petition is upheld, the appeal shall be deemed to have been admitted and the parties and the authority by which the appeal was rejected shall be so notified. The appeal having been admitted, the file, to which the administration records shall be joined, shall be registered and the proceedings shall be continued as provided in chapter I of these regulations.

XXII. If the petition is disallowed, the files transmitted shall be returned to the authority concerned together with notification of the ruling, formal notice of which shall be given to the petitioner; the file shall be placed in the archives when the ruling has become final.

. . .

[1] Published in vol. XIII of *Folletos de Divulgación Legislativa*, Editorial Lex, La Habana, kindly furnished by Dr. Jorge Tallet, Chief of the Department of Cultural Affairs, Ministry of State, Cuba. Translation by the United Nations Secretariat. The text also appears in *Gaceta Oficial* of 30 October 1959.

ACT No. 680 OF 23 DECEMBER 1959

PRINCIPLES AND LEGAL STANDARDS GOVERNING THE COMPLETE REFORM OF EDUCATION IN CUBA[1]

. . .

THEREFORE: In view of the foregoing facts and with the firm intention of immediately initiating a complete reform of education, the Ministry of Education appointed various committees of experts specializing in the different branches of education, to evolve a new national education system, and has taken note of their reports, which are based on the following:

[1] Published in vol. XV of *Folletos de Divulgación Legislativa*, Editorial Lex, La Habana, kindly furnished by Dr. Jorge Tallet, Chief of the Department of Cultural Affairs, Ministry of State, Cuba. The Act also appears in *Gaceta Oficial* of 24 December 1959. Translation by the United Nation Secretariat.

PRINCIPLES FOR THE REFORM OF THE NATIONAL EDUCATIONAL SYSTEM

. . .

General Aims of Our Education

Principle 2. The objective which education must set before itself is the full and complete development of the human personality — that is, the development of the potential or innate characteristics of man to the full extent of his being and his worth.

Education should therefore not concentrate on cultivating the intellect, without also being concerned with the affections and feelings, the character and habits.

Consequently, education must not be a mere process of transmitting information, but should lay stress on developing fully the natural gifts and propensities of the pupil. In addition, it should discover and guide individual vocations, so that the pupil may be able to lead a full life.

Education should offer to the child and to the young person a prospect of the physical world and a prospect of the moral world in terms of an active and practical concept of society, so that as a result his life may be directed along the right lines and he may achieve happiness.

The ultimate and supreme goal of education should be to enable the individual to live his life according to an ideal in which physical, intellectual, ethical, aesthetic and vocational values are cultivated to the full, in a balanced and harmonious way, with a view to developing the human being, within the context of social integration.

. . .

PRIMARY EDUCATION

. . .

Objectives of Primary Education

Principle 7. The objectives of primary education are both individual and social, since they involve both the development of the personality and the adaptation of the child to the social environment. Primary education should therefore aim at the following objectives:

(1) The full and complete development of the personality of the child through a mastery of the basic instruments of culture;

(2) The formation of a national consciousness;

(3) The realization of the democratic ideal;

(4) The formation of an American consciousness;

(5) International understanding.

In order to achieve a full and complete development of the personality, the primary school must train the child for modern life, in other words teach him to read, communicate, think, analyse situations and problems and to get on with others.

The primary school is responsible for helping the child to develop. It is important that teachers should know the basic principles governing this development (including learning) and, in addition, that they should know how the basic moral principles of the pupil are formed.

Primary education will therefore pay attention to the following aspects:

(*a*) Developing the outstanding abilities and potentialities of the child;

(*b*) Helping the child to look after his own physical and mental health, by providing him with suitable conditions for the formation of his character;

(*c*) Providing the child with means of learning how to express his thoughts by oral and written communication;

(*d*) Providing opportunities for the child to learn to solve problems connected with the operations of buying, selling and saving which arise in everyday life;

(*e*) Developing the child's creative and recreational interests and encouraging him to acquire knowledge and skills which are useful in modern life;

(*f*) Developing the capacity for aesthetic expression and appreciation of different forms of art;

(*g*) Developing the capacity for reflective thought and criticism through matters arising out of:

(1) The acquisition of scientific knowledge;

(2) The solving of social problems;

(*h*) Helping the child to understand his geographic environment, the resources of his country and its prospects for economic development;

(*i*) Helping the child to interpret the history of his country, to understand the relations between Cuba and other States at different epochs and to appreciate our present position with regard to those relations;

(*j*) Helping the child to acquire the responsibilities, attitudes and skills connected with family and social life.

In order to create a national consciousness, the primary school should help children to understand the physical and social conditions surrounding them, and the problems connected with the destiny of our society as a nation. The preservation of our national resources for the benefit of all citizens of the country, the contribution of the Agrarian Reform Law to reinforcing our national sovereignty, the history of the development of our institutions and of the sacrifices and efforts made to achieve political and economic freedom, will be important topics in the programmes of social studies.

The realization of the democratic ideal and the achievement of a democracy based on a humanist philosophy, one of the greatest features of which is respect for human dignity and human rights, will

be the principal objective of the primary school, which will be responsible for making the child understand, with due regard for the degree of maturity which his mind has reached, the principal values on which democracy is based and the fact that democracy really signifies government by the people, for the people.

In order to realize the democratic ideal, the school must concentrate on:

(*a*) Helping the child to understand the meaning of democracy and to practise it in every-day life;

(*b*) Developing the individual characteristics required by the democratic citizen; civic responsibility and sense of duty; absence of prejudice; respect for, and compliance with, the law; ability to co-operate in carrying out collective tasks; honesty in all walks of life; respect for basic moral principles; the need to live, individually and in the community, in an atmosphere of dignity, justice, liberty and well-being.

. . .

Co-operation in the international field, by developing existing international organizations, will be an important topic in the top grades of the primary schools.

. . .

International understanding, as a basis of world co-existence, is another objective of Cuban education. . . .

Children in the top grades of the primary school should know of the existence and aims of the United Nations and UNESCO; in addition, they should learn and assimilate as far as possible the Universal Declaration of Human Rights, since these rights are a statement of the duties of States towards the destiny of the human person.

. . .

SECONDARY EDUCATION

Principle 8. For the purposes of the new national education system, secondary education comprises all scholastic, training and other educational facilities from after the sixth grade of the primary school up to university level; its particular aim is to educate the adolescent.

Subdivisions of Secondary Education

Principle 9. Secondary education shall be divided into: (*a*) ordinary, general, elementary or basic, lasting three years, and (*b*) special, vocational, professional, higher or pre-university, lasting three or more years.

Nature and Conditions of Secondary Education

Principle 10. Ordinary or basic secondary education is free of charge and will become compulsory for all Cuban adolescents, as soon as the national resources permit this, and once the requirements of primary education, which take precedence, have been met.

. . .

Characteristics and Abilities which Secondary Education should cultivate in the Pupil

Principle 12. The aim of secondary education shall be not so much to inform the mind, as to form the personality of the pupils, by caring for and improving their physical and mental health, cultivating their intelligence, their appreciation of values and their capacity for endeavour and by seeking to inculcate in them those standards of kindliness, good citizenship and good behaviour which are essential for civilized and democratic existence. These conditions involve:

(*a*) *Mental health.* This includes the proper adjustment of the individual towards society and towards himself — that is, he should understand his fellow beings (correct behaviour towards them), and understand himself (mental balance and serenity). The aim of both is well-being and happiness.

(*b*) *The ability to reason.* Logical thought, the ability to draw correct conclusions, which is an essential accomplishment that everybody should possess.

(*c*) *The spirit of research and inquiry.* Intellectual curiosity, on which technical and scientific progress depend to such a considerable extent.

(*d*) *The ability to express thoughts,* which is inseparable from the ability to think correctly. A free and democratic society must use persuasion, and for this oral and written communication are indispensable.

(*e*) *The ability to judge, assess, criticize and distinguish values,* mainly civic, ethical and aesthetic values. This enables man to understand the achievements, ideals, aspirations and standards of different ages, nations and individuals, and gives him a yardstick for determining his own conduct and appreciating the conduct of others.

(*f*) *The capacity for co-operation and social solidarity,* because the ideal of a free people should consist in the harmonious fusion of individual liberty with the feeling of social responsibility, without which there can be no organized society. Democratic education should reconcile the values of liberty and those of the community.

(*g*) *Education in responsibility in the enjoyment of liberty,* which can be obtained only by internal and self-imposed discipline adapted to the characteristics of the pupils and the members of their families.

(*h*) *The ability to act on one's initiative,* which includes the spirit of enterprise, the cultivation of the spirit of endeavour, interest, firmness of will and the cultivation of habits of perseverance in work.

. . .

THEREFORE: by virtue of the powers conferred upon it, the Council of Ministers resolves to enact the following:

LAW No. 680

Chapter I

NATIONAL EDUCATION SYSTEM

. . .

Levels of Education

Art. 3. The national education system set up by this law shall include studies at three stages — namely:

(*a*) Primary education;

(*b*) Secondary education; and

(*c*) University education.

Art. 4. The first stage of the Cuban educational system shall be the primary school, from pre-school age up to the sixth grade. The aim is that, by means of the primary school, the pupil shall gradually become a citizen, enjoying a permanent economic security; with a clear consciousness of his nationality, duties and rights; and with the necessary culture to enable him to play a useful and responsible role in the advancement of his community.

The primary school shall provide the Cuban child with the cultural equipment that is essential for his individual development and for the advancement of his country — the ability to express his thoughts correctly, an understanding of the physical, natural and social environment in which he is growing up, the ability to make intelligent use of the knowledge which he has acquired, quantitative reasoning, positive civic conduct and attitudes conducive to human progress.

The primary school shall deal with all the essential processes of learning, in order to provide a solid basis for the secondary education of the pupil; it must be democratically organized, so as to embrace all Cuban children, thus ensuring uniformity in the formation of the type of man which the nation needs in order finally to achieve its liberty and sovereignty.

Art. 5. Education shall be compulsory for the Cuban child up to the age of twelve and up to the sixth grade in the primary school and shall be free when provided by the State, province or municipality.

The aim of Ministry of Education policy shall be to provide the necessary means to enable education to be made compulsory until the completion of basic secondary schooling.

. . .

Art. 8. Secondary education shall include all the scholastic institutions and other educational facilities provided for the training and instruction of pupils between the sixth grade and university level, its purpose being to cover that stage of education which corresponds to adolescence. It shall have two cycles or stages:

(*a*) *Basic secondary education*, lasting three years and of a pre-vocational nature; it will be the compulsory basis for all branches of higher secondary education;

(*b*) *Higher secondary education*, lasting three years in the pre-university institutes and land survey schools, and for varying lengths of time in the case of the vocational or professional education given in the schools for primary teachers, commerce and fine arts and in the technical, agricultural and industrial institutes.

Art. 9. Basic secondary education shall be free of charge when provided by the State, province or municipality. There will be a standard programme of a general and elementary nature, which will provide the adolescent with a sound basis of integrated culture and make it possible to ascertain what gifts individual students possess, with a view to encouraging them and guiding them in the choice of the trade or profession they will follow in life, and which, in the event of their studies being interrupted, will provide them with practical equipment for earning their living; for that purpose and to enable them to achieve this essential objective of their education the study programmes shall include optional vocational subjects.

. . .

Art. 12. . . .

Higher secondary education provided by the State, province or municipality shall be free of charge, except in the case of studies for the pre-university *bachillerato*, where a moderate contributory registration fee may be charged, which shall be entirely given to the institutions concerned.

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CZECHOSLOVAKIA

NOTE[1]

1. Act of 26 March 1959, amending and supplementing Act No. 16/1959 of the Collection of Laws, concerning sickness insurance of employees. This Act provides further advantages for larger families by increasing family allowances for these families at the expense of the State. As against the previous situation, family allowances are increased in the case of families with three and more children, in such a way that the increase becomes greater as the income of the supporter of the family decreases. This measure, which is an expression of the care devoted to the systematic improvement of the living standards of the people, is aimed at the achievement of a speedier growth of personal consumption, above all in the case of families with a lower per capita income. At the same time it is also the expression of an increased attention to the material welfare of the children and, consequently, to their health.

2. Government ordinance of 12 June 1959 amending government ordinance No. 19/1951 of the Collection of Laws, concerning adjustment of the hours of work at various workplaces in the interest of ensuring smooth transport for the working people and reducing traffic jams at rush hours, and in the interest of the even supply of electricity, gas and heating steam, No. 30/1959 of the Collection of Laws. This government ordinance has eliminated the conflict between government ordinance No. 19/1951 of the Collection of Laws and the Convention of the International Labour Organisation concerning night work of women in industry, No. 89 of 1948. According to this government ordinance, night work by women may be permitted by the Government, after consultation with the Central Council of the Trade Unions, only for a limited period of time and provided that it is required in the interest of the State in view of circumstances of special gravity.

3. Ordinance of the Minister of Foreign Affairs of 5 May 1959, concerning the convention on alimony claims abroad, No. 33/1959 of the Collection of Laws. The signature of this convention, which for Czechoslovakia has been in force since 2 November 1958, facilitated the assertion of alimony claims for persons living on the territory of one of the contracting parties and having justified claims against persons subject to the jurisdiction of another contracting party. Accession to this convention is proof of the systematic devotion of the Czechoslovak Republic above all to the protection of the interests of children.

4. Act No. 37/1959 of the Collection of Laws, promulgated on 8 July 1959, concerning the status of the works committees of the basic organizations of the trade unions.[2] This Act provides that the relationships of comradely co-operation of the organs of the Revolutionary Trade Union Movement, in particular of the works committees of the basic organizations of the movement, with the enterprise directors and other economic and state organs shall be governed by the decision of the IVth All-Union Congress on the works committees of the basic organizations of the Revolutionary Trade Union Movement. According to this decision, the basic organizations of the Revolutionary Trade Unions shall, on behalf of the workers of the enterprise and in keeping with the interests of the entire society, consider and settle all matters pertaining to their professional, social, cultural and health interests. For instance, the works committee participates, together with the director of the enterprise, in the drafting and control of the enteprise's plans; concludes collective agreements with the director of the enterprise; decides, together with the director of the enterprise, upon important questions concerning the operation, management and development of the enterprise; takes care of the provision of health and social facilities; together with the director of the enterprise, organizes factory-sponsored housing construction and the provision of assistance to co-operative and individual housing construction: and encourages the improvement of the professional qualifications of the workers. Furthermore, the decision defines the competence of these organs of the Revolutionary Trade Unions in affairs of major importance for the enterprise, as for instance the issuance and amendment of the rules of employment, the determination of the hours of work, piece-work rules, systems of wages and salaries, recruitment, appointment and dismissal of workers, allocations of enterprise flats, and arbitration of disputes between the workers and the authorities of the enterprise concerning the beginning and termination of the employment relationship. The independence of the enterprise committees of the basic organizations of the Revolutionary Trade Union Movement is ensured also from the economic point of view. The director

[1] Information kindly furnished by the Permanent Representative of the Czechoslovak Socialist Republic to the United Nations.

[2] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Cz. 1.

of the enterprise is bound to grant a contribution to the committees of an amount to be determined according to the number of employees of the enterprise. These measures also greatly enhanced, and provided a legal basis for, the direct participation of the workers in the solution of important questions of immediate concern from the point of view of their interests and activities as well as for the management of the enterprise.

5. Government ordinance No. 59/1959 of the Collection of Laws, promulgated on 12 August 1959, concerning civic control of trade and retail shops. According to this government ordinance, controllers from amongst the citizens are elected by the local national committees for a period of one year. Their competence covers the network of retail shops, restaurants, canteens and other public eating facilities and public service shops operated by enterprises and organizations of the local economic administration. The activities of these civic controllers, subordinated directly to the national committees, intensify direct control by the citizens over the standard of public services, increase direct popular participation in the direction of economic life and have a direct influence on the maintenance of state discipline and on the protection of socialist property.

6. Act No. 78/1959 of the Collection of Laws of 18 December 1959, amending Act No. 103/1951 of the Collection of Laws, concerning uniform preventive and medical care. According to the Act of 19 December 1951, No. 103/1951 of the Collection of Laws, concerning medical and preventive care, full-scale medical and preventive care was granted free of charge to all infants until the age of one year. Concerning children beyond that age, there were practically excluded from the grant of such care the children of private farmers and other persons not employed in the socialist sector of industry or trade, from the first up to the fifteenth year of age. (Even in such cases it was possible to grant full-scale medical care free of charge on the individual request of the parents.) Pursuant to the policy of increased health care for children, this restriction was removed by the Act of 18 December 1959 and preventive and medical care was granted free of charge to all children up to the fifteenth year of age, irrespective of the social status of their parents.

7. Act No. 81/1959 of the Collection of Laws, promulgated on 18 December 1959, concerning holidays with pay.[1] Such holidays were previously governed by Act No. 3/1954 of the Collection of Laws, the validity of which was several times prolonged. This Act had several shortcomings, especially as regards the automatic extension of the leave according to the length of work with the same employer, in the same field or profession. The Act failed to take sufficient account of the difficulty or strenuousness of work performed or of its effect on the health of the worker. The new legislation remedies these shortcomings; it secures the existing length of the leave but permits its further extension in the case of workers performing operations which are harmful to human health or involve exceptional difficulty (so-called supplementary leave, which may go up to one or two weeks beyond the normal leave). The new legislation also brings advantages to women who have dissolved their working contract on grounds of pregnancy or maternity and to persons awarded an invalidity or old-age pension. Another advantage introduced by this new legislation is the disregarding, in the calculation of leave, of days during which the worker was sick or was drawing extra leave on account of overtime work or of official state holidays.

[1] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Cz. 3 (A).

ACT No. 194 OF 13 JULY 1949 CONCERNING THE ACQUISITION AND LOSS OF CZECHOSLOVAK STATE CITIZENSHIP

as modified by subsequent provisions[1]

PART I

ACQUISITION OF STATE CITIZENSHIP

Article 1. — By Birth

(1) A child who is born in the territory of the Czechoslovak Republic and whose father or mother is a citizen shall acquire state citizenship by birth.

(2) A child who is born abroad shall acquire state citizenship by birth if his mother and father are citizens. A child who is born abroad and whose father or mother is a citizen whereas the other parent is an alien shall acquire state citizenship if the executive organ of the competent district national committee approves an application to that effect made by the parent who is a citizen. The said application must be made within one year after the birth.

(3) A child found in the territory of the Czechoslovak Republic at a tender age shall be a citizen until proved to have another nationality.

Article 2. — By Marriage

(1) An alien woman who marries a citizen shall acquire state citizenship if the executive organ of the competent district national committee approves an

[1] Text annexed to proclamation No. 73/1958 of 5 November 1958, published in *Sbírka zákonů* No. 29, of 11 November 1958. Translation by the United Nations Secretariat.

application made by her to that effect. The application may be made before the marriage, but not later than six months thereafter. Even where the application is approved after the marriage, the applicant shall be deemed to have acquired state citizenship on the date of the marriage.

(2) The children of an alien woman who are under the age of fifteen years and are included in her application shall acquire state citizenship together with her.

Article 3. — By Grant

(1) State citizenship may be granted on the application of a person who has lived in the territory of the Czechoslovak Republic continuously for at least five years and who on acquiring state citizenship renounces, unless stateless, his previous nationality.

(2) State citizenship shall be granted by the Ministry of the Interior; in cases deserving special consideration the said ministry may grant state citizenship to an applicant who does not fulfil the conditions laid down in paragraph (1).

(3) Spouses may apply jointly for state citizenship; each spouse's application shall be considered separately. Children under the age of fifteen years who are included in their father's or mother's application shall acquire state citizenship together with the father or mother.

Article 4. — State Citizen's Oath

(1) The acquisition of state citizenship by marriage or grant by a person over the age of fifteen years shall not become effective until he has taken the following oath:

"I swear on my honour and conscience to be always faithful and devoted to the Czechoslovak Republic and its people's democratic order and to discharge properly all my duties as a citizen thereof."

(2) The Ministry of the Interior may waive the state citizen's oath only in exceptional cases.

PART II

LOSS OF STATE CITIZENSHIP

Article 5

Repealed.

Article 6. — By Release

(1) A person shall lose state citizenship if on his own application he is released from his allegiance to the state. State citizenship shall be forfeited on the date of delivery of the certificate of release.

(2) Spouses may apply jointly for release from state citizenship; each spouse's application shall be considered separately. Children under the age of fifteen years who are included in their father's or mother's application shall lose state citizenship together with the father or mother.

Article 7. — By Withdraw.

(1) The Ministry of the Interior may withdraw state citizenship from any person resident abroad who:

(*a*) Has acted or is acting in a manner hostile to the State or likely to prejudice its interests, or

(*b*) Has left the territory of the Czechoslovak Republic unlawfully, or

(*c*) Fails to return to the country within the prescribed time-limit of thirty days (if overseas, ninety days) from the date on which he receives from the Ministry of the Interior a summons to return.

(2) The Ministry of the Interior may also withdraw state citizenship from any person who retains another nationality or who resides abroad continuously for a period of five years without a valid Czechoslovak document authorizing him to stay abroad.

(3) Where the personal service of a notice of withdrawal of state citizenship or of a summons under paragraph (1)(*c*) presents difficulty, service shall be deemed to be effected through the issue of a public notice.

Article 8. — Family Members

(1) A woman who is a Czechoslovak state citizen shall not lose state citizenship by her marriage to an alien or a stateless person.

(2) Except as otherwise provided in this Act, the loss of state citizenship by one spouse shall not affect the state citizenship of the other spouse or of the children.

. . .

PART IV

FINAL PROVISIONS

Article 10

(1) The general provisions governing the acquisition and loss of state citizenship shall cease to have effect as from the date on which this Act comes into force.

In particular the following enactments are hereby repealed:

1. Article 28, second sentence, and articles 29, 30, 31 and 32 of the Civil Code;[1]
2. The decree of 24 March 1832, No. 2557, relating to emigration;
3. The decrees of the Court Chancellery governing questions of state citizenship;
4. Act No. L/1879 concerning the acquisition and loss of state citizenship, and Act No. IV/1886 concerning the collective naturalization of repatriated persons;
5. Articles 2 and 3 of the Act of 9 April 1920, No. 236, to supplement and amend the existing provisions

[1] The General Civil Code promulgated on 1 June 1811.

concerning the acquisition and loss of state citizenship and of the right of domicile in the Czechoslovak Republic;

6. The proclamation of the Minister for the Interior of 15 December 1926, No. 225, concerning documents of state citizenship of the Czechoslovak Republic, in the form in which it appears in the Proclamation of 1 July 1928, No. 108;

7. The Act of 29 May 1947, No. 102, concerning the acquisition and loss of Czechoslovak state citizenship by marriage.

(2) This Act shall not affect the Act of 29 April 1930, No. 60, to give effect to the Naturalization Agreement of 16 July 1928 between Czechoslovakia and the United States of America; the Act of 12 April 1946, No. 74, concerning the grant of state citizenship to repatriates; the Act of 13 September 1946, No. 179, concerning the grant of state citizenship to repatriates from Hungary; or the Act of 28 April 1948, No. 107, to extend the time-limit governing applications for the grant of state citizenship to repatriates.

. . .

ACT OF 17 OCTOBER 1958 TO AMEND AND SUPPLEMENT THE PROVISIONS CONCERNING THE ACQUISITION AND LOSS OF CZECHOSLOVAK STATE CITIZENSHIP[1]

Art. II. A female citizen who married an alien before the date on which this Act came into force may apply for the retention of state citizenship not later than six months after the marriage. Such applications and other unprocessed applications for the retention of Czechoslovak state citizenship shall continue to be dealt with in accordance with article 5 of Act No. 194/1949, with the effects therein prescribed.[2]

Art. III. (1) A person of Hungarian ethnic origin who lost Czechoslovak state citizenship under decree No. 33/1945 and who is resident in the territory of the Czechoslovak Republic on the date on which this Act comes into force shall become a Czechoslovak state citizen on condition that he has not already regained Czechoslovak state citizenship and is not a national of any other State.

(2) The wife and minor children of a person referred to in paragraph (1) shall likewise become Czechoslovak state citizens on condition that they have not already become so as provided for in the said paragraph; that they are resident in the territory of the Czechoslovak Republic; and that they are not nationals of any other State.

. . .

Art. V. This Act shall come into force on the date of promulgation and shall be enforced by the Minister for the Interior.

[1] Text published in *Sbírka zákonů* No. 29, of 11 November 1958. Translation by the United Nations Secretariat.

[2] Article 5 of Act No. 194/1949 provides: "A woman who is a Czechoslovak national shall lose her nationality by marriage to an alien, provided that she acquires by marriage her husband's nationality under the legal system of his country. The regional national committee can, however, on an application made by the woman before the marriage, or at the latest, within six months after the marriage, declare that she retains her Czechoslovak nationality. Even if the said application receives a favourable decision after the marriage, no loss of nationality shall be deemed to have occurred."

DAHOMEY

CONSTITUTION OF 15 FEBRUARY 1959[1]

PREAMBLE

By an act of self-determination, the Dahoman people adopted on 28 September 1958 the constitution instituting a Community based on the equality and solidarity of the peoples composing it.

Making use of the option granted to them under article 76 of the said constitution and setting up their own institutions, the Dahoman people solemnly proclaim Dahomey to be a republican, democratic, secular and social State and a member of the Community.

The Republic of Dahomey intends to do everything possible to achieve, through work, order and justice, the fraternal union of all its children in a society devoid of any racial or ethnic discrimination.

It intends to pursue its efforts beyond its frontiers with a view to achieving the same fraternal union of all peoples.

It reaffirms its adherence to the right of peoples to self-determination and to fundamental human rights, as set out in the declarations of the constitutions of the French Republic and in the Universal Declaration of Human Rights.

It adopts as basic principles of the State: the separation of powers, the obligation to work, the equality and solidarity of all Dahomans without distinction as to origin, sex or religion.

TITLE I

THE STATE AND SOVEREIGNTY

Art. 1. Dahomey is a republican, indivisible, secular, democratic and social State and a member of the Community.

. . .

Art. 2. The republic shall ensure equality of rights, without distinction as to origin, race or religion, to all nationals of the Community.

Freedom of conscience, respect for creeds and customs, the profession and free practice of religion, and respect for private property shall be guaranteed to all, subject only to the preservation of public order.

Freedom of opinion, expression and association; the right to work; freedom of work; trade union rights, including the right to strike; equal rights for men and women; the protection and welfare of the individual and the family; the right to education; and the right to training shall be guaranteed equally to all.

The secrecy of correspondence and the secrecy of postal, telegraphic and telephonic communications shall be inviolable. Restrictions on such inviolability may be imposed only by virtue of a law.

Art. 3. Sovereignty shall be vested in the people, who shall exercise it through their elected representatives or by way of referendum.

No group of the people or any individual may assume the exercise of sovereignty.

Suffrage may be direct or indirect in the conditions established by an organic law.

The vote shall in all cases be universal, equal and secret.

All citizens of the Community of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote in the conditions established by an organic law.

Art. 4. The political parties and groups shall assist in the exercise of the franchise. Subject to the preservation of public order, they may be formed and engage in their activities freely. They shall respect the principles of the sovereignty of the people and of democracy.

. . .

TITLE IV

THE LEGISLATIVE ASSEMBLY

Art. 23. The Legislative Assembly shall exercise legislative power and supervise the action of the Government.

It shall be composed of deputies elected by direct universal suffrage for a term of five years.

. . .

Art. 29. A compulsory mandate shall be null and void . . .

TITLE VII

THE JUDICIAL AUTHORITY

Art. 44. The judiciary shall be independent of the legislature and the executive.

. . .

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of June 1959, and in the *Journal officiel de la République du Dahomey* of 16 February 1959. Translation by the United Nations Secretariat.

TITLE X

TREATIES, AGREEMENTS AND CONVENTIONS

. . .

Art. 50. Treaties, agreements and conventions which have been duly ratified shall have an authority superior to that of the law.

. . .

TITLE XII

AMENDMENT OF THE CONSTITUTION

. . .

Art. 53. No procedure for amendment shall be admissible which threatens the republican form of the Government, the integrity of the territory or the democratic principles governing the republic.

. . .

DENMARK

NOTE[1]

I. LEGISLATION

Social Security

By Act No. 70, of 13 March 1959, provision was made for widows' pensions according to detailed rules, the main principles of which are as follows.

Every woman who is widowed after the age of fifty-five, or who is widowed after the age of forty-five and is then responsible for the maintenance of at least two children of less than eighteen years of age, is entitled to a widow's pension. The annual basic amount is the same as the variable amount of old-age pension according to Act No. 258 of 2 October 1956 (cf. *Yearbook on Human Rights for 1956*, p. 50). In addition, children's allowances are provided for.

Only widows having Danish nationality — or who were last married to a Danish national — and being permanent residents of Denmark are entitled to this pension. These conditions may, however, be dispensed with in pursuance of treaties with foreign countries.

Widows who are not entitled to receive a pension under these rules — e.g., because they do not fulfil the age requirements — may receive special benefits, but only in case of need.

II. JUDICIAL DECISIONS

1. *Freedom of Speech — Equality before the Law*

During the period preceding the general parliamentary elections on 14 March 1957 the Danish State Broadcasting Service arranged several political broadcasts on radio and television, in which all political parties were given equal time. On the eve of election day a general multi-party broadcast was arranged in which, however, only representatives of the parties represented in the old Parliament were allowed to participate, to the exclusion of a party called "The Independent" which had registered as a new party according to the electoral law, having collected the required number of signatures by 10,000 voters. In the ballot this party got 52,890 votes, only a few thousand short of the 60,000 votes required to be allowed to share in the supplementary seats under the system of proportional representation.

The party brought an action against the Broadcasting Service, and by a decision of 13 November 1959 the Supreme Court, upholding a decision of the High Court, ordered the Broadcasting Service to recognize that it had not been entitled to exclude the party from participating in the broadcast in question. The plaintiff had not claimed damages.

The grounds of the judgement point to the considerable propaganda effect which the multi-party radio and television broadcast must have had because of its timing and staging. They go on to state that in a democratic society it is of crucial importance that all political parties taking part in a parliamentary election should be treated equally, and the administrators of the State Broadcasting Service must be under a particular duty to observe such equality of treatment. In the opinion of the court, no conclusive practical difficulties had been proved to prevent the new party from being allowed to take part in the broadcast. Consequently, the exclusion was unjustified.

2. *Personal Liberty*

The constitutional and statutory provisions concerning judicial control of administrative deprivation of liberty have been reported in *Yearbook on Human Rights for 1953*, pp. 63 and 66, and *Yearbook on Human Rights for 1954*, p. 76 (cf. also *Yearbook on Human Rights: First Supplementary Volume*, 1959, pp. 75-81). Some leading cases were reported in *Yearbook on Human Rights for 1956*, p. 50. In a judgement of 20 March 1959 the Supreme Court decided another question concerning the scope and the field of application of the provisions relating to judicial control in matters of personal liberty.

The case concerned a young man who as a conscientious objector had been called up for civil labour service instead of compulsory military service. Because of disobedience a disciplinary punishment of five days' house arrest was imposed upon him by the camp commander. Upon administrative appeal to the Ministry of the Interior the decision was upheld. He then took the matter to the courts in accordance with article 71, paragraph 6, of the Constitution.[2] The lower court and the Court of Appeal, however, dismissed the case as not concerning a deprivation of liberty within the meaning of that provision. The Court of Appeal based its decision on the following reasoning: compulsory military service and civil labour service for conscientious objectors, even if

[1] Note kindly furnished by Professor Max Sørenson, University of Aarhus, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Yearbook on Human Rights for 1953*, p. 66.

involving considerable inroads upon personal liberty, are outside the scope of judicial control. The performance of compulsory service requires the maintenance of discipline and order according to detailed rules, and compliance with these rules is therefore part of the service. Accordingly, disciplinary measures imposed to assure such compliance are not subject to judicial review.

The Supreme Court, however, overruled the decisions of the courts below and referred the case back to the lower court for consideration on the merits. The Supreme Court held that house arrest imposed as a disciplinary measure in the circumstances of the case should be considered as a deprivation of liberty, the legality of which was subject to judicial control according to constitutional provisions. The Supreme Court appears to have based this decision on the grounds that this form of arrest, which may be imposed for a period up to four weeks, is an interference with personal liberty which is not entirely insignificant, and that the corresponding disciplinary measure within the military services is subject to judicial control under the military code of criminal procedure.

DOMINICAN REPUBLIC

ACT No. 4280, PROVIDING PENALTIES FOR THE WILFUL DISTORTION OF HISTORICAL TRUTH AS RECOGNIZED OR DETERMINED BY THE DOMINICAN ACADEMY OF HISTORY (ACADEMIA DOMINICANA DE LA HISTORIA) OR EARLIER

of 17 September 1955[1]

Single article. Anyone who, whether by means of speeches, shouts or threats uttered in public places or meetings, or by means of writings or printed material distributed, offered for sale or exhibited in public places or meetings, with the deliberate intention of creating confusion and deceiving the public drastically distorts historical, positive or factual truth, as it has been recognized or determined by the Dominican Academy of History or earlier, shall be liable to the penalties of correctional imprisonment and a fine of RD$10.00 to RD$500.00, or to one of these penalties only, depending on the circumstances.

[1] Published in *Gaceta Oficial*, No. 7892, of 30 September 1955. Translation by the United Nations Secretariat.

EL SALVADOR

DECREE No. 2972: ELECTORAL ACT

of 27 November 1959[1]

PART I

PURPOSE OF THE ACT

Art. 1. The activities of citizens in relation to the electoral process and to any actions to be taken by the State for electoral purposes including the rules regulating the right of association for the purpose of establishing political parties shall be governed by the provisions of this Act.

Art. 2. The offices of President and Vice-President of the republic, deputies to the Constituent Assembly and the Legislative Assembly, and members of municipal bodies shall be filled by popular election through the direct, equal and secret vote of the citizens.

PART II

THE ELECTORATE

Art. 3. The suffrage is a right and a duty of citizens, which may not be delegated or renounced.

Art. 4. The electorate consists of all citizens competent to vote.

Art. 5. All Salvadorians over eighteen years of age, without distinction as to sex, are citizens.

. . .

Art. 9. The following persons are incompetent to exercise the rights of citizenship:

1. Persons against whom a formal warrant of arrest and custody has been issued;
2. Persons of unsound mind;
3. Persons deprived of civil rights by order of a court;
4. Persons who refuse, without good cause, to discharge an office to which they have been popularly elected;
5. Persons of notoriously vicious conduct;
6. Persons convicted of an offence;
7. Persons buying or selling votes in elections;
8. Persons signing statements, proclamations or declarations of support for the purpose of promoting or assisting the re-election or continuance in office of the President of the republic, or employing direct means of achieving that purpose;
9. Officials, authorities and agents thereof who restrict the freedom of suffrage.

. . .

[1] Published in *Diario Oficial* Vol. 185, No. 220, of 2 December 1959. Translation by the United Nations Secretariat.

PART V

THE FORMATION AND REGISTRATION OF POLITICAL PARTIES

Chapter I. — Registration

Art. 20. Citizens competent to exercise their rights may form themselves into political parties.

The establishment of political parties which promote doctrines of anarchy, communism or any other ideology calculated to destroy or impair the democratic structure of the Government of the republic, and the establishment of political parties organized on the basis of prejudice in matters of sex, race or religion, are prohibited; the establishment of political parties which are connected with or receive assistance, financial or otherwise, from foreign persons or bodies, whether political or not, is likewise prohibited.

Art. 21. Political parties are prohibited from:

(1) Using names associated with institutions of the State;

(2) Adopting the national flag or coat of arms as their emblem;

(3) Using names or devices which are the same as or similar to those of other parties, the same colours differently arranged, or the same initials as another party. Such cases shall be decided in favour of the party which first applied for registration or re-registration.

Art. 22. No political party may be founded unless it has 5,000 members, who must be domiciled in at least five departments of the republic.

The membership of a party must be recorded in books specially kept for the purpose.

Art. 23. A register of political parties is hereby established and shall be kept by the Central Electoral Board.

In order to acquire legal status and the right to participate in elections, a party must be entered in the appropriate register.

Political parties whose organizers and leaders include individuals of communistic, anarchical or any other ideology or affiliation calculated to destroy or impair the democratic structure of the Government of the republic shall not be registered.

. . .

Art. 30. A political party shall be struck off the register:

(1) If the party cannot exist in conformity with constitutional provisions, or persistently violates them;

(2) In case of dissolution of the party;

(3) In case of contravention of the principles proclaimed in its rules of management and statutes; and if the provisions of its own statutes concerning its organization are not observed;

(4) If the party acts in contravention of, or does not meet, the requirements established by this Act;

(5) In case of an amalgamation of parties, whereupon the new group shall be registered, provided that it meets the requirements established by article 24 of this Act;

(6) If the party does not participate in two successive general elections or, having participated in two successive periods of propaganda, fails to compete at the polls.

(7) If the party does not comply with the rules established by this Act, in serious cases.

The striking-off of a party shall be indicated by a separate entry in the appropriate register, a marginal note being made against the original entry giving the number of the new entry.

. . .

Art. 36. Only political parties registered in conformity with this Act or recognized by this Act may use the general name of "party".

Groups, associations or bodies, by whatever name they are known, which pursue or engage in political and electoral activities must be organized into political parties in conformity with this Act.

. . .

Chapter IV. — Electoral Propaganda

Art. 48. Electoral propaganda may be undertaken freely through all lawful communication media in accordance with the regulations in force. It shall be permitted only for four months before the date of the elections for President and Vice-President of the republic and for two months before the date of the elections for deputies. Propaganda for the election of members of municipal bodies may be undertaken on behalf of registered candidates for one month before the date of the election.

Art. 49. Electoral propaganda must remain within the bounds prescribed by law, by public decency and by good manners.

. . .

Art. 51. Any person who, for the purpose of electoral propaganda, uses insulting, slanderous or defamatory language or promotes or participates in public disorders shall be punished in accordance with the general laws.

Art. 52. Any partisan propaganda through the medium of organs of the press, radio and television which are operated by the Government of the republic, municipal councils or autonomous official bodies is prohibited.

Members of the armed forces on active service and agents of the security forces may not engage in electoral propaganda.

Art. 53. No political propaganda in any form which invokes religious motives or appeals to the religious beliefs of the people may be undertaken by any minister of religion or layman.

Electoral propaganda in the places of worship of any religion, and electoral propaganda elsewhere which makes use of ceremonies or meetings of a religious character, are prohibited.

Art. 54. The prohibition referred to in the preceding articles shall not restrict the right to vote of any citizen qualified as an elector.

Art. 55. Meetings or demonstrations in public places for purposes of electoral propaganda may be held only if permission has been obtained in advance from the governor in the capital of a department, or from the mayor in other districts. In the capital of the republic, the permit issued by the authorities must also be presented to the headquarters of the national police, in order that the latter may take whatever security measures are necessary and make suitable arrangements for regulating traffic while the meeting is being held.

Art. 56. An application for permission to hold such a meeting, demonstration or procession shall be made in writing to the appropriate authority by the authorized local representative of the political party concerned at least three days before the date for which permission is sought, with an indication of the hour, date, place and duration of the meeting, demonstration or procession and, in the last case, of the route which the procession will follow.

The authority to whom the application is made shall grant the permit without further reference or formality.

Art. 57. An application for a permit may be rejected by the appropriate authority only if some other political party or parties have already applied for a similar permit for the same day.

In such cases the permit shall be granted for a different day, to be determined by agreement with the party concerned.

In order to avoid breaches of the peace, opposing political parties shall not hold meetings in the same district on the same day.

PART VI

CANDIDATES

Art. 58. Candidates for office by popular election must meet all the requirements established by the constitution and laws of the republic, and their names must be recorded in the Register of Candidates.

. . .

Art. 61. Applications for registration as candidates for the offices of President and Vice-President of the republic and of deputies to the Constituent Assembly and Legislative Assembly must be made by the applicants in person, either individually or collectively.

An application in respect of membership of a municipal council shall be signed by all the candidates and may be presented by the representative, designated in advance, of the sponsoring party or by the applicants themselves.

An application shall be accompanied in every case by a complete certified copy of the record of the proceedings by which the candidates were designated, such copy being authenticated by the political party concerned, in accordance with the relevant statutes.

. . .

Art. 64. An application for registration shall expressly indicate the party or coalition of parties on behalf of which it is made. No person may be registered as a candidate for more than one party or coalition.

. . .

Art. 70. The entry in the register of candidates must include:

. . .

(*c*) Particulars of the sponsoring party or coalition of parties.

. . .

PART X

VIOLATIONS AND PENALTIES

. . .

Chapter II. — Contraventions

Art. 158. Leaders and organizers of associations, groups or bodies which, not being established as political parties in accordance with this Act, engage in activities typical of a political party, shall be liable to a penalty of one to two years' imprisonment.

The offence established by this article shall not include the preliminary recruitment of members for the purpose of procuring the registration of a political party.

. . .

Art. 165. A person who, not being a Salvadorian citizen, participates directly or indirectly in political activities shall be expelled from the territory of the republic, for which purpose the Ministry of the Interior shall be informed.

. . .

GENERAL PROVISIONS

. . .

Art. 172. The suffrage being a function of the greatest public importance, privately owned theatrical, newspaper, radio and television undertakings shall be required to announce to the public, free of cost, any official measures taken or instructions issued by any authority of the republic in connexion with the electoral process.

. . .

Art. 174. No elector is obliged to disclose the manner in which he voted, even if called upon to do so by a judicial or administrative authority.

. . .

Art. 181. Active electoral propaganda is prohibited on the day of, and during the three days preceding, the election. The wearing of party badges or emblems by individuals shall not be deemed to constitute propaganda.

. . .

Art. 184. The Electoral Act of 25 February 1952, published in *Diario Oficial* No. 40, Vol. 154, of 27 February 1952,[1] is hereby repealed in its entirety, together with all subsequent amendments. The Permanent Political Parties Act of 23 August 1949, published in *Diario Oficial* No. 184, Vol. 147, of 24 August 1949, is similarly repealed in its entirety.

TEMPORARY ARTICLES

. . .

Art. 186. The legal existence of permanent political parties which were registered under the Act hitherto in force and which participated in the elections of 1956 and 1958 is hereby recognized.

. . .

Art. 189. This Act shall come into force eight days after its publication in the *Diario Oficial.*

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[1] See *Yearbook on Human Rights for 1952*, p. 251.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1959[1]

A SURVEY OF FEDERAL AND LAND LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS

CONTENTS

INTRODUCTION

It is the constant endeavour of the courts to define in more specific and more concrete terms the concept of the rule of law which is the foundation of the constitutional order in the Federal Republic. During the year covered by this survey a number of decisions tending in this direction were pronounced by higher courts.

The Federal Constitutional Court held (3 February 1959, *BVerfGE* 9/137) that it followed from the principle of the rule of law that the individual must know how far administrative authorities were permitted to restrict his rights. However, that principle did not oblige the legislator either to bind the administrative authorities to impose the permissible restriction in all cases or to define in precise terms the circumstances in which they might refrain from imposing a permissible restriction of clearly defined nature and extent. The same court ruled similarly in another case (8 January 1959, *DÖV* 59/145). The Drugs Manufacture Order of 11 February 1943 makes the manufacture of new drugs illegal unless the manufacturer obtains a special licence for the purpose, but gives no indication of the conditions on which such a licence is to be issued. The Federal Constitutional Court held that the omission of even minimum rules to be applied in such cases was an

[1] Report prepared by Dr. Klaus J. Unverzagt, Government Councillor, and kindly forwarded by the Office of the Permanent 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- und Verordnungsblätter bzw. Amtsblätter der Länder* (Journals of legislative provisions and regulations and official bulletins of the Länder) (B = Bremen, Bay = Bavaria, Bln = Berlin, BW = Baden-Württemberg, 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 Bundesverfassungsgerichtes* (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 — including those to Land journals — are to the 1959 series.

offence against the principle of the rule of law. The Federal Court of Justice held (23 March 1959, *BGHZ* 30/19) that it was the duty of the authorities to give a petitioner accurate information on the progress of his petition and to come to a decision on it as soon as the legal inquiry had been completed.

The Federal Constitutional Court had occasion to rule (5 June 1959, *DÖV* 60/28) on the permissibility of the wide-spread practice of reaching tax composition settlements. The court held that except where it was specifically authorized by statute this practice was incompatible with the principle of taxation according to law, and declared that tax abatements which could not be justified by specific statutory provisions or had been granted without checking were illegal.

The Constitutional Court at Coblenz had occasion to deal (16 March 1959, *NJW* 59/1628) with article 13 of the European Convention on Human Rights, which guarantees that everyone whose rights are violated shall have an effective remedy. The court held that neither the natural right of the individual to the protection of his fundamental rights by the State nor the principle of the rule of law required that individuals should be granted the right of appeal to the Constitutional Court. Every State was entitled to establish its own forms and procedures for the protection of fundamental rights. In the Federal Republic the requirements of article 13 were satisfied, so far as matters of administrative law were concerned, by the normal due process of German law and, in particular, by the application of the "general clause" principle. Moreover, the individual was at liberty to appeal to the Federal Constitutional Court on constitutional grounds concerning any violation of the fundamental rights guaranteed under the Basic Law, which were essentially identical with those laid down in the Convention and in the Land constitution.

1. PROTECTION OF HUMAN DIGNITY

The Federal Constitutional Court ruled (29 July 1959, *BVerfGE* 10/89) that commercial firms were entitled to claim the fundamental right of general freedom of trade embodied in article 2 of the Basic Law even if they were not corporations in the legal sense; the right in question, the court held, applied even to purely economic entities.

The Economic Offences Penalties Act provides that the owner or manager of a business in which a breach of the law has been committed may be punished under the Petty Offences Act (*Ordnungswidrigheitengesetz*.) The person in question can escape punishment only by proving that he exercised ordinary care to avoid the offence. An appeal was lodged against this provision, which represents a departure from the principle that a person must be presumed innocent until he is proved guilty, on the ground that it was a violation of human dignity. The Constitutional Court ruled that while no one could be punished except for an offence, the petty offences procedure (*Bussgeldverfahren*), which was not intended to cover criminal offences, was subject to different considerations. The provision in question did not impose an unreasonable burden on the person concerned, since the existence of an offence had to be factually proved in every case.

The Federal Court of Justice held (18 March 1959, *BGHZ* 30/7) that, where a well-known artist was referred to in an advertisement without his consent, his general rights as an individual could be held to have been infringed even if there had been no unauthorized use of his name within the meaning of the relevant provisions of civil law. The fact that the practice was customary in advertising did not absolve the offender, if it constituted an abuse which could not be approved in the light of generally accepted ideas of justice. In addition to applying for an injunction, the aggrieved party was entitled to claim damages, including, in particular, damages for moral injury. In another decision (28 February 1959, *BGHSt* 13/32), the Federal Court of Justice had occasion to deal with article 88 of the Criminal Code, which lays down constitutional principles, offences against which are punishable under the following provisions. The article lays down as a constitutional principle the prohibition of tyranny or arbitrary rule of any kind. A publication demanding that no Jew should be allowed to hold any influential position in the Federal Republic was an incitement to renewed racial discrimination and was unconstitutional, the court held. The essential content of the Constitution included in particular article 2 of the Basic Law, which provides for the protection of human dignity, and the equal treatment clause of article 3. Even in the absence of the Criminal Code, measures violating those provisions would be illegal and void. The Federal Social Court ruled (5 March 1959, *DÖV* 59/584) that the withdrawal by the authorities of a formally but not substantively justified entitlement (pension) was not an offence against the human dignity of the person concerned. Nor did it infringe the right to the free development of personality, since that right merely safeguarded freedom of action in general, and conferred no claim to any benefit.

In principle, a homeless person's claim on the authorities ends with the provision of emergency shelter, and the public duty of the authorities to deal with the problem of homelessness is in general fulfilled by the provision of such shelter. The Higher Administrative Court at Münster ruled (20 March 1959, *DÖV* 60/145) that the emergency shelter assigned to a homeless person might in some cases — for example on the ground that it might endanger his children's morals — be judged unreasonable from the standpoint of the protection of human dignity.

The Federal Administrative Court held (9 November 1959, *DÖV* 60/147) that the proof of need required to be produced by persons applying for a licence to carry arms was not a violation of the right to the

free development of personality, since the Firearms Act had been constitutionally enacted and in no way infringed the constitutional order.

2. PROTECTION AGAINST DISCRIMINATORY TREATMENT

(*a*) EQUAL TREATMENT IN GENERAL

The Federal Constitutional Court again ruled (16 June 1959, *BVerfGE* 9/334) that although the legislator had very broad regulatory powers, he could not arbitrarily infringe the principle of equality laid down in article 3 of the Basic Law. The court held that the statutory limitation of ninety days on claims for damages caused to Germans by the occupation authorities — as against the two or three year limitation usual under the civil law — was not a violation of the principle of equality, since it was based on reasonable considerations, such as the rapid turnover of units of the occupation forces. In consonance with the above-mentioned view that the legislator is bound equally with other authorities by the principle of equality, the Federal Constitutional Court ruled (20 May 1959, *BVerfGE* 9/291) that justice required that identical situations received identical legislative treatment. A Land Act authorized municipalities to levy a fire-fighting tax on males between the ages of eighteen and sixty who did not belong to a voluntary fire-brigade or had not served for a period of at least twenty-five years in such a brigade. The court held that the tax could not be justified as a special levy within the meaning of tax law, since it should in that case have been limited to those deriving special benefit from protection against fire. If intended as a payment in lieu of service it should have been limited to those actually fit for service, while if intended as a general tax it should not have been limited to men between the ages of eighteen and sixty.

In the case of amnesty acts, on the other hand, the legislator is allowed very broad discretionary powers. The Federal Constitutional Court held (13 December 1959, *NJW* 60/235) that the principle of equality did not require the legislator, in enacting immunity legislation, to extend immunity to all criminal offences or to do so in equal degree. It was permissible to except certain types of offences and to make special provision for specific offences.

The same court ruled (22 January 1959, *DÖV* 59/384) that it was a requirement of the general principle of equality, in conjunction with the State's social duty, that the situation of persons with means and those without means should to a considerable extent be equalized so far as concerned their rights of due process. This could be achieved in different ways, depending on the nature of the case and the procedure in the branch or level of the judicial machinery involved. In social courts of first or second instance, the right of due process of persons without means was adequately ensured without the appointment of poor person's counsel. The Federal Administrative Court held (17 April 1959, *DÖV* 59/592) that a clause in a Costs Act under which a complaint was to be regarded as withdrawn if the plaintiff's application for permission to sue *in forma pauperis* was rejected and the prescribed advance against costs was not paid within the following fourteen days infringed the principle of equality, since it placed the party without means at a disadvantage as compared with the party with means. However, the same court later took a different view, holding (6 October 1959, *DÖV* 59/907) that there were objective grounds for differential treatment; no one was entitled to state services gratis, and an application for permission to sue *in forma pauperis* was rejected only if the suit had no prospects of success.

The Federal Finance Court ruled (28 August 1959, *NJW* 60/71) that the legislator had not offended against the principle of equality by failing to give children's allowances paid to government employees some degree of exemption from income tax, even though general children's allowances had in the meantime been exempted from tax under the Children's Allowances Act. The courts could not, as a general rule, grant tax exemptions contrary to law on their own initiative in order to ensure equality; this was a matter for legislation, even where the principle of equality was being infringed.

The Federal War Victims' Assistance Act provides that the child of a mother whose husband had been missing during the period of the child's conception is not entitled to an orphan's pension. This provision was challenged on the ground that under civil law the illegitimacy of a child born during the period of a marriage or within a specified period following its dissolution can have legal effect only if the child's illegitimacy is finally established by judicial proceedings. The Federal Constitutional Court declined (17 March 1959, *BVerfGE* 9/201) to view this as unjust discrimination on the legislator's part. Special treatment was not unjustified in this case, since the father, who was the person legally entitled to contest the child's legitimacy, had disappeared, and could not make use of his right to do so. The civil law provision in question related only to a putative right. Any mother or child who wished to assert a claim under the Federal Assistance Act was at liberty to institute proceedings to establish the date of the father's death, and thus to clarify the situation.

The fact that members of the Austrian nobility who had become Czechoslovak nationals as a result of the political changes of 1918/1919 and had subsequently acquired German nationality were not authorized to use their former titles of nobility, although persons of German nationality by birth were permitted to do so, was not inconsistent with the principle of equality, the Federal Administrative Court held (26 May 1959, *BVerwGE* 8/317). The court based this ruling on the position that the principle of equality required only that similar matters,

not dissimilar matters, should be treated similarly. The same court held (9 October 1959, *BVerwGE* 9/210) that a clause of the Berlin Act concerning the recognition of victims of political, racial and religious persecution under which recognition could not be extended to adherents or former adherents of a totalitarian system was void as incompatible with the principle of equality, since no one should be placed at a disadvantage because of his convictions or political views. It occasionally happens in the Federal Republic that an individual is assessed for church tax on his immovable property in one Land and on his income in another. The Federal Administrative Court ruled (20 March 1959, *BVerwGE* 8/211) that this was not a violation of the principle of equality, since it followed from the Federal Republic's federal structure that the Länder regulated their affairs differently. Moreover, double taxation was not barred as a matter of principle. On the other hand, the case was not one of wrongful double taxation, since that implied multiple taxation of the same object on the same assessment basis by more than one fiscal authority.

(*b*) Equal Treatment of the Sexes

The statutory revision of the civil law enacted on 18 July 1957 in order to bring it into line with the principle of equality laid down in the Basic Law provided that where parents could not agree on the upbringing of their children the father should have the deciding voice, and that the statutory agency of the children vested in the father. The Federal Constitutional Court declared this statutory provision void (29 July 1959, *BVerfGE* 10/59). It held that the moral community existing between the parents and their indivisible joint responsibility for their children, together with the broad equality of rights enjoined by the Constitution, entailed the full equality of rights of the father and mother in the sphere of parental authority as in others. In the event of dispute the decision must rest with the guardianship court. The Federal Court of Justice (13 July 1959, *BGHZ* 30/306) maintained its earlier view that, during the interval between the abrogation of the law conflicting with the principle of equality of rights (31 March 1953, article 117 of the Basic Law) and the entry into force of the statutory revision referred to above, the statutory agency of a minor legitimate child vested in both parents jointly.

Under the Income Tax Act as amended on 13 November 1957, spouses having an independent income may elect to be taxed either separately or jointly. The effect of this, because of the progressive rates of tax applied, is that, given appropriate division of income, separately assessed spouses may enjoy more favourable rates of taxation than idividuals. The Federal Constitutional Court (14 April 1959, *BVerfGE* 9/237) rejected an appeal based on the ground that this provision was a breach of the principle of equality, ruling that only the rates of taxation of individuals could be compared, not those of groups, since the Income Tax Act was based on the principle of individual taxation. In cases where spouses were able arbitrarily to divide their income, there were factual differences involved, and the legislator had not infringed the principle of equality since that principle prohibited only the differential treatment of identical situations. Under a provision of civil law, a married couple takes the husband's name. The Federal Administrative Court held (27 November 1959, *DÖV* 60/306) that this provision was compatible with the principle of equality. It did not place the wife at a disadvantage; on the contrary, it gave her the right to bear the husband's personal name. Moreover, marriage was a unity safeguarded by the Constitution itself, and it must be regarded as legitimate that only one name should be valid for that unity. The use of the husband's name was consonant with his position in the marriage partnership and his special duties. The law merely reflected the different position of the husband.

The Federal Court of Justice ruled (5 May 1959, *BGHZ* 30/50) that the preference given to males in the law relating to farm inheritance was consistent with the principle of the equality of the sexes. It justified this view by reference to the public interest in the undivided inheritance of farms and the rule that the principle of equality barred only the differential treatment of identical matters. The objective biological and functional differences between men and women justified the differential regulation of their legal status. Thus in agriculture women were as a rule more concerned with domestic duties, while men were responsible for the planning and outside work.

3. PROTECTION OF THE INDIVIDUAL

(*a*) Arbitrary Deprivation of Liberty

In the Rhineland-Palatinate a Land Act concerning the institutional care of mentally infirm or addicted persons, passed on 19 February 1959 (*RPGVBl* 59/91), provides for the compulsory institutionalization of such persons. Committal requires an application in writing by the administrative authorities, which must be followed — as a rule before the person concerned is committed to the institution — by a judicial order.

The Land High Court at Hamm held (26 January 1959, *NJW* 59/822) that the committal of a person to a medical institution, even for a period of only six weeks, was so serious an encroachment on his fundamental right of personal freedom that it could be permitted only subject to strict conditions. It was permissible only if the effects of the mental infirmity of the person concerned raised an imminent danger to his own person or property or to the persons or property of those about him. Moreover, the danger must be one to be expected, with a probability approaching certainty, in the immediate and not

merely the near future, and one which could be averted only by committal.

The Land High Court at Neustadt, ruling on the question of the duration of custody pending deportation — a matter not regulated by statute — held (8 September 1959, *DVBl* 60/72) that the length of the period of deprivation of liberty should normally be determined by the duration of the deportation proceedings, provided that the German administrative authorities dealing with the case conducted the proceedings with all due speed.

(*b*) Physical Integrity

In application of the Food Act, which lays down strict rules for the purity of food products, a series of orders was issued on 18 December 1959 containing detailed regulations concerning the additives which may be used in foodstuffs and in the manner in which foodstuffs are to be handled (*BGBl* 1/725 *et seq.*). The Federal Atomic Act of 23 December 1959 (*BGBl* I/814) lays down extensive safeguards designed to protect the health of the population against injury from atomic radiation. An Act concerning the protocol of 11 December 1946 amending the Convention on Narcotic Drugs, the protocol of 19 November 1948 on the international control of narcotic drugs and the protocol of 23 June 1953 on the poppy plant and opium was passed on 26 March 1959 (*BGBl* II/333).

The Federal Administrative Court ruled (14 July 1959 *BVerfGE* 9/78) that compulsory vaccination pursuant to the Vaccination Act of 8 April was consistent with the Basic Law, since it did not essentially infringe the fundamental right to physical integrity and the Act was in the public interest. The duty of submitting to vaccination was the corollary of the citizen's right to vaccination. In decisions relating to vaccination, however, general and special dangers were to be taken into account. Where any danger was involved vaccination must be waived or postponed. In making his decision, however, the vaccinating physician must be guided only by medical considerations, and vaccination must not be made conditional on the assumption of responsibility for possible damages by the statutory representative of the person to be vaccinated.

During the period under review the Federal Court of Justice again had occasion to deal with the duty of physicians to tell their patients the facts. The court held (16 January 1959, *NJW* 59/814) that in cancer cases it was normally the physician's duty to inform his patient of the special dangers of radiation therapy. This followed from the constitutional right of physical integrity, which could be invaded only with the consent of the person concerned. In another ruling (10 February 1959, *BGHSt* 12/379), the court held that where a physician did not consider an operation essential, but merely desirable, he must exercise special care to determine first whether the consent of the patient or of the person having parental power over him had been obtained and secondly whether there were any contra-indications.

(*c*) Private Life, Family, Reputation

The Federal Court of Justice ruled (15 April 1959, *BGHZ* 30/132) that parents were not intitled to give male children feminine names. The relevant civil registration regulation was not inconsistent with the right to the free development of personality, or with freedom of religion or the rights of parents, since such a practice would constitute an abuse.

Under German law, no one may change his name without authorization, which may be granted only for a compelling reason. The Higher Administrative Court at Berlin ruled (12 March 1959, *DÖV* 59/869) that the existence of a compelling reason was not a matter which could be decided on the basis of administrative discretion. The administrative instructions, now rescinded, under which authorization was to be granted to a naturalized German citizen to reassume, through a change of name, a title he had been deprived of as a result of anti-aristocratic legislation in his country of origin, were still binding on the authorities as an expression of current general opinion. The Federal Administrative Court held (13 November 1959, *DÖV* 60/151) that the exercise of administrative discretion was similarly barred in the official determination made in cases where the spelling of a name is uncertain. The Baden-Württemberg Administrative Court, in a decision of 10 September 1959 (*DÖV* 59/871) took the same general position, though with a noteworthy difference. The court held that although administrative discretion might not be exercised in determining whether a compelling reason existed, the decision as to whether the application for a change of name should be granted nevertheless remained a matter for the discretion of the authority concerned. Whether or not a compelling reason existed must be decided in the light of the applicant's personal circumstances, while considerations of public interest could be taken into account in the subsequent discretionary decision.

In a special case involving the law relating to names, the Federal Administrative Court held (5 May 1959, *DVBl* 59/829) that the grant of a title by a foreign sovereign did not constitute a compelling reason for a change of name within the meaning of the Act concerning change of name. In another case, the same court ruled (26 May 1959, *DÖV* 59/867) that members of the Austrian nobility who had become Czechoslovak nationals as a result of the political changes of 1918/1919 and had thereby lost their titles could reassume them after subsequent acquisition of German nationality.

The Land High Court at Düsseldorf ruled (15 April 1959, *NJW* 59/1238) that the calling up of a person liable to military service did not constitute the separation of a minor from his family and was accordingly, for that reason if for no other, not a violation of article

6 of the Basic Law, under which children may be separated from their parents against the latter's will only by virtue of a law.

(*d*) Freedom of Religion

The Federal Administrative Court held (24 July 1959, *BVerwGE* 9/97) that a young person liable to military service was capable, despite his youth, of making a decision on conscientious grounds to object to military service under arms. Questioning as to the conscientious grounds for his objection in no way infringed the rights of the conscientious objector. No one was obliged to disclose his convictions; a person must do so, however, if he wished by claiming adherence to a specific belief to draw certain consequences. If the conscientious grounds for objection to military service could not be proven, that fact must weigh against the person concerned. The same court held (24 July 1959, *BVerwGE* 9/100) that the view that a conscientious objection to military service under arms could be made only by a morally mature person with firm and enduring convictions was incompatible with the Basic Law. The Land High Court at Düsseldorf ruled (15 April 1959, *NJW* 59/1238) that the right to object to military service under arms was personal in nature and could therefore be exercised only by the person liable to service himself, not by the person having parental power over him.

4. DUE PROCESS

(*a*) Before Civil and Administrative Courts

The Act concerning the agreement of 30 June 1958 between the Federal Republic of Germany and Belgium on the mutual recognition and execution of legal decisions, awards and writs in civil and commercial matters and the Act concerning the implementation of that agreement were published in the *Bundesgesetzblatt* (*BGBl* I/425, II/765). The agreement between the Government of the Federal Republic of Germany, the Government of the Republic of Austria and the Government of the Kingdom of Belgium concerning the further simplification of legal intercourse pursuant to the Hague Convention of 1 March 1954 was also published in the *Bundesgesetzblatt* (*BGBl* II/1523, 1524). This instrument contains provisions facilitating the service of documents, legal assistance, the recovery of costs etc.

In a decision of fundamental importance (13 June 1959, *BVerwGE* 8/350) the Federal Administrative Court went into the question of what constitutes a court of law, and came to the conclusion that the German Patent Office, which had hitherto been regarded as a court of law, was not a court within the meaning of the Basic Law, and that decisions of the Patent Appeals Tribunals could therefore be challenged as administrative acts in the administrative courts. The court based this finding on the fact that the principal activities of the Patent Office were administrative in character. Even before that ruling, decisions of patent offices at first instance had not been regarded as judicial acts. But the Patent Appeals Tribunals did not meet the requirements of a court of law either, the court held, since their executive and judicial powers were not separated. Moreover, many decisions had been taken in them without the collaboration of a member versed in law, and, in addition, the composition of the Patent Appeals Tribunals was not laid down in advance in general terms.

Article 18 of the Administrative Courts Act for the Rhineland-Palatinate allows the option of legal action or administrative complaint against the decisions of lower administrative authorities. The opinion had hitherto prevailed that under this legal provision a person who had taken the course of administrative complaint could not subsequently bring legal action against the result of the complaint. The Federal Constitutional Court (17 March 1959, *BVerfGE* 8/194) rejected a constitutional appeal against that interpretation based on the plea of denial of the right of due process guaranteed by the Basic Law (article 19 (4)), interpreting the legal provision in question as excluding the commencement of legal action only while the appeal was in process. The Federal Administrative Court ruled (17 April 1959, *DÖV* 59/542) that a provision in the Bavarian Costs Act under which the plaintiff must pay a deposit for costs before the oral hearing in an administrative court was incompatible with article 19 (4) of the Basic Law. The provision impeded a plaintiff's access to legal action, even though liability for costs was not definitely established until the end of a case. That applied particularly to needy parties, since where a person was denied legal aid his case was considered to have been withdrawn. As a result, such persons were placed at a disadvantage as compared with parties possessed of means. In its decision of 6 August 1959, however, the Federal Administrative Court no longer took that position (*DÖV* 59/907).

The Federal Constitutional Court (14 April 1959, *BVerfGE* 9/256) ruled that in deciding on an application for poor persons' legal assistance made by a child respondent in legitimacy proceedings, it was not a denial of the right of legal hearing laid down in article 103 (1) of the Basic Law to take into account the child's prospects of success in the proceedings. The fact that in such proceedings the court acted under its *ex officio* powers of investigation did not, of course, mean that legal assistance must automatically be denied and the right of legal hearing thus disregarded; each case must be decided on its own merits with due regard to the state of the proceedings. Legal assistance, as a state welfare service, could be demanded only where it would serve a useful purpose. As to the question of what the right of legal hearing involved, the same court held (3 November 1959, *BVerfGE* 10/177) that it required the judge to introduce facts within the knowledge of the court into the proceedings. The Federal Social Court held (15 December 1959, *NJW* 60/501) that the right of legal

hearing was infringed even where, although the parties or their representatives had been heard at the oral proceedings, the court had not gone into the facts of the case with them properly and fully because they had not been able to familiarize themselves with the subject matter of the proceedings and with the evidence in good time. The Federal Court of Justice ruled (8 October 1959, *BGHZ* 31/43) that the duty of arbitration tribunals to hear the parties was not substantially less than that of the ordinary courts. It was true that arbitration tribunals were not bound to inform the parties of their legal views or to call upon them to make statements; a tribunal's failure to hear the parties could not be regarded as constituting peremptory ground for review, but it was nevertheless sufficient ground for reversal of the tribunal's award, if the latter could be shown to be due to that failure. The Higher Administrative Court at Münster held (22 April 1959, *DÖV* 59/636) that the bench of a Land administrative court was not regularly constituted where one of the honorary members who had participated in the oral proceedings did not collaborate in the final deliberations and the vote. If a judge or an honorary member was unable to take part in the final deliberations, the oral proceedings must be repeated. The regular constitution of the court was an essential constitutional requirement and must be verified *ex officio*. The Federal Social Court ruled (19 February 1959, *NJW* 59/910) that a division of a Land social court was not regularly constituted if it did not have a presiding judge appointed by name. In a further decision (3 November 1959, *DVBl* 60/107) the same court ruled, in line with the general practice of the higher courts, that the constitution of a division of the Land Social Court to include two Social Court justices merely delegated to that court as assisting judges was unlawful, irrespective of the length of time for which they were so delegated. This irregular constitution of the court was a material defect of procedure, since it resulted in a lack of judicial independence, and any judgement vitiated by this defect must be annulled.

The Federal Court of Finance ruled (4 September 1959, *NJW* 60/120) that the failure of the revenue office to advise a taxpayer that his case might be worsened by the institution of appeal proceedings was a material defect of procedure requiring the case to be referred back to the revenue office.

(*b*) Before Criminal Courts

During the year covered by this survey a number of agreements concerning extradition and legal assistance came into force. These included the treaty dated 17 January 1958 between the Federal Republic of Germany and the Kingdom of Belgium, which came into force on 30 May 1959, and the agreement between the Government of the Federal Republic of Germany and the Kingdom of Morocco of the same date, which came into force on 27 January 1959 (*BGBl* II/118, 582). The same subject was covered by the agreement between the Government of the Federal Republic and the Government of the Kingdom of Sweden dated 14 March 1959 (*BGBl* II/401).

In a decision of fundamental importance, the Federal Constitutional Court gave its opinion (17 November 1959, *BVerfGE* 10/200) on the constitutionality of the municipal courts (*Gemeindefriedensgerichte*) in Baden-Württemberg. The court ruled, firstly, that, where the jurisdiction of the federal courts was excluded through the establishment of special Land courts which did not meet the requirements of the Basic Law, the right to a lawful judge was infringed. Such an infringement might be brought about, not only by the executive, but also by the legislature. The municipal courts were unconstitutional because of their close connexion with the administrative authorities; for example, the mayor, who was also a local police authority, was *ex officio* president of the court. Equally inconsistent with the constitution was the fact that, under the relevant statute, where the municipal court was constituted by a single judge, only a municipal official could be appointed to that office. In another decision (19 March 1959, *BVerfGE* 9/223), the court ruled that the right to a lawful judge did not mean that the latter must be specified once and for all and for all cases. Flexible rules of jurisdiction were permissible, so long as they were based on principles of justice and stated in general terms, and so long as they ruled out any extraneous influences on the proceedings. Thus the clause in the Judicature Act under which certain offences, because of their special importance, might be tried before the Land court instead of the court of first instance (*Amtsgericht*) was not inconsistent with the constitution. That rule, while indefinite, had been given adequately concrete interpretation, in particular, through administrative regulations; moreover, the decision in any individual case could be tested in the courts. The Federal Court of Justice ruled similarly (29 October 1959, *BGHSt* 13/297) concerning the constitutionality of another clause in the Judicature Act, under which the public prosecutor may bring charges either before the ordinary criminal court or before the juvenile court. One of the court's principal grounds for this ruling was the fact that the two courts are of equivalent standing.

Section 301 of the Code of Criminal Procedure lays down that, on any appeal by the public prosecutor, the decision may be reversed in favour of the defendant. The Federal Court of Justice held (3 March 1959, *BGHSt* 13/41) that the rule against *reformatio in peius* applied even where an earlier decision had been reversed in favour of the defendant on appeal by the public prosecutor against the defendant.

Under section 310 of the Code of Criminal Procedure, there is as a general rule no right of further complaint (*Beschwerde*). The Land High Court at Stuttgart ruled (5 September 1959, *NJW* 59/2080) that a party who had not been granted a judicial hearing on a *Beschwerde* before pronouncement of the

decision, which had gone against him, was entitled to lodge a further *Beschwerde* despite that provision. Continuing its earlier practice, the Federal Constitutional Court, in its decisions of 14 April 1959 (*BVerfGE* 9/261) and 3 June 1959 (*BVerfGE* 9/303) ruled that no facts or evidence could be used against parties unless they had been given the opportunity to comment on them. In a case relating to an application for the amplification and rectification of a judicial decision, the same court declared (3 April 1959, *BVerfGE* 9/231) that the omission of the oral hearing prescribed by law did not in every case constitute a violation of the right of legal hearing. The Federal Court of Justice ruled (5 May 1959, *NJW* 59/1330) that a practising Jew who was to be tried on a high Jewish holiday (first day of the Feast of Tabernacles) had not been granted the prescribed legal hearing if he had been willing to testify but had been prevented by Jewish law from doing so.

The Federal Court of Justice held (24 March 1959, *NJW* 59/1142) that a statement made in court by a person in a state of over-fatigue was not admissible if the freedom of will of the person concerned had been impaired by over-fatigue. In another case the Federal Court of Justice ruled (16 January 1959, *NJW* 59/899) that a trial might be held at night, especially where this arrangement served the ends of justice, as by permitting the hearing of eye-witness evidence in traffic accident cases. The hearing must, however, be fixed for an hour such as to ensure that the parties and the witnesses were not prevented by over-fatigue from exercising their full freedom of will.

The Federal Court of Justice held (21 December 1959, *BGHSt* 13/366) that a clause in the Judicature Act under which, in proceedings against dumb persons, either an interpreter must be employed or the proceedings must be in writing, did not preclude the use of other means of communication. For instance, a defendant who was dumb and who otherwise expressed himself in writing could reply to questions which could be answered "Yes" or "No" by nodding or shaking his head, provided that the presiding judge repeated the answers orally in such a way that the defendant and the other parties heard them and misunderstandings were impossible.

The Federal Constitutional Court ruled (3 February 1959, *BVerfGE* 9/160) that a complaint on constitutional grounds against a warrant of arrest became nugatory if in the meantime the complainant had been legally convicted of the act charged in the warrant. However, this did not apply where the complaint related to the violation of fundamental procedural rights.

5. PROTECTION OF NATIONALITY, OF FREEDOM OF MOVEMENT AND OF THE RIGHT OF ASYLUM

(*a*) Nationality

Under article 116 of the Basic Law, an expellee of German stock is regarded from the standpoint of constitutional law as a German if he was admitted as a refugee to the territory of the German Reich as it existed on 31 December 1937. The Federal Administrative Court ruled (21 October 1959, *BVerwGE* 9/221) that expellee status ended where the expellee, *prima facie* and in the light of existing circumstances, had been absorbed into the general life of any Land. In addition, the requirement of admission implied some official procedure or attitude justifying the assumption that the person concerned had not been refused permanent residence. The former Reich and State Nationality Act provided that a German woman who married an alien lost her German nationality. The Federal Administrative Court held (9 June 1959, *BVerwGE* 8/340) that this provision applied equally, at least up to the date of entry into force of the Basic Law (24 May 1949), where a woman of German stock married an alien, so that the woman lost her German status. The same court ruled (7 July 1959, *DÖV* 59/866) that where the marriage to an alien took place after the entry into force of the Basic Law, the woman did not lose her German nationality unless she had acquired a foreign nationality through the marriage.

In a decision of fundamental importance, the Federal Court of Justice ruled (18 March 1959, *DVBl* 59/434) that Poland had not ceased to exist by reason of the German occupation of 1939 and that the Polish population therefore retained its nationality.

(*b*) Freedom of Movement

The Act concerning the European Convention on Establishment was published in the *Bundesgesetzblatt* (II/997). This convention[1] relaxes the regulations concerning immigration and residence for nationals of member States. Questions of deportation are also dealt with, and nationals of the signatory Powers are assured equal treatment and due process of law. There are also other provisions designed to facilitate employment and dealing with election to professional organizations, school attendance and tax relief.

(*c*) The Right of Asylum, Extradition

The Extradition Agreement of 26 June 1953 between the Federal Republic of Germany and France came into force on 22 October 1959 (*BGBl* II/1251).

The Federal Constitutional Court ruled (4 February 1959, *BVerfGE* 9/174) that a person who committed the acts causing him to fear political persecution in the country seeking his extradition only after he became resident in the Federal Republic might, in exceptional cases, be deemed to be a victim of political persecution within the meaning of the Asylum Ordinance of 6 January 1953 and of the Convention relating to the Status of Refugees dated 28 July 1951. Article 16 (2) of the Basic Law, which laid down the

[1] See *Yearbook on Human Rights for 1956*, pp. 292–7.

right of asylum as a constitutional principle, must be broadly interpreted.

Under article 104 (2) of the Basic Law, only a judge may decide on the admissibility and extension of any deprivation of liberty. The Federal Court of Justice held (8 October 1959, *NJW* 59/1285) that, despite that provision, the Public Prosecutor was competent, for the purposes of article 30 of the Extradition Act, to issue warrants for the arrest and production in court of persons to be extradited. A warrant of arrest might be issued even where there was reason to expect that the person to be extradited would present himself voluntarily at the place of surrender, if the time and place of surrender had not been agreed on. There was a conflict of opinion between the Federal Court of Justice and the Federal Constitutional Court on the question whether, in the case of a transit order issued by the Federal Republic, the person to be extradited should be handed over to the extraditing or receiving State if it transpired during transit that he was a German. The problem arose because article 16 (1) of the Basic Law prohibits the extradition of Germans. While the Federal Court of Justice held (7 January 1959, *BGHSt* 12/262) that the person to be extradited should be handed back, the Federal Constitutional Court took the opposite view (20 October 1959, *BVerfGE* 10/136). The court based its opinion on article 16 of the Basic Law and stated in addition that international obligations did not affect the issue, since in that respect they were inconsistent with the constitution.

6. PROTECTION OF PROPERTY

(*a*) General

A number of double taxation agreements were concluded — e.g., between the Federal Republic and Sweden (*BGBl* II/182, 721), the Federal Republic and Luxembourg (*BGBl* II/1269), and the Federal Republic and Norway (*BGBl* II/1280). The Bundestag also ratified the agreements dated 8 April 1958 and 3 April between the Federal Republic and Spain and Portugal respectively concerning the restoration of industrial and other property rights suspended by reason of the Second World War.

The Rhineland-Palatinate Higher Administrative Court commented (29 January 1959, *DÖV* 60/315) on the concept "grounds of public interest" which, under the law relating to expropriation, is applied in determining whether an expropriatory measure may be imposed. The effect of that was not to leave the administrative authorities room for the exercise of free discretion or latitude of judgement; on the contrary, the question whether such grounds existed was one of fact and law which could be fully tested in the administrative courts. The need to maintain or increase the revenue of a municipality was not a matter of public interest justifying expropriation. Expropriation for the purpose of maintaining places of work was not permissible where the workers concerned could be provided with reasonable alternatives.

The Federal Court of Justice ruled (22 January 1959, *BGHZ* 29/207) that, where an action for expropriation was withdrawn, the authority bringing the action was responsible to the owner for any damage he had sustained by reason of the expropriation proceedings.

The Federal Administrative Court held (15 July 1959, *BVerwGE* 9/86) that, where an article was irregularly taken over by the State for temporary use and was later lost, the date of reference for the purpose of determining compensation was the date on which the article was lost.

(*b*) Real Property

The Bavarian Constitutional Court gave a detailed opinion (25 February 1959, *DÖV* 59/304) on the rights arising from the ownership of real property. It ruled that, despite the constitutional guarantee of property, the owner of real property was not entitled to act without regard to any harm he might cause to the beauty and character of the native landscape. In particular, he must take account of the fact that his property, as a part of the landscape, must also serve other people who sought pleasure and recreation therein. Consequently, a law which respected that principle, while at the same time permitting the owner to continue the economic use of his property, was not expropriatory, but was a legitimate and non-compensable form of control over the use of property. Where there was such further encroachment as in fact to imply expropriation, the State was liable for compensation, despite article 24 of the Reich Nature Conservation Act, which barred all claims. The Federal Court of Justice ruled similarly (16 March 1959, *DÖV* 59/750), holding that, where the natural and hitherto undisturbed enjoyment or economic use of property was prohibited or materially restricted by state action, the case was one of expropriation, even if the state action was taken under the Reich Nature Conservation Act.

The Federal Court of Justice gave a ruling (2 July 1959, *BGHZ* 30/241) on a difficult case relating to a purely indirect infringement of real property rights. In this case, the level of a road had been raised in such a way as to increase considerably the difficulty of access to adjacent properties. The court held that this amounted to state encroachment on the real property rights of the abutting owners, providing ground for claims for compensation under the law relating to expropriation. In these cases, the fundamental consideration to be borne in mind in determining whether encroachment amounting to expropriation had taken place was the extent of the croachment, which must be judged from the cost of providing the new means of access required. There is a long-standing difference of opinion on the question whether a temporary building ban imposed for town planning reasons entitles the persons affected to

compensation under the expropriation laws. The Federal Court of Justice ruled (25 June 1959, *DVBl* 60/27) that it did not, provided that the ban was imposed for a reasonable length of time and was absolutely essential for the nationally planned development of a self-contained locality. If, however, the building ban was prolonged because of undue delay in planning, the restriction of property rights, while originally legitimate and non-compensable, became expropriatory. A ban lasting for longer than three years must in any case be regarded as expropriatory and compensable. The court reached the same conclusion (25 June 1959, *DÖV* 60/309) in a case involving what is known as a *de facto* building ban, which arises where a ban is not officially ordered but results from other measures by the competent authorities.

The question of the standard to be applied in the valution of land subject to expropriation has been a matter of constant dispute. The Federal Court of Justice ruled (30 November 1959, *NJW* 60/530) that where a piece of land was earmarked in a development plan for public use as a common services area, any fall in its normal value which resulted from the plan must be disregarded in determining the amount of compensation which must be assessed on the basis of the property's previous value. In another case, the same court ruled (30 November 1959, *NJW* 60/574) that compensation for expropriation must as a general rule be based on the normal value of the land at the time of expropriation. The value of price-controlled land (all vacant land) must be assessed on the basis of its true price, taking into account the fact that the price-control authorities had allowed, in addition to the agreed indemnification for the site, recognizably excessive payments by way of compensation for overgrowth, buildings and rights pertaining to the property, etc.

The courts also again applied themselves to the problematical question of the base date to be applied for the purpose of determining compensation for expropriation. The Federal Court of Justice ruled (8 June 1959, *BGHZ* 30/281) that, if the amount of compensation for expropriation had been incorrectly assessed in times of fluctuating prices, the price conditions to be taken as basis should be those prevailing at the time of the last oral hearing of the first-instance proceedings, where one of the parties had lodged an appeal against what had in fact been the correct decision of the first-instance court. In determining compensation for real property the particular circumstances of the property in question must be taken into account; but the fact that the owner had formerly carried on a prosperous business on the site must be disregarded, if the business, together with the buildings, had been destroyed more than ten years previously during the war and had no longer affected the value of the site at the time of expropriation. The court had already expressed the same view in its decision of 22 January 1959 (*NJW* 59/771) as the principle applicable to cases where there was a general upward trend in prices. The Federal Administrative Court reached a similar conclusion, ruling (9 June 1959, *BVerwGE* 8/343) that where a re-plotting plan was carried out the compensation paid must be equal to the value of the land contributed at the time when the plan took legal effect. The suitability of land for building development, the court continued, was expressed in its market value. Moreover, the point was not the actual use of the land, but its potential usefulness, and even land situated outside the development area might have at least the character of potential development property.

The question whether re-plotting plans are expropriatory is a recurrent problem. It becomes a particularly open question where a participant, instead of having land allotted to him, is merely given cash compensation, either for part of the land he has contributed or, because its area is small, for the whole of it. The Federal Administrative Court held (13 January 1959, *NJW* 59/1242) that cash compensation aid to round out an unavoidable under-allocation of land did not constitute compensation for expropriation. However, the payment of cash compensation was not justified where suitable land was available for allocation and an allocation could have been made, given a different division of the area, without prejudice to the principles of re-plotting — in particular to the interest of the majority of the participants in a rational re-plotting scheme. The Federal Court of Justice took the opposite view (12 October 1959, *BGHZ* 31/49), ruling that re-plotting was expropriatory where the area consolidated was not allocated to the participants in proportion to the land they had contributed, with the result that a special sacrifice was imposed. The Higher Administrative Court at Münster took an intermediate view (22 April 1959, *DÖV* 60/312), holding that the question whether re-plotting was to be regarded as expropriatory could not be answered either affirmatively or negatively without qualification. While a re-plotting plan was not by purpose expropriatory, individual measures taken in carrying it out might constitute legitimate measures of expropriation.

(*c*) Other Property Rights

By Act of 26 February 1959 (*BGBl* II/129), the Bundestag ratified the Convention on the International Recognition of Rights in Aircraft, dated 19 June 1948.

While the liability of the State for injury caused by statutorily compulsory inoculations had already been recognized by the courts, the Federal Court of Justice (23 November 1959, *DÖV* 60/308) extended the State's liability for compensation to other inoculations which it had merely recommended. Even by merely recommending a normally harmless protective inoculation, the State was calling for a special sacrifice which provided material ground for a sacrifice claim. This was because the injured party or the person having parental power over him agreed to the inoculation in the belief that it was harmless and was in the public interest.

In another case the Federal Court of Justice dealt with the question of whether a valid claim for compensation could be made by a party affected not directly by, but only as an indirect consequence of, a measure of expropriation. The court ruled (18 September 1959, *BGHZ* 31/1) that an employee of the German Communist Party, who had also been an active member of the party, could not claim compensation for expropriation on the ground that as a result of the dissolution of the party and the confiscation of its funds she had received from her employer neither her full salary for the period before and after the dissolution of the party nor holiday pay in compensation for annual leave which had not been granted to her. Only a person against whom an administrative act had been directed had a claim to compensation for expropriation, not a person indirectly affected.

The Federal Court of Justice held (25 May 1959, *BGHZ* 30/123) that the unjustified issue and execution of a tax attachment order gave the aggrieved person no ground to claim compensation for an encroachment amounting to expropriation. Such a case gave rise only to a claim for damages recoverable in the civil courts. Similarly, the same court ruled (2 April 1959, *DVBl* 60/318) that the innocent but unlawful institution of bankruptcy proceedings did not constitute an expropriatory encroachment, the essence of the latter being the imposition of a special sacrifice in the public interest. That did not apply to execution proceedings, in which the claims of creditors were enforced with the assistance of the State.

(*d*) Property held Abroad and Measures taken by Foreign Powers

Under the Act dated 5 November 1957, concerning the general consequences of the war, the settlement of claims for certain losses, such as those caused by reparations, restitutions, etc., was deferred for future legislative treatment, and claims were thus barred in the meantime. This was regarded as unconstitutional. However, the Federal Court of Justice ruled (23 February 1959, *NJW* 59/1037) that the bar was not at variance with the guarantee of property contained in article 14 of the Basic Law. That must hold good at least for so long as the bar on claims remained a temporary measure, operative for a period which had not yet expired at the time of the court's ruling. Owing to the extraordinarily difficult nature of the subject matter, the legislator must be allowed adequate time for its study.

The Federal Court of Justice held (12 November 1959, *BGHZ* 31/168) that where claims against a debtor resident outside the territorial application of the Basic Law had virtually been expropriated without compensation by the nationalization of the debtor's property, a guarantor resident in the Federal Republic of Germany could not plead, vis-à-vis a creditor also resident in the Federal Republic, that the extinction of the claim had discharged him from his guarantee. (Under German law, a guarantee is accessory to the claim and is extinguished along with it.) The court based this view on the fact of expropriation without compensation, which was contrary to the rule of law and must be regarded as null and void within the jurisdiction of the Federal Republic.

7. POLITICAL ACTIVITIES AND FREEDOM OF ASSOCIATION

(*a*) Free Expression of Opinion

In a ruling dated 22 December 1959 (*NJW* 60/476), the Federal Court of Justice made some important observations on the rights of the press. The press, the court held, served legitimate interests when it reported or commented on matters concerning which the public had a serious interest in being kept informed. This interest of the public in being kept properly informed must be recognized, as a general rule, so far as concerned the treatment of political matters. If the reputation of an individual was injured through matter published in the press, the question whether the damage to his reputation was warranted could be settled only by weighing the rights and interests involved. Particular attention should be given to determining whether there was a reasonable relation between the purpose of the publication and the injury to the reputation of the individual. The publication of such matter could not be justified, however, if the available facts had been evaluated in a biased manner, so that a distorted picture emerged.

Under an Act of North-Rhine-Westphalia, publishers and editors may be barred from exercising their profession if they abuse their position to attack the free democratic constitutional order. This applies particularly to the dissemination of matter advocating national socialism, militarism, totalitarianism and racial discrimination. The Federal Constitutional Court ruled (6 October 1959, *BVerfGE* 10/118) that this Act was an infringement of the freedom of the press guaranteed under article 5 of the Basic Law. It was true that the basic right of freedom of the press, like other basic rights, could be forfeited through abuse. Under the express provisions of article 18 of the Basic Law, however, such forfeiture and its extent could be pronounced only by the Federal Constitutional Court. Since the Act conflicted with that provision, it was void.

The Land Higher Court at Hamburg, dealing with an interesting case relating to the effect of basic rights on civil law, ruled (6 May 1959, *NJW* 59/1784) that, by virtue of the right of free expression of opinion, any person was entitled to voice objective criticism of a profession. Such criticism was not unlawful, even where it had harmful consequences for the profession concerned, unless it was made from improper motives. Moreover, the basic right of free expression of opinion protected the expression of right as well as of wrong opinions. Criticism became unobjective only if it was libellous, was based

on false facts and assertions, or made in pursuit of personal ends.

The Federal Labour Court ruled (23 February 1959, *NJW* 59/1167) that the basic right of free expression of opinion included the right to engage in political activities within the context of the democratic constitutional order. In the case of civil servants, however, this right was restricted because of the duty, implicit in the nature of their work, to be moderate and discreet in the expression of political opinion. Any failure in this duty on the part of an employee might justify dismissal.

The Federal Court of Justice gave a ruling (20 January 1959, *NJW* 59/636) on the question of criminal liability for remarks made about an opponent during an election campaign. Article 193 of the Penal Code, under which the protection of legitimate interests is a defence in cases of offensive utterance, was a reflection of the right of free expression of opinion proclaimed in article 5 of the Basic Law. That defence was available to a candidate who attacked his opponent in an election. A person could not prevent his political opponent in an election campaign from reproaching him with defects of character which he had demonstrated by his own previous conduct.

Political refugees are not entitled to the statutory resettlement allowances and other benefits if their flight or the circumstances leading to it resulted from their own fault. The Federal Administrative Court ruled (9 September 1959, *DÖV* 60/65) that according to ideas of democratic freedom no fault within the meaning of the Act attached to expressions of political opinion which, if they had been made in the Federal Republic, would have come under the protection of article 5 of the Basic Law.

(*b*) Freedom of Assembly and Association

Under a Baden-Württemberg Act, pharmacists exercising their profession in that Land are required by law to join the Land Chamber of Pharmacists. Such compulsory membership was challenged as unlawful in view of the right of freedom of association proclaimed in article 9, paragraph 1, of the Basic Law. The Administrative Court at Mannheim (4 September 1959, *DVBl* 59/897) held that this was not a violation of the Basic Law, since pharmacy was a state-controlled profession and was therefore subject to certain wider restrictions.

The Federal Constitutional Court reached a similar conclusion (29 July 1959, *BVerfGE* 10/89) in a case relating to another type of compulsory membership. It ruled that the right of freedom of association did not preclude the obligation of joining associations constituted under public law. It was true that such compulsory membership could be permissible only within the context of the constitutional order set up by the Basic Law, but it was not prohibited under article 9 of the Basic Law, since that article was concerned only with civil law associations and the right to form, join or remain outside them. Under the Basic Law, public law associations could properly be formed to fulfil legitimate public functions. It was a matter for the legislator to decide which state functions should be fulfilled through direct state administration and which should be covered by indirect state administration through foundations and corporations.

Under the Criminal Code, high treason is punishable whether it is committed by an individual independently or as an official of a party and in accordance with the latter's aims. Where the offence was committed by a party official, it had been a matter of dispute whether the Federal Constitutional Court, as the only competent tribunal, must have declared the party unconstitutional before proceedings for high treason could be instituted. The Federal Constitutional Court ruled (3 February 1959, *DÖV* 59/387) that this was not necessary even where the party official, in his activities, had not gone beyond the bounds of the party's objectives.

8. THE SUFFRAGE AND THE RIGHT OF SELF-DETERMINATION

On 25 April 1959 the Federal Assembly passed (*BGBl* 230) the Act concerning the election of the Federal President, which amended the Act of 8 July 1953. In Schleswig-Holstein, the Act of 25 March 1959 concerning elections to municipal and district government bodies was passed (*GVBl* SchH 59/13), replacing the Act of 1955.

In the sphere of constitutional law, the question whether independent associations of electors enjoy the same protection as political parties, and whether they must accordingly be accorded similar treatment in electoral laws, is much debated. The Federal Constitutional Court had formerly ruled (*BVerfGE* 6/367) that "local parties" (Rathausparteien) were not political parties within the meaning of the Basic Law. In an Act passed by the Land legislature of Lower Saxony, "local parties" were recognized as political parties for the purpose of municipal elections. The Federal Administrative Court ruled (29 May 1959, *BVerwGE* 8/327), that the Land legislature had not exceeded its powers. Its ruling did not apply in areas outside its jurisdiction and did not violate the Basic Law, even if it was assumed that "local parties" were not entitled to the status of a political party within the meaning of the Basic Law.

The Federal Constitutional Court ruled (14 July 1959, *BVerfGE* 10/4) that the right of a representative to speak in the Bundestag followed from his status under the constitution. The exercise of that right was subject to the limitations imposed by the legislature by virtue of its rights of autonomy. The parliamentary privileges guaranteed under article 38 of the Basic Law were not impaired if the total time available for debate, as decided by the Bundestag, was

divided among the parties according to their numbers. The right of members of the Government to be heard at any time, as laid down in article 43, paragraph 2, of the Basic Law could not be restricted by the Bundestag; it was limited only by the rule against abuse.

9. PROTECTION OF THE RIGHT TO THE FREE CHOICE AND EXERCISE OF A PROFESSION OR OCCUPATION

The order concerning examinations for hospital nurses and children's nurses was promulgated on 22 April 1959 (*BGBl* I/236).

In addition, the federal legislature promulgated, on 1 August 1959, the Federal Ordinance on Attorneys (*BGBl* I/565). The ordinance provides that lawyers may set up practices without restriction, but must obtain a licence, which cannot be refused if certain conditions are fulfilled. A lawyer is no longer required, as under the previous legislation, to have served as an assistant before establishing his practice. Under the ordinance, all the lawyers in a district become members of a professional association.

Under article 12 of the Basic Law, all Germans are guaranteed the right freely to choose their trade or profession. The same article also provides that the practice of trades and professions may be regulated by law. This provision of the constitution leads in practice to considerable difficulties, since in certain professional or occupational groups an unavoidable *numerus clausus* exists — which implies an infringement of the constitutionally guaranteed right of free choice of trades and professions. Furthermore, it is difficult at times to determine whether a case involves an infringement of the right of free choice of trades and professions or a mere regulation of the exercise of a trade or profession.

Under the order dated 29 September 1941 concerning medical advertising, all such advertising is prohibited among the non-medical public, and medicines may be recommended only to physicians. A constitutional appeal against the Order was rejected by the Federal Constitutional Court (17 March 1959, *BVerfGE* 9/213). The court ruled that the order did not offend against article 12 of the Basic Law, since it was merely a measure regulating the exercise of a profession. It was legitimate, since it was based on pertinent considerations. The Federal Administrative Court ruled (27 January 1959, *NJW* 59/834) that the licence statutorily required for the acquisition and processing of codeine for the manufacture of drugs could not be refused on the ground that there was no demand for the drugs in question. The decision to manufacture drugs, the court held, was the choice of a trade or profession within the meaning of the constitution. According to the known decisions of the Federal Constitutional Court, objective restrictions on the choice of a trade or profession might be imposed only in the event of a particularly serious threat to public health. Such circumstances did not exist in the case in question, since trade in narcotics was strictly supervised under other provisions of the law.

The Drugs Order contains a list of products which may be sold only in pharmacies. A constitutional appeal against that rule was rejected by the Federal Constitutional Court (7 January 1959, *DÖV* 59/144). The court held that the rule was compatible with the Basic Law, since it regulated the professions of pharmacist and druggist only so far as concerned their exercise. It was also objectively justified by the need to prevent the abuse of medicines, by the fact that the sale of such products necessitated the specialized knowledge possessed only by pharmacists, and finally by the need to protect the business interests of pharmacies.

The Federal Constitutional Court ruled (16 June 1959, *BVerfGE* 9/338) that age limits imposed in connexion with the exercise of a profession (midwifery) were subjective conditions of practice. The fact that a general assumption of the incapacity of the person concerned was implied was not at variance with the importance of freedom of profession for the freedom of the individual. So far as exceptions to the age limit were permitted by law, article 12 of the Basic Law did not lay down that an exception must be made if the individual capacity of the claimant was established. In a legal provision of that nature there was a suitable relation between the degree of the encroachment involved and the danger to the protected valuable right (public health); and the provision was a reasonable one. The Federal Administrative Court ruled, similarly (20 November 1959, *DÖV* 60/148), that the imposition of an age limit for building inspectors was not a breach of article 12 of the Basic Law. Building inspection was a state-regulated profession, and the importance of an inspector's duties to the State justified the imposition of an age-limit similar to that applied in the civil service.

The Federal Administrative Court ruled (5 May 1959, *BVerwGE* 8/287) that the statutory requirement that an independent craftsman must pass an examination as a master craftsman before he may establish a business did not violate the right of freedom of trade or profession. It was true that the relevant provision of the Crafts and Trades Order represented a restriction of the right to choose a profession or occupation, but it entailed only a subjective condition of practice which must be regarded as legitimate in view of the dangers which would arise without such control. In particular, there was no breach of the principle of equality in the fact that a person making the same products as a master craftsman, but on an industrial basis, did not have to take a master craftsman's examination, since the two cases were not comparable. Under the Retail Trade Protection Act a person wishing to set up business as a retail trader must, as must a craftsman, first give evidence of specialized knowledge. The Federal Administrative

Court held (23 June 1959, *DVBl* 59/664) that this regulation was consistent with article 12 of the Basic Law. In particular, evidence of specialized knowledge might also be required in the interests of public health, from a small retailer of foodstuffs. The specialized knowledge required, however, should not be more than was necessary to carry on the proposed business.

In accordance with a recognized legal principle, a licence may be refused, under commercial law, where the applicant, while himself trustworthy, allows an untrustworthy person to exert influence on his business. The Federal Administrative Court ruled (16 October 1959, *BVerwGE* 9/222) that this was not an infringement of the right of freedom of profession or occupation. The applicant was not being penalized for another person's fault, but was simply suffering the consequences of his own inability or unwillingness to remove the harmful influence. In another case, where a plaintiff with a record of two convictions had been refused a retail licence on the ground of personal untrustworthiness, the same court ruled (21 July 1959, *DVBl* 59/765) that the requirement that an applicant must be personally trustworthy was, generally speaking, constitutional. The authorities must not, however, bar an applicant from his profession or occupation for a longer period than was required by the overriding public interest, if they wished to remain within constitutional limits.

The Federal Administrative Court ruled (20 February 1959, *BVerwGE* 8/172) that the Basic Law conferred no legal right to appointment as a lecturer in a university faculty. It was true that the profession of lecturer could be practised only at a university, and that where appointment was refused freedom of choice was impaired. Nevertheless, there was no legal right involved, since a university faculty had exactly the same freedom of choice in making an appointment as any other employer. The right of free choice of a profession or occupation did not guarantee the right to work.

The Federal Constitutional Court ruled (17 November 1959, *DÖV* 60/61) that article 157, paragraph 3, of the Code of Civil Procedure, which provides that lay counsel (Prozessagenten) may be authorized to practice in court only in the event of need, was compatible with article 12 of the Basic Law. This rule, which regulated the choice of a profession, was a legitimate one, since it appeared desirable on reasonable grounds of public interest. The question must be considered in the light of the fact that the monopoly position of the legal profession was justified. For that reason the admission of lay counsel could be contemplated when there were not sufficient professional lawyers available to the court. Under the Midwives Act (article 10) a person may not be admitted to the profession unless the number of midwives in the district is inadequate. The Federal Administrative Court (20 December 1959, *DVBl* 60/363) considered this constitutional. A midwife practised a state-controlled profession, and was therefore subject to greater than normal restrictions in the exercise of her profession. The regulation of entry to the profession was reasonable, if overcrowding and any resulting danger of unfair competition was to be avoided. The protected rights, public health and family health were of such importance that the restriction was justified.

10. PROTECTION OF RIGHTS IN LABOUR LEGISLATION

The Act of 7 December 1959 (*BGBl* I/705) concerning measures to promote year-round activity in the building industry, together with further amendments and additions to the Labour Exchange and Unemployment Insurance Act, represented an attempt by the federal legislature to provide inducements, in the form of loans and grants, for the execution of construction works in the winter months, in order thereby to reduce seasonal unemployment.

The order of 25 March 1959 amending the order concerning the working hours of federal employees extended to federal employees the forty-five-hour week which was already the general rule in private industry. Under the order, the second and fourth Saturdays of each month are free days for the persons covered.

The Act of 30 June 1959 (*BGBl* I/361) extended to the Saar the federal laws concerning working conditions and the equalization of family burdens.

During the year covered by this report, the Federal Republic acceded to a number of ILO conventions. These included Convention No. 97 of 1 July 1949 concerning migration for employment (*BGBl* II/87), under which the parties are required to transmit information on their emigration and immigration policies. The Convention also includes measures against misleading propaganda and deals with medical attention for migrants, and prohibits, *inter alia*, the deportation of migrants who are unable to follow their occupation. Mention should also be made of the Act of 20 April 1959 (*BGBl* II/441) relating to Convention No. 105 of 25 June 1957 concerning the abolition of forced labour. In accordance with a notice published on 6 August 1959 (*BGBl* II/993), Convention No. 102 concerning minimum standards of social security came into force for the Federal Republic on 21 February 1959.

Orders Nos. 3 and 4 of the European Economic Community, which came into force on 1 January 1959, were published in the *Bundesgesetzblatt* (II/473). These measures also are concerned with questions of social security for migrant workers in the territory of members of the European Economic Community.

Under the Disabled Persons Act, a severely handicapped person may not be given notice of termination without the approval of the state authorites. The Federal Administrative Court ruled (29 May 1959, *NJW* 59/1382) that such approval was necessary even

when the sole reason for the notice given was to bring about a reduction of the wages of the person concerned.

11. PROTECTION OF THE RIGHT TO SOCIAL SECURITY AND WELFARE

Under the regulations in force in the Federal Republic, social security pensions are adjusted yearly to the average income of all employees. Under the second Act, dated 21 December 1959, concerning the adjustment of statutory social security pensions following the change in the general basis of assessment for 1959 (*BGBl* I/765), the appropriate adjustment was made for the year covered by this report. The third order, dated 30 November 1959, concerning changes in incomes for the calculation of pensions under workers' and employees' pensions insurance and miners' pensions insurance (*BGBl* I/699) served the same purpose. The fact that the law concerning social insurance had developed independently in the Saar prior to its final reincorporation in the Federal Republic necessitated the passage of the Act of 26 March 1959 concerning the reciprocal application of pensions and sickness insurance law to pensioners in the Saar and the rest of the Federal Republic, including Land Berlin (*BGBl* I/200). The Act deals with the payment of insurance benefits where a pensioner leaves or settles in the Saar. The Act of 30 June 1959 amending the Sickness Insurance Regulations in the Saar (*BGBl* I/365) serves to unify the relevant laws.

The Act 14 April 1959 (*BGBl* II/432) concerning the fourth supplementary agreement dated 21 December 1956 to the agreement on social insurance between the Federal Republic of Germany and the Kingdom of the Netherlands regulated the social insurance rights acquired in Germany by Netherlands nationals between 1940 and 1945. These claims were settled by a lump-sum payment to the Netherlands Government.

The Act of 6 July 1959 (*BGBl* I/421) amending the Act regulating claims under life and pensions insurance deals with the payments of benefits by insurance companies against premiums paid before the currency reform of 1948 in cases where such benefits became due after the date of that reform. The Act of 30 June 1959 (*BGBl* I/367) for the protection of savings in the Saar was designed to protect residents of the Saar against any loss of savings-bank deposits which might result from the economic incorporation of the Saar into the Federal Republic and its consequent withdrawal from the French currency and economic community. An agreement to that end had already been concluded between Germany and France on 27 October 1956. A considerable body of legislation has been enacted in recent years by the federal legislature with the object of providing compensation for hardships resulting from the refugee problem of the post-war years and from the currency devaluation. This compensatory legislation was further improved and extended in the year under review through the adoption of a large number of amendments and new laws (e.g., the second Act, dated 4 February 1959, amending the Old Persons' Savings Act (*BGBl* I/29), and the eleventh Act, dated 29 July 1959, amending the Equalization of Burdens Act (*BGBl* I/545)).

The second Act, dated 13 January 1959, amending the Federal Restitution Act (*BGBl* I/21) provides substantial benefits to injured parties.

On 26 February 1959 the Bundestag ratified the Convention of 20 June 1956 on the recovery abroad of maintenance (*BGBl* II/149). This is a general agreement designed to facilitate the enforcement of claims against persons in other contracting States.

Under the Tuberculosis Assistance Act of 23 July 1959 (*BGBl* I/513), the State provides sufferers with curative treatment, rehabilitation and financial assistance and preventive medical care.

In Land Schleswig-Holstein, the Rent and Charges Assistance Act of 28 May 1959 (*SchHGVBl* 59/61) dealt with the social problem resulting from the financial difficulties created for lower-income groups by the increase in controlled rents.

In the Saar, Act No. 678 of 27 June 1959 concerning the acquisition of building land to provide housing for refugees, expellees and needy German nationals (*SGVBl* 59/1075) was designed to assist such persons in obtaining building land, which is very scarce and expensive.

The range of persons entitled to welfare benefits under the relevant German law includes those of severely reduced capacity to earn their living. The Federal Constitutional Court ruled (24 June 1959, *BVerfGE* 9/26) that the possibilities of employment open to an infirm person by virtue of the Disabled Persons Act alone must not be taken into account in comparing the possibilities of employment open to such persons with those open to a person in good health, as required under section 11 b, paragraph 3, of the Reich Welfare Regulations. A number of measures have been taken by the State to combat tuberculosis and assist sufferers. The Federal Administrative Court ruled (29 January 1959, *DÖV* 59/827) that a person suffering from tuberculosis had no enforceable claim to state tuberculosis assistance. Such assistance was not a state welfare service, but a measure of disease prevention, and was rendered by the State solely in the public interest, not in the interest of individual sufferers.

Legislation has been enacted offering refugees and expellees a number of benefits designed to help them to overcome the difficulties resulting from their expulsion from their countries. Proof of refugee status must normally be produced in the form of a certificate issued by the State. The Federal Administrative Court ruled (29 October 1959, *NJW* 60/592) that a refugee certificate could not subsequently be revoked and withdrawn if in issuing it the authorities had merely misappraised the facts known to them or had

mistakenly regarded the legal requirements as being fulfilled.

"Expatriates" — i.e., Germans or persons of German stock formerly resident abroad but returned to the Federal Republic — receive the same treatment as refugees proper. The Federal Administrative Court ruled (30 January 1959, *NJW* 59/1552) that expatriate status attached even to persons who left an unfriendly foreign country although no measures had been taken against them individually. That applied at any rate in cases where the person concerned could no longer, as a German, find a means of livelihood in the foreign country. Where the expatriate, to avoid excessive expatriation expenses, sold his property below its true value, that too was to be treated as a loss attributable to expulsion.

Under the Prisoners of War Compensation Act, not only prisoners of war in the strict sense, but also German nationals imprisoned under measures taken by foreign States in connexion with the Second World War receive compensation payments. The Federal Administrative Court ruled (29 June 1959, *BVerwGE* 9/59) that German nationals detained in Poland were as a general rule to be regarded as prisoners of war within the meaning of the Act, at least if they had been detained before 31 May 1945 and sent to a prison camp or prison.

12. THE RIGHT TO EDUCATION

In accordance with a notice published in the *Bundesgesetzblatt*, the cultural agreement concluded between the Federal Republic of Germany and Chile came into force on 24 May 1959 (*BGBl* II/549).

By Act No. 662 of 6 February 1959 concerning exemption from school fees (*SGVBl* 59/597), the Saar legislature abolished school fees for all public schools providing general education. The Act also provides for state assistance to private schools which do not charge fees. In Baden-Württemberg, the Act of 23 November 1959 amending the Private Schools Act (*BWGVBl* 59/167) provided for a considerable increase in the statutory state subsidies to private schools.

Under article 6, paragraph 3, of the Basic Law, a child may be separated from the family against the will of the persons having parental authority over it only pursuant to a law and if those having such authority fail in their duty or the child is otherwise threatened with neglect. Some parents had invoked that clause in opposing the calling up of their children for military service as unconstitutional. The Land Higher Court at Düsseldorf ruled (15 April 1959, *DVBl* 59/4) that the calling up of a minor liable for military service did not mean his separation from the family and did not, therefore, offend against the constitutional clause referred to. Moreover, the right to object to military service under arms belonged only to the person liable for military service, and not to those having parental authority over him.

13. PROTECTION OF INDUSTRIAL RIGHTS AND COPYRIGHT

On 30 June 1959 the federal legislature passed the Act concerning the incorporation of the Saar in matters of commercial law (*BGBl* I/388). During the period covered by this report, protection of inventions, designs and trade marks was extended to a number of exhibitions and trade fairs (see notices published in *BGBl* I/153, 225, 409, 621, 724).

On 9 July 1959 (*BGBl* II/821) the Bundestag passed an Act ratifying the Multilateral Agreement of 30 April 1956 on commercial rights of non-scheduled air services in Europe.

In accordance with a notice published on 19 March 1959 (*BGBl* II/402), the agreement of 30 July 1955 between the Federal Republic of Germany and Paraguay concerning most-favoured-nation treatment and the protection of industrial patents and trade-marks came into force. The agreement between the Federal Republic of Germany and Spain concerning the commercial consequences of the Second World War and the restoration of rights in industrial patents and trade-marks came into force on 2 July 1959 (*BGBl* II/732).

The Federal Court of Justice ruled (8 December 1959, *NJW* 60/573) that where an artist's originality consisted precisely in his having depicted a human figure in such a way that its facial lineaments conveyed the general impression of a personality of distinct temperament, the fact that in imitating that figure the offender had portrayed it showing different, changing emotions, such as fear and pain, was no defence against the charge of illegal plagiarism in breach of copyright.

FEDERATION OF MALAYA

NOTE

1. The Banishment Ordinance, 1959, No. 11 of 1959 (*Government Gazette*, Ordinance Supplement No. 1, of 21 March 1959), which made provisions for the banishment of persons whose banishment is thought to be conducive to the good of the Federation, specifically excluded citizens of the Federation from its operation.

2. The Trade Unions Ordinance, 1959, No. 23 of 1959 (*Government Gazette*, Ordinance Supplement No. 2, of 30 May 1959), included provisions concerning the registration of trade unions and employers' organizations and the rights of registered trade unions and employers' organizations, including the right to form federations, and provisions delimiting the rights of minors and public officers to join trade unions. The text of the Ordinance and a French translation have been published by the International Labour Office as *Legislative Series* 1959–Mal. 1.

FINLAND

NOTE[1]

I. LEGISLATION

1. According to Act No. 13 of 16 January 1959 on state guaranty for study loans (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK* (Official Gazette of Finland) No. 13/1959), the State may stand surety for the study loan of a talented and assiduous student of small means who pursues studies in a university or in another comparable institute in order to obtain an academic degree.

If the student has shown particular success in passing a final examination, his loan can be paid from the state funds totally or in part.

This plan is administered by the State Study Guaranty Board under the supervision of the Ministry of Education.

2. Act No. 126 of 20 March 1959 on unemployment assistance (*AsK* No. 126/1959) contains provisions regulating the aid to be given unemployed persons who are in need of economic support. The assistance is paid by the municipal or rural commune where the person is registered as an unemployed person. The communes are given compensation from the state funds in a fixed proportion.

3. Act No. 219 of 15 May 1959 on the performance of unarmed compulsory military service (*AsK* No. 219/1959) deals with the problem of conscientious objection to military service based on the ground that such service is contrary to the prescriptions of a religion or belief.

According to article 75 of the Finnish Constitution Act, every Finnish citizen is under obligation to take part in, or make his contribution to, the defence of the country as prescribed by law. This duty has been considered as one of the highest duties of a citizen towards his country.

However, in order to observe a personal conviction based on religion or belief, conscientious objection to military service was already recognized in Finland by the Act No. 186 of 29 May 1931. According to this Act, conscientious objectors could be exempted from armed service in peacetime. Instead, they had to serve as unarmed persons in hospitals or other government establishments. Although applicable to many cases, this Act did not solve the problem of cases where conscientious objectors refused to perform any service which was even remotely connected with military service and even on the mere ground that it was a substitute for it. The circumstances had also changed in other ways since the promulgation of the Act.

In the new Act mentioned above unarmed service is divided into three categories according to the place of service. The first alternative is that unarmed service is performed in the defence forces of the country and the second one is that it is performed in the civil administration of the State or in a central hospital. Those who refuse to perform a service belonging to either one of the first two categories have to serve a fixed time in a special working establishment. This Act also is applicable only in peacetime.

Petitions concerning unarmed service are considered by a special board of examiners, the members of which are appointed by the State Council. The board is to consist of a chairman having legal training and four members, one a commissioned officer of higher rank, one a psychiatrist, one a clergyman and one a representative of the Ministry of Social Affairs. The decisions of the board may be appealed against to the Ministry of Defence. The working establishments mentioned above are under the supervision of the Ministry of Social Affairs.

4. Act No. 246 of 2 June 1959 on the employment service (*AsK* No. 246/1959)[2] has the purpose of increasing the effectiveness of the policy of placing unemployed persons in the free labour market. To that end, the State is to carry on an employment service aimed at promoting people's chances of finding work in an effective and expedient way, to bring about a balance in the labour market. The administration and supervision of this function are entrusted to the Ministry of Communications and Public Works.

A private association may be granted a concession to carry on an employment service if it is considered to have good possibilities of finding work in a certain field or if the concession would concern employment service for disabled or handicapped persons only.

The general principle to be followed in this function is to serve the labour market effectively so that the employers will get the workers who are best suited to the posts offered and that those looking for work will find work which corresponds to their skill or

[1] Note prepared by Mr. Voitto Saario, judge of the Court of Appeal, Helsinki, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Fin. 1.

craftsmanship. The employment service of the State is free.

5. Act No. 259 of 12 June 1959 on seizure and search in criminal cases (*AsK* No. 259/1959) has repealed articles 13 and 14 of the Act of 19 December 1889 on the administration of the Penal Code, which articles contained provisions on domiciliary visit and search. The new Act regulates these and some other measures which investigation authorities are allowed to take in order to detect offences.

Seizure

According to the Act, a thing can be seized if there is reason to presume that it can be a piece of evidence in a criminal case or that it has been taken away from someone by means of an offence or that the court will pronounce it confiscated. However, a document the substance of which is such that the person having the document in his possession would not be allowed to testify of it may not be seized. Nor may a written message between the suspect and such a close relative of his as may, according to the rules of procedure, refuse to testify, except in cases when the offence in question is punishable with hard labour for six years or more.

The letters, other pieces of mail or telegrams addressed to the suspect or coming from him which are in the possession of the postal and telegraphic office may be seized only when the offence in question is punishable with hard labour and they could be, according to the provisions of this Act, seized from the addressee.

The same authorities as possess the power to issue a warrant of arrest are authorized to issue a warrant of seizure. The court has this power only in cases brought before it. A person not possessing power to issue such a warrant who lawfully apprehends a suspect or executes a detention, an arrest, a domiciliary visit and search or an inspection may seize a thing then found without a warrant. A policeman may even otherwise seize such a thing when the circumstances require a quick step and a warrant cannot be obtained immediately. This right, however, cannot be applied to a piece of mail which is in the possession of the postal and telegraphic office. The proper authority is to be notified of this kind of seizure without delay and he is to decide upon whether the seizure will remain in force or not.

A piece of mail, a telegram, an accounting book or another private document seized shall not be examined or, if it is closed, opened by anyone except the authority possessing power to issue a warrant of seizure or an expert or other person whose assistance is used in detecting the offence or who otherwise is involved in the case.

The details of a seizure shall be recorded, mention being made of the purpose of the seizure and the things seized being listed.

A seizure shall be terminated as soon as its purpose has been achieved. If no legal action on the ground of the offence which has caused the seizure has been brought before the court within six weeks of the seizure, it shall be dropped unless the provincial government considers that there is reason to continue the period of its validity for two weeks at most.

When the court is trying a legal action which has caused a seizure, it is to consider, at the request of the party concerned, whether the seizure is to be kept in force or not. If the seizure has not been terminated earlier, the court is to give an order on it in its final decision.

In order to ensure the detection of an offence, a house or a room may be closed or admittance to a certain place or removal of a thing to another place may be forbidden or a similar measure taken. To these measures are to be applied, as far as applicable, the provisions relating to seizure.

Domiciliary Visit and Search, and Personal Inspection

If there is reason to suspect that an offence has been committed for which the penalty is more severe than imprisonment for six months, a domiciliary visit and search can be made in a house, a room or a closed place of storage or in a vehicle, in order to find a thing or otherwise to examine a circumstance which may be important for detecting the offence.

At the house of a person other than the suspect a visit and search may be made only when the offence has been committed or the suspect apprehended there or there are particularly valid reasons to assume that a thing to be seized can be found or other light on the offence obtained by the means of visit and search.

In order to catch a person to be apprehended, detained, arrested or brought to investigation or before the court, a visit and search may be made at his house and even elsewhere if there are valid reasons to assume him to be there.

In a suite of rooms to which the public has admittance or where vagrants and criminals usually are staying or where such property as that which is sought for usually is bought or taken as a pawn, a visit and search may be made irrespective of the nature of the offence.

A warrant of visit and search may be issued by the same authorities as may issue a warrant of seizure; but a policeman may make a visit and search in order to catch a person to be apprehended, detained, arrested or brought to investigation or before the court or to seize a thing which has been traced from the act of offence or otherwise when the matter allows of no delay.

The Minister of the Interior and the Chancellor of Justice are authorized to entrust a person ordered by them to investigate certain criminal cases to make a visit and search.

At a visit and search a witness called by the person carrying it out is to be present, if possible. The party concerned or someone belonging to his household is to be given a chance to be present and to call a witness if this can take place without delay. If none of these have been present, the person at whose house the visit and search have taken place is to be informed as soon as this can be done without hampering the detection of the offence in question. The complainant or his proxy may be allowed to be present at a visit and search to give necessary information. The person carrying out the visit and search shall, however, see to it that the complainant or his proxy will not learn more of the circumstances detected than is unavoidable.

At a visit and search more damage than is unavoidable must not be caused. A room or a place of storage may be opened by force, but it shall be closed again in an appropriate way afterwards. A visit and search must not be made without special reason between nine o'clock in the evening and six o'clock in the morning.

The details of a visit and search shall be recorded by the person carrying it out. Before it begins he is also obliged to read the warrant of visit and search to the person at whose house it takes place or, if there is no warrant, to explain orally the purpose of it.

For the same purpose as in the case of visit and search, the public prosecutor or other authorities who are investigating an offence are entitled to inspect also places other than those mentioned above.

If there is reason to suspect that an offence has been committed for which the penalty is more severe than imprisonment for six months, a person may be submitted to personal inspection so that a thing to be seized may be found or a circumstance which may be important for detecting the offence may be examined. Any person other than the suspect may be submitted to inspection only when there are particularly valid reasons to assume that a thing to be seized may be found or light on the offence obtained by that means.

A person who is suspected of an offence of the above-mentioned kind on plausible grounds is bound to submit to personal inspection. At such an inspection a blood sample may be taken or other examination performed when necessary if it can take place without noteworthy inconvenience.

To personal inspection are to be applied, as far as applicable, the provisions relating to visit and search. A witness called by the person carrying it out is to be present, except when it is performed by a physician. Blood samples must not be taken or other examinations demanding medical competence performed by anyone but a physician. Personal inspection is to be performed only by someone of the same sex as the person inspected, except when it is performed by a physician. Persons belonging to the other sex may not be present.

II. INTERNATIONAL AGREEMENTS[1]

1. Act No. 169 of 10 April 1959 (*AsK* No. 169/1959) brings into force in Finland the Supplementary Convention on the Abolition of Slavery, the Slave-trade and Institutions and Practices similar to Slavery, of 7 September 1956.

2. Act No. 557 of 13 November 1959 (*AsK* No. 557/1959) brings into force in Finland the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1949, as far as they fall within the scope of legislation.

[1] See also p. 373.

FRANCE

DEVELOPMENT OF HUMAN RIGHTS IN 1959[1]

After securing the adoption of a large body of legislation at the end of 1958, the Government of the Fifth Republic turned its attention to the preparation of reforms, not all of which have as yet been embodied in legal texts or submitted to Parliament.

However, some important legislation was enacted in 1959 in the field of educational reform and assistance to private educational institutions, which are considered as important as the state institutions for the training of the young.

In addition, progress was made with the application of the laws reforming penal procedure and the system of penalties, laws which are based, as has been shown, on a constant desire to protect the individual and re-educate the delinquent or the criminal.

Mention should be made of some laws, particularly affecting Algeria, which aim at producing profound changes in the status of women and in the system of ownership of immovable property.

Lastly, the termination of the decolonizing process in tropical Africa is reflected in the discontinuance of the section dealing with the territories formerly under French authority or trusteeship.

I. LEGISLATION AND JUDICIAL DECISIONS

A. Civil and Individual Rights

1. *Nationality*

The Nationality Code was supplemented and amended by three ordinances of 7 January 1959. Some of the provisions introduce merely procedural changes or make such adaptations of the laws as are necessary, for instance, as a result of the elimination of the "colonies", which were formerly referred to as such in the Code. Any alien woman married to a Frenchman and who failed to make a declaration at the time of the marriage in order to acquire French nationality may now make such a declaration after her marriage and thus acquire French nationality. Lastly, a "master register of births of naturalized French persons born abroad" has been established. This register will be part of the valid and official records of births, deaths and marriages of naturalized French persons. As a result, the formalities they must comply with to prove their civil status will be much simplified.[2]

2. *Amnesty*

An ordinance of 31 January 1959[3] contains (article 5 et seq.) additional provisions to those already adopted regarding amnesty for "acts of collaboration" — i.e. acts contrary to French interests or honour committed during the German occupation, 1940–1944. The ordinance provides for the restitution of civil and political rights to certain convicted persons who have served their sentences. It authorizes the extension of the amnesty to persons who were prosecuted or convicted *in absentia*. The amnesty extends even to crimes of murder, the only limit being the following provision, which indicates the spirit of the text: "These measures shall not apply . . . to persons who deliberately exposed or attempted to expose any person to torture, deportation or death."

In addition, an Act of 31 July 1959[4] amnesties all persons guilty of breaches of police regulations committed before 28 April 1959, and of some offences such as those relating to meetings, elections, demonstrations on the public highway, labour conflicts and breaches of the press laws, and a number of economic offences.

3. *Welfare of Children and Young Persons*

Stricter regulations[5] now prohibit the admission to places where alcoholic beverages are sold to children under sixteen years of age who are not accompanied by their father, mother, guardian, or any person over eighteen who is responsible for their charge or supervision; it is prohibited "to sell or offer free of charge" alcoholic beverages to minors.

Under an ordinance of 5 January 1959[6] prefects are authorized "to forbid minors under eighteen to enter any establishment providing amusement or entertainment, whatever the conditions of admission, if such amusement or entertainment or the frequenting of such an establishment is likely to have a harmful influence on the health or morality of young people".

[1] Note prepared 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] Ordinances 59–64, 59–65 and 59–68, *Journal officiel*, January, pp. 553 and 554.

[3] Ordinance 59–199, *Journal officiel*, February, p. 1491.

[4] Act 59–940, *Journal officiel*, August, p. 7795.

[5] Ordinance 59–107 of 7 Januari 1959, *Journal officiel*, January, p. 619.

[6] Ordinance 59–28, *Journal officiel*, January, p. 313.

The child welfare provisions of the Family and Social Assistance Code (articles 42, 46, 48, 49, 66, 84, 86, 115, 193 and 204) were amended and expanded by a decree of 7 January 1959.[1]

4. *Alcoholism*

By an ordinance and a decree of 7 January 1959,[2] the code regulating the sale of alcoholic beverages and laying down measures for the prevention of alcoholism was expanded by the addition of some stronger provisions against alcoholism: certain kinds of publicity were forbidden, while the establishment and transfer of places selling alcoholic beverages and their location near certain buildings were made subject to regulations. The severity of the penalties and fines for offences against the earlier regulations was increased (see also above, "Welfare of Children").

5. *Freedom of Assembly — Judicial Decisions*

In connexion with the policing of public meetings, one decision is worth noting; this decision is in harmony with previous judicial decisions and it is a reminder that the powers of the administrative authority have definite limits and that it is under an obligation to respect the freedom of assembly.

"Although it is for the authorities in which police powers are vested to take the necessary measures for the maintenance of public order, it is their duty, in the exercise of their functions, to ensure that any action they take is consonant with respect for the freedom of assembly guaranteed by the Acts of 30 June 1881 and 28 March 1907;

". . . it has not been shown by the judicial inquiry that the public lecture planned by Mr. S. for 20 December 1956 in the assembly room of the town hall of B. was likely to threaten law and order to an extent that the danger could not be guarded against by taking appropriate police measures, which could have been taken in this case";

that being so, there was no justification for forbidding the lecture.[3]

6. *School Age — Educational Reform*

An ordinance of 6 January 1959[4] raised the school-leaving age from fourteen to sixteen for all French and alien children living in France. A measure to raise the school-leaving age was not greatly needed as such. It is being applied progressively and it merely confirms a spontaneous movement which is very broad in scope. It is already a fact that today only 35 per cent of all children leave school at fourteen. The real reason for passing this measure, which has been awaited for several years, is that it is bound up with two much more important reforms, concerning the organization of the *baccalauréat*[5] and the structure of state education itself.

The latter reform, which was brought about by a decree of 7 January 1959,[6] covers the whole problem of assigning children to the different types of education, directing them towards different professional careers, and, therefore, in the long run, the extent to which human resources are adapted to the needs of society. Whether their schooling is well or poorly organized affects not only the direct interest of individuals, but also that of the community as a whole; hitherto, however, the children's studies and their possibilities of finding the right type of instruction for their needs, and their choice amongst the main branches of education (secondary, vocational and higher education) have depended largely on chance and family prejudice, and also on the family's financial position.

Furthermore, there has been criticism of the methods of selection by successive examinations which did not provide enough opportunity for changing from one type of studies to another during the period of schooling. Such selection, in any event, implied that some kinds of education were better than others, an attitude which did not meet the needs of modern life or the child's interests, and even less those of the nation. The prestige rightly attaching to arts courses resulted in many of the most intelligent children taking such courses, although their capacities would have been more rationally utilized in training for careers in science or industry.

The main purpose of the new reform is to do away with the previous compartmentalization and premature selective examinations, and in order to do so, to prolong as much as possible the period of general education, which will be at the same time a period of observation, permitting a more accurate appraisal of the children's aptitudes and making it possible to give their families appropriate advice regarding their choice. At the same time, care is being taken to facilitate orientation or changes of orientation whenever possible or necessary during that period.

Thus the keystone of the reform is the establishment of a two-year "observation cycle" (ages ten and eleven) during which the children, regardless of the educational institution in which they are enrolled, are to receive properly planned instruction comprising the essential subjects and offering a general education.

Following the observation cycle, the children have a choice of five branches of education leading to five different goals; but it is still possible to change from one branch to another. The table on p. 117 will give an idea of the organization of these five branches of

[1] Decree 59–101, *Journal officiel*, January, p. 601.

[2] Ordinance and decree 59–107 and 59–132, *Journal officiel*, January, pp. 619 and 646.

[3] *Conseil d'Etat*, case of "Minister of the Interior *v.* S." of 27 November 1959, in the *Recueil des décisions du Conseil d'Etat*, 1959, Sirey, p. 632.

[4] Ordinance 59–45, *Journal officiel*, January, p. 376.

[5] Decree 59–58, *Journal officiel*, January, p. 430.

[6] Decree 59–57, *Journal officiel*, January, p. 422.

education and the future opportunities open to those who follow them.

Special classes or institutions are established for children whose physical or mental state prevents them from receiving instruction under normal conditions. This is a serious effort not to deprive maladjusted children of a normal education and to provide them, in spite of their condition or their infirmities, with an appropriate general or vocational training.

There are also measures dealing with physical education and sports.

Lastly, the decree provides for future measures for the vocational training of adults; but much wider scope is given to such projects in an Act which is discussed below ("Social rights").

7. *Position of Private Schools*

Article 3 of the above-mentioned ordinance of 6 January 1959 on compulsory school attendance expressly provides that compulsory education "may be given in either public or private institutions or schools, or at home by the parents, or by one of the parents, or by a person of their choice". This provision recognizes the principle of freedom of education: freedom for the parents to choose the teachers and methods of education; and freedom for private educational institutions to exist side by side with institutions administered by the State. Thus, we have turned our backs on the trend towards a state monopoly of education.

This principle of freedom of education was reaffirmed by the final adoption, on 31 December 1959, of an Act "on the relations between the State and private educational establishments".[1] In the present political situation in France, the Act has a far-reaching effect which goes well beyond this definition, for private educational institutions are often operated by religious groups.

In accordance with principles defined in the Constitution itself, it is recalled that, in its own educational institutions, the State provides instruction which "respects all beliefs" and takes whatever steps may be necessary to ensure that the pupils of the state schools enjoy freedom of worship and of religious instruction.

Financial assistance, which has long been necessary for the survival of private education, is granted to private educational establishments in three different ways: (1) Private educational institutions may simply ask to be integrated into the public school system. The teachers in these institutions become state officials with permanent or fixed-term contracts. (2) Private primary or secondary schools and schools providing vocational training may sign a "contract of association" with the State. Instruction is then given "according to the regulations and the syllabuses of state education". The State pays the teachers' salaries and the operating expenses of the schools. (3) A third system, called "the simple contract system" is also open to these institutions: the State exercises technical and financial supervision, in return for which it also takes over the payment of the teaching staff according to scales of salaries fixed by decree.

The decrees for the application of this Act, which were issued in 1960, call for additional comment.

These provisions, which are very favourable to private educational institutions — particularly, although not solely, to Catholic schools — gave rise to considerable controversy both before and after their adoption. Some people feel that they are not sufficient to ensure that all citizens bear an equal share of the expenses of national education, and others that they disregard the separation of church and State. It may be hoped, however, that, with time and practice, they may promote a clearer and better understanding of the role of the State, which bears the supreme responsibility for the quality of national education, and also for the financial position of the teaching staff, but which, on the other hand, must observe an attitude of neutrality and respect for each family's religious convictions and conception of education.

8. *Enforcement of Penalties*

Supplementing the provisions we have already mentioned which reform the Code of Penal Procedure, a decree of 23 January 1959[2] made additions to the part containing regulations (methods of enforcement), particularly to book V, "Penal enforcement procedures" (articles D 48 to D 572). This very detailed text deals successively with preventive detention, the classification of penitentiary institutions, the treatment of prisoners, prison labour, the functions of the penalty enforcement judge, systems of placement in open institutions or semi-liberty, prison discipline and security, the management of prisoners' property and the maintenance of prisoners, hygiene and sanitation, the relations of prisoners with the outside world, prisoners' aid, including spiritual, moral and educational aid, the role of private prisoners' aid associations, conditional release and the corresponding measures of assistance, etc.

B. Social Rights

1. *Vagrants and Anti-social Persons*

The progress we have already mentioned towards closer co-operation between those responsible for the administration of justice and the social assistance organizations and services is evident also with regard to vagrants, that is to say, persons who live, generally alone, on the fringes of society, without work or means of support and also without a home. Begging is often, but not always, associated with vagrancy.

[1] Act 59-1557, *Journal officiel*, January 1960, p. 66. See p. 118 below.

[2] Decree 59-322, *Journal officiel*, February, p. 2328.

Until now, the only notice taken of this situation by the law has been to punish the "offence of vagrancy", an unsatisfactory and often inhumane solution.

The decree of 7 January 1959[1] amending the Family and Social Assistance Code, authorizes, under certain conditions, the payment out of "social assistance" funds of the cost of board and lodging in appropriate institutions for "vagrants considered suitable for rehabilitation", on the same terms, for instance, as persons released from prison or in danger of prostitution.

The order laying down the regulations for the application of this decree,[2] dated 14 September 1959, defines how this "social rehabilitation" is to be attempted. To be eligible for it, the vagrant must be homeless, penniless and out of work; he must be judged suitable for an attempt at rehabilitation "bearing in mind, *inter alia*, his mental faculties, his age, his aptitudes . . ."; he must also freely accept a certain degree of supervision.

Because of their powers and also because of their relations with the police, the judicial authorities seemed best fitted to pass on cases coming under the new provisions. For that reason a "vagrants' aid commission" has been set up, operating, parallel with the probation committees and discharged prisoners' aid committees, under the chairmanship of the "penalty enforcement judge" (see *Yearbook on Human Rights for 1958*, p. 73). This commission initiates and coordinates action "to promote the social rehabilitation of vagrants". Placement may be decided upon, either on the initiative of the Procureur de la République, who in this case waives his right to prosecute, or on that of the vagrant himself. The object of placement is to encourage the vagrant's readaptation to a trade and to his social environment.

Although these measures are restricted in scope, they are extremely important. When experience has been gained of their application, it will probably be possible to improve them.

2. *In the Factory*

Another ordinance of 7 January 1959[3] gave additional legal protection against unfair dismissal to the members of works committees and staff representatives. The special procedure applicable to them if they are dismissed continues to be compulsory for six months after the expiry of their term of office. The same protection is granted to unsuccessful candidates for staff elections for the three months following those elections.

Another text of the same date[4] is intended to encourage schemes whereby workers are associated or given a material interest in the undertakings in which they are employed. By means of certain tax exemptions, industrial and commercial undertakings are encouraged to sign contracts with their staff enabling them to share collectively either in the results achieved by the undertaking, or in its capital or in a reinvestment of profits, or in higher productivity. This ordinance makes it compulsory to "establish a system for keeping the employees informed and maintaining a check on the performance of the contract". The corresponding tax exemptions are granted only when the benefits allowed have been found to be real and the contracts valid.

3. *Handicapped Workers*

The Act of 23 November 1957 concerning the reclassification of workers who are handicapped by a physical or mental disability, whatever its cause, is mentioned in the *Yearbook on Human Rights for 1957*, p. 80. A decree of 3 August 1959[5] brings the application of this Act into line with that of the Act of 26 April 1954 concerning the compulsory employment of disabled ex-servicemen. In particular, this decree specifies the obligations of employers and the procedures for inspection and for submitting claims.

4. *Social Training Schemes*

The Act of 31 July 1959[6] on social training schemes is much wider in scope. Its object is defined as follows in article 1: "With a view to improving labour efficiency, practical training facilities and advanced courses shall be made available to workers", that will facilitate their promotion to higher posts or their re-training for a new activity.

At the first-degree level, vocational training schemes are first and foremost a means of giving workers in industry, agriculture or handicrafts an opportunity to acquire skills through practical training, more refresher courses and correspondence courses given either by vocational training centres (operated by the Ministry of Labour), or by other public or private education institutions. At a higher level, the schemes offer workers the opportunity "to acquire the knowledge and practical training to become engineers, highly skilled technicians and research workers and to occupy senior posts in the economic and administrative fields". Provision is made for the establishment of appropriate public or private higher educational institutions; these centres, institutes or schools are intended to train highly qualified engineers and technicians. They may take full-time students, no degrees being required for enrolment. The cooperation of undertakings or groups of undertakings in the creation and operation of these institutions is actively encouraged. The State pays most of the operating expenses and compensation for any loss of salary by the students taking these courses. This Act

[1] Decree 59-143 (article 10), *Journal officiel*, January, p. 667.

[2] Order of 14 September 1959 (Justice, Public Health), *Journal officiel*, September, p. 9209.

[3] Ordinance 59-81, *Journal officiel*, January, p. 565.

[4] Ordinance No. 59-126, *Journal officiel*, January, p. 641.

[5] Decree 59-954, *Journal officiel*, August, p. 7817.

[6] Act 59-960, *Journal officiel*, August, p. 7828. See p. 117 below.

is expected not only to give an impetus to individual efforts for self-improvement, but also to bring to the fore many people with the capacities to become highly skilled technicians, who are essential to modern industry.

Supplementing the existing provisions, an Act of 28 December 1959[1] makes state financial assistance available to university or faculty institutes or specialized centres directly attached to trade union organizations with a view to encouraging the "training of workers, called upon to carry out trade union responsibilities" or to participate in the management of economic or social organizations. These provisions round out those of the Act of 23 July 1957 (see *Yearbook on Human Rights for 1957*, p. 80) concerning paid holidays for workers' education and trade union training.

5. *Trade Union Rights — Judicial Decisions*

Attention is drawn to an interesting decision of the Court of Cassation regarding the ability of industrial associations to institute civil proceedings to protect professional interests.

Under book III, article 11, of the Labour Code, industrial associations "may, in any court of justice, exercise all the rights of a civil plaintiff in criminal cases in respect of matters which may directly or indirectly prejudice the collective interests of the trade that they represent". The question arises whether this idea of the collective interest of the trade encompasses the proper functioning of an institution established either by an undertaking or by a small number of wage-earners, which itself legally has powers to defend its interests.

The first judges had denied an industrial association the right to act as a civil plaintiff in a dispute brought before the court by a wage-earner, who alleged that the employer had impeded the operation of a works committee; the reasons on which the judgement was based were that the interest in dispute was not identifiable either with that of the trade as a whole or even with the collective interests represented by this industrial association.

The Criminal Chamber of the Court of Cassation, on the other hand, considered that the powers of a factory (or works) committee "do indeed involve the collective interest of the trade, even when, in actual fact, the activity of the committee concerns only a limited number of workers; that industrial associations are therefore entitled to intervene if the operation of a factory or works committee is impeded and to do so independently of any proceedings which this committee or its members may bring directly . . . that, if proved, the impeding of the operation of a committee in itself constitutes damage to the trade as a whole, for which the industrial associations are entitled to demand redress".[2]

[1] Act 59-1481, *Journal officiel*, December, p. 12476.

[2] Cass. Crim. 7 October 1959 — *Recueil Dalloz*, 1960, p. 294, with a note by Mr. J. M. Verdier.

6. *Family Allowances*

Within the framework of the European Economic Community, regulations Nos. 3 and 4 were adopted regarding the social security scheme applicable to "migrant workers" — i.e., workers who take temporary or permanent employment outside their country of origin. A ministerial circular of 31 August 1959[3] laid down the rules for granting family allowances in respect of children to wage-earners working in France, even if the children are resident abroad. These provisions apply to the nationals of the countries of the European Economic Community, and also to refugees and stateless persons.

C. PROVISIONS PARTICULARLY AFFECTING ALGERIA

1. *Marriage — Protection of Women's Rights*

Mention must be made of an important text to promote the emancipation of women and the protection of their rights and of those of the children at the time either of marriage or of the dissolution of the marriage. The ordinance of 4 February 1959[4] provides that there must be a public expression of consent to the marriage by both sides before the *cadi* or the civil registrar and a court decision before a marriage may be dissolved. The minimum age for marriage is fixed at eighteen for men and fifteen for women. The provisions of this ordinance are supplemented by a decree of 17 September 1959[5] which lays down the formalities for celebrating and announcing marriages and the sanctions to which the *cadis* or civil registrars, *inter alia*, are liable in the case of non-compliance with these formalities; the decree also lays down precise regulations for instituting divorce proceedings and stresses the judge's obligation to hear both spouses personally; the judgement granting the divorce must specify who is to have the custody of the children, and, if necessary, define the financial interests of the spouses; a woman left destitute by a husband who has disappeared may petition the judge for a divorce.

2. *Individual Freedoms*

The "committee for the protection of individual rights and freedoms", which was given only a temporary mandate by an ordinance of 20 August 1958 (see *Yearbook on Human Rights for 1958*, p. 72), was given a permanent mandate and its powers were defined by a decree of 9 June 1959.[6]

3. *System of Land Tenure*

The variety of legal systems relating to land is one of the obstacles to economic progress in Algeria. Various texts attempt to remedy this situation. Within the framework of the economic development plan, new rules for the verification and establishment

[3] *Journal officiel*, September, p. 9226.

[4] Ordinance 59-274, *Journal officiel*, February, p. 1860. See p. 118 below.

[5] Decree 59-1082, *Journal officiel*, September, p. 9139.

[6] Decree 59-702, *Journal officiel*, June, p. 5778.

of ownership and other property rights have been made applicable to certain areas called "modernized land tenure areas", by an ordinance of 3 January 1959.[1] The improvements in the land tenure system include the marking out of estates, the dividing up of land to put an end to the existence of the indivisible land units which are prejudicial to economic development, and the consolidation of holdings. These operations apply to all categories of land, whatever the legal system formerly applicable to the land itself or the personal status of its owners. A land court of Algeria has been set up at Algiers and a land division has been instituted in the Court of Appeal of Algiers. On the basis of the inquiries carried out by a magistrate-rapporteur, proposals are made on which, in the absence of a settlement out of court or a conciliatory arrangement, the land court pronounces judgement. The effect of the judgements of the land court is to bring immovable property under the ordinary property law.

In addition, a decree of 21 October 1959[2] reformed the land specifications relating to immovable property and property rights coming under the ordinary law. As in continental France, an index of immovable property has been established and is to be maintained in every *commune* by the registrar of mortgages. The purpose of the provisions relating to the form of the deeds and the particulars they must contain is to ensure the accuracy of the land specifications.

An Act of 28 December 1959[3] applied similar regulations to the areas covered by the above-mentioned ordinance of 3 January 1959.

4. *Professional Advancement in Algeria*

Apart from the measures for the application in Algeria of the above-mentioned Act 59–960 ("Social rights"), of 31 July 1959, an Act of 28 December 1959[4] lays down a broad three-year programme of professional advancement in Algeria and provides for the promotion of French Moslems. Provision is made for the creation of 500 youth training centres and 800 adult professional training sections (including agricultural and vocational training sections for women). Professional associations and economic, social and co-operative organizations must include members with Algerian status, so as to accelerate the process by which members of the rural *élite* will come to share management responsibilities. Previous regulations giving priority to persons with Moslem status in recruitment to the government service have been brought back into force; and there are measures to encourage undertakings to reserve a certain percentage of their jobs for workers who have taken advantage of the professional advancement schemes.

[1] Ordinance 59-41, *Journal officiel*, January, p. 373.

[2] Decree 59-1190, *Journal officiel*, October, p. 10036.

[3] Act 59-1486, *Journal officiel*, December, p. 12479.

[4] Act 59-1480, *Journal officiel*, December, p. 12475.

D. PROVISIONS PARTICULARLY AFFECTING THE STATES MEMBERS OF THE COMMUNITY

During the last part of 1958 (see *Yearbook on Human Rights for 1958*, p. 289), eleven new African republics and the Malagasy Republic joined the Community.

The following laws on the organization of the Community were adopted by the end of 1958: the ordinances of 19 December 1958 on the Executive Council of the Community, on the Senate of the Community, on the Court of Arbitration of the Community, and on representation of the Parliament of the French Republic in the Senate of the Community.[5]

Certain decisions of 9 February 1959,[6] taken by the President of the French Republic in his capacity as President of the Community, specified the representation of member States in the Senate of the Community, the official language, the flag, and the principles governing foreign policy, defence policy, the maintenance of order, nationality, etc.

In the same way, decisions were adopted on 12 June 1959[7] with regard to currency, exchange rates, economic policy, and general procedures for the administration and supervision of justice.

A decree of 27 March 1959[8] set up an inter-ministerial assistance and co-operation committee and defined the administrative machinery for assistance and co-operation between France and the other members of the Community.

However, because of the political developments, it was not possible to give the new institutions their full scope, and as early as 1959 the States concerned expressed the wish to adopt a more flexible form of organization, based entirely on a system of bilateral or multilateral conventions.

National legislations are henceforth the individual responsibility of the several independent States and will no longer be covered in the present section.

II. INTERNATIONAL INSTRUMENTS

Legislative action was taken to ratify the Convention on the Status of Stateless Persons, New York, 28 September 1954 (ordinance 59-1321, *Journal officiel*, December, p. 11839).

The following agreements relating to social security were published:

Additional Agreement of 30 August 1957 to the General Agreement between France and Belgium of 17 January 1948 (decree 59-1040, *Journal officiel*, September, p. 8727) relating to frontier and seasonal workers.

[5] Ordinances 58-1254, 1255, 1256 and 1257, *Journal officiel*, December, pp. 11455 *et seq.*

[6] Decisions of 9 February 1959, *Journal officiel*, February, pp. 2051-2052.

[7] Decisions of 12 June 1959, *Journal officiel*, June, pp. 6404-6405.

[8] Decree 59-462, *Journal officiel*, March, p. 3700.

General Agreement between France and Spain and Supplementary Agreement relating to frontier and seasonal workers, of 27 June 1959 (decree 59-614, *Journal officiel*, May, p. 4948).

General Convention between France and Greece of 19 April 1958 (decree of 5 May 1959, *Journal officiel*, June, p. 5620).

General Convention between France and Poland of 9 June 1948 and Supplementary Agreement of 6 March 1959 (decree of 22 October 1959, *Journal officiel*, October, p. 10229).

General Convention between France and Portugal of 16 November 1957 relating to migrant workers, and Agreement of 30 October 1958 (decree of 19 June 1959, *Journal officiel*, June, p. 6409).

Agreement between France and the OEEC of 5 March 1959 on the application of French social security legislation to the staff employed by the said organization (decree 59-1211, *Journal officiel*, October, p. 1081).

The following were also published:

Convention between the State of Israel and France concerning Judicial Assistance in Criminal Matters of 12 November 1958 (decree 59-1249, *Journal officiel*, November, p. 10388).

Franco-Italian Convention on Judicial Co-operation of 12 January 1959 (decree 59-629, *Journal officiel*, May, p. 5078).

International Convention relating to Civil Procedure of 1 March 1954 (decree 59-1122, *Journal officiel*, September, p. 9420).

Franco-Tunisian Convention on Cultural and Technical Co-operation (decree of 7 December, *Journal officiel*, p. 11684).

Table showing the Branches of Education open to Children at the End of the Observation Cycle

(See p. 112)

Branch	*Teaching institutions*	*Aims and opportunities*
I. General education — final phase (12 to 16 years)	Different institutions or special sections of schools of general education, providing general instruction with special attention to agriculture, domestic science, trades, etc.	Termination of study at sixteen and start of economic activity.
II. Short technical training	Schools of technical education (formerly apprenticeship schools)	Preparation for "long technical training" or professional training.
III. Short general education	Schools of general education (former post-primary courses)	Preparation for medium-level non-technical employment in the distribution and services division of economic activities.
IV. Long technical training	Technical secondary schools (formerly technical schools and national vocational schools)	Preparation for long professional training or "social training schemes".
V. Classics or modern languages	Secondary schools providing teaching in classics or in modern languages	Preparation for higher education.

ACT No. 59-960 RELATING TO VARIOUS MEASURES TO PROMOTE SOCIAL TRAINING SCHEMES, OF 31 JULY 1959[1]

Art. 1. With a view to improving labour efficiency, practical training facilities and more advanced courses shall be made available to workers that will facilitate their promotion to higher posts or their retraining for a new type of activity.

Schemes for improving efficiency shall take the form of vocational training schemes or advanced work-training schemes. The necessary steps shall be taken either by educational institutions, primarily those under the Ministry of Education, or by collective adult training centres under the Ministry of Labour, the Ministry of Agriculture and other ministries, by public institutions, or by private enterprises participating in the scheme.

SECTION I

VOCATIONAL TRAINING SCHEMES

Art. 2. The aim of first-degree vocational training shall be the training of specialized or skilled workers.

The training shall be given in vocational training

[1] Text published in the *Journal officiel* No. 180, of 6 August 1959. Translation by the United Nations Secretariat.

centres for adults under the supervision of the Ministry of Labour, which shall organize both full-time practical training courses and more advanced training courses for employed workers.

The conditions for the organization of a second-degree vocational training scheme, preparing workers for technical supervisory work and for posts as technicians of various grades and as training instructors will be established by decree.

. . .

SECTION II

ADVANCED WORK TRAINING SCHEMES

Art. 7. Advanced work training schemes shall give workers the opportunity to acquire the knowledge and practical training to become engineers, highly skilled technicians and research workers and to occupy senior posts in the economic administrative fields.

. . .

ACT No. 59-1557 OF 31 DECEMBER 1959 CONCERNING RELATIONS BETWEEN THE STATE AND PRIVATE EDUCATIONAL ESTABLISHMENTS[1]

Art. 1. In accordance with the principles laid down in the constitution, the State provides children and adolescents in public educational establishments with the opportunity of obtaining an education in keeping with their abilities under conditions of equal respect for all beliefs.

The State proclaims and respects freedom of education and guarantees the exercise thereof in lawful private establishments.

It makes all necessary provision for ensuring that pupils in public schools enjoy freedom of worship and religious instruction.

In private establishments which have entered into one of the contracts hereinafter described, instruction covered by the contract is under state supervision. The establishment, while retaining its individuality, must provide such instruction under conditions of complete respect for freedom of conscience. It must be open to all children without distinction of origin, opinion or belief.

. . .

[1] Published in the *Journal officiel* No. 2, of 2 January 1960. Translation by the United Nations Secretariat.

ORDINANCE No. 59-274 OF 4 FEBRUARY 1959 RELATING TO MARRIAGES ENTERED INTO IN THE DÉPARTEMENTS OF ALGERIA, LES OASIS AND LA SAOURA BY PERSONS HAVING LOCAL CIVIL STATUS[1]

Art. 1. The provisions of this ordinance apply, subject to the provisions of article 10, to persons whose condition and capacity are governed by one of the local civil statuses in force in the départements of Algeria, and the départements of Les Oasis and La Saoura.

The marriage or dissolution of marriage of the persons referred to in this article continues to be subject to the rules of their local personal status, except in so far as the following provisions apply.

Art. 2. Marriage is constituted by the consent of both spouses.

For a marriage to be valid, consent must be expressed orally, publicly and in person, in the presence of two witnesses who have reached their majority, before either the Cadi or the civil registrar. The parties to the marriage may request that the registrar should be a Moslem.

The consent of minors or of persons under a judicial or legal disability must be supported by that of their guardian.

. . .

Art. 4. A promise of marriage, whether unilateral or mutual, is not marriage and creates no obligation to marry.

Art. 5. A man may not marry until he has completed his eighteenth year, and a woman her fifteenth. However, the presiding judge of the court of main instance [tribunal de grande instance] may, for serious reasons, grant a waiver of the age requirement.

Art. 6. Except in the case of the death of one of the spouses, marriage is dissolved only by judicial decision.

Such decision is made by the competent judge at the request of either spouse.

Art. 7. The decree dissolving the marriage shall decide the question of the custody of the children in their best interests.

It shall also rule on any application for compensation or alimony made by the spouses on their own or their children's behalf.

. . .

Art. 10. This ordinance does not apply to marriages performed according to the Ibadite rite.

. . .

[1] Published in the *Journal officiel* No. 35, of 11 February 1959. Translation by the United Nations Secretariat.

GABON

CONSTITUTION OF 19 FEBRUARY 1959[1]

PREAMBLE

The people of Gabon, in response to the offer made by the French Republic in the preamble to the constitution of 4 October 1958, aware of their responsibility before God, inspired by the wish to promote the freedom and dignity of man and to organize community life in accordance with the principles of social justice, confirm the decision of the Territorial Assembly which, on 28 November 1958, opted for the status of a State member of the Community, solemnly proclaim their devotion to the principles set out in the preamble to the aforesaid constitution, and in particular in the Declaration of the Rights of Man and of the Citizen of 1789, as supplemented by the preamble to the constitution of 1946, and in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948.

INTRODUCTORY TITLE

The people of Gabon also proclaim their devotion to the following principles:

Freedom of conscience and the profession and free practice of religion shall be guaranteed to all, subject only to the requirements of public order.

Religious institutions and communities shall have the right to exist and develop without hindrance; they shall be exempt from state supervision and shall regulate and administer their affairs independently.

Marriage and the family form the natural basis of society.

They shall be placed under the special protection of the State.

Children are the most precious possession of the family and of the people.

Parents have the natural right and the essential duty to raise their children in order to endow them with the proper physical, intellectual and moral attributes.

The State and the community have the duty to support and supervise the educational efforts of parents.

Young people shall be protected by the action and the institutions of the State and the community against exploitation and against moral, intellectual and physical neglect.

Children born out of wedlock shall have the same rights to assistance as legitimate children.

Religious communities and private associations which have an educational objective and which respect the above-mentioned principles shall take part in the education of young people in conformity with the law.

Parents have the natural right, within the framework of compulsory education, to decide on the education of their children.

Children shall be admitted to the public schools without distinction as to race or religion.

The State shall supervise the instruction given in private educational establishments.

The conditions for the participation of the State and the community in the financial costs of private educational establishments shall be determined by law.

In public educational establishments, religious instruction may be given to the pupils at the request of their parents under the conditions set out in the relevant regulations.

TITLE I

THE REPUBLIC

Art. 1. Gabon is an indivisible, democratic and social republic.

The Gabon Republic shall ensure equality before the law for all citizens without distinction as to origin, race or religion. It shall respect all creeds.

. . .

Art. 2. Sovereignty shall be vested in the people, who shall exercise it through their elected representatives and by way of referendum in the cases provided for in this constitution and in the constitution of the Community.

No section of the people nor any individual may assume the exercise of sovereignty.

Art. 3. Elections shall be held on a basis of universal, equal and secret suffrage, and citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote as determined by law.

Art. 4. The political parties and groups shall assist in the exercise of the franchise. They may be formed

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5 of 15 June 1959 and in the *Journal officiel de l'Afrique équatoriale française* of 1 May 1959. Translation by the United Nations Secretariat.

and engage in their activities freely within the framework determined by laws and regulations. They shall respect democratic principles and public order.

. . .

TITLE II

THE LEGISLATIVE ASSEMBLY

Art. 6. The Legislative Assembly shall be composed of deputies elected for a term of five years by direct suffrage.

. . .

Art. 9. A compulsory mandate shall be null and void.

. . .

TITLE IV

RELATIONS BETWEEN THE ASSEMBLY AND THE GOVERNMENT

. . .

Art. 25. Treaties, agreements and conventions which have been duly ratified, approved and published shall take precedence over the law.

. . .

TITLE VI

JUDICIAL TRIBUNALS

Art. 38. Subject to the jurisdiction exercised by the Community, the organization of the judiciary shall be established by law. Justice shall be administered and judgements executed on behalf of the people. Judges shall be independent, and magistrates of the bench shall remain in office for life.

. . .

TITLE XII

AMENDMENT

. . .

Art. 47. No draft legislation and no proposal for amendment may have the aim of jeopardizing the republican and democratic form of the State.

. . .

GHANA

THE OFFENCES AGAINST THE STATE (FALSE REPORTS) ACT, 1959

No. 37 of 1959, assented to on 18 July 1959[1]

2. In the Criminal Code after section 345 A there shall be added the following section:

"345B. (1) Whoever communicates to any other person, whether by word of mouth or in writing or by any other means, any false statement or report which is likely to injure the credit or reputation of Ghana or the Government of Ghana, and which he knows or has reason to believe is false, shall be liable to imprisonment for a term of not more than fifteen years.

"(2) This section shall not apply

"(*a*) To anything said or done in the course of the proceedings of the National Assembly,

"(*b*) To anything done in the course of or in preparation for any civil or criminal inquiry or proceedings before the Supreme Court or any other court,

"(*c*) To a fair report of any proceedings in the National Assembly, in any civil or criminal inquiry or before the Supreme Court or any other court.

"(3) It shall be no defence to a charge under this section that the person charged did not know or did not have reason to believe that the statement or report was false unless he proves that, before he communicated the statement or report, he took reasonable measures to verify the accuracy of the statement or report.

"(4) A citizen of Ghana may be tried and punished for an offence under this section committed outside Ghana as if it had been committed within the jurisdiction of the court."

[1] Published in Supplement to *Ghana Gazette* dated 22 July 1959. The Act entered into force on 22 July 1959.

THE NATIONAL ASSEMBLY ACT, 1959

No. 78 of 1959, assented to on 9 December 1959[1]

PART I

PRELIMINARY

. . .

2. In this Act, unless the context otherwise requires:

"The Assembly" means the National Assembly, and in parts VI and VII includes a committee;

. . .

"Member" means a member of Parliament;

. . .

"Sitting" means a period during which the Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in committee;

. . .

PART II

COMPOSITION AND MEMBERSHIP

. . .

4. (1) Subject to the provisions of this section, a person shall be qualified to be elected as a member if, but only if

(*a*) He is a citizen of Ghana, and

(*b*) He has attained the age of twenty-five years, and

(*c*) He is able both to speak and read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly:

Provided that a person who is unable to read by reason of blindness or other physical cause shall not for that reason only be treated as failing to satisfy the condition set out in paragraph (*c*) of this subsection.

(2) No person shall be qualified to be elected as a member if he is at the time of the election a person such as is mentioned in the following table.

TABLE

1. A person holding the office of Speaker, or being a public officer other than a minister or parliamentary secretary.

2. A person disqualified from practising his profession in Ghana by virtue of an order made in respect of him personally by a competent authority, not being an order made at his own request or more than five years previously.

[1] Published in Supplement to *Ghana Gazette* dated 12 December, 1959. Of the provisions quoted above, those taken from part I of the Act entered into force on 12 December 1959 and the remainder on 1 January 1960. Among the provisions repealed by the Act were sections 24-26 of the Ghana (Constitution) Order in Council, 1957, extracts from which appear in *Yearbook on Human Rights for 1957*, pp. 190-10.

3. A person adjudged to be of unsound mind or detained as a criminal lunatic.

4. A person who has been sentenced in Ghana for any offence to death or to imprisonment for a term exceeding twelve months, or for any offences to imprisonment for consecutive terms exceeding twelve months in all, not being a person —

(*a*) Who has been granted a free pardon in respect of the said offence or offences, or

(*b*) Whose said imprisonment terminated more than five years previously.

5. A person who has been convicted in Ghana of an offence which involved dishonesty, not being a person —

(*a*) Who has been granted a free pardon in respect of the said offence, or

(*b*) Whose imprisonment for the said offence terminated more than five years previously, or

(*c*) Who, not having been sentenced to imprisonment for the said offence, was convicted more than five years previously.

6. A person against whom an order under the Preventive Detention Act, 1958[1] is in force or has been in force at any time in the previous five years.

7. A person who is disqualified for membership of the Assembly under the provisions of section 423 of the Criminal Code or section 16 of the Electoral Provisions Ordinance, 1953.

. . .

5. (1) Every member shall cease to be a member on the dissolution of the Assembly.

(2) A member shall cease to be a member if an event occurs whereby he becomes a person such as is mentioned in the table contained in the last preceding section, or if

(*a*) The Speaker receives a notice signed by him whereby he resigns his seat; or

(*b*) He is expelled from the Assembly under section 40 of this Act;[2] or

(*c*) He is absent from twenty consecutive sittings of the Assembly in the same session, whether comprised in one or more meetings, without leave of absence having been given under the hand of the Speaker in respect of any one of those sittings before the termination of the sitting and the Assembly does not, in any of the three sittings next following the last of those sittings, order that this paragraph shall not apply; or

(*d*) In the course of the proceedings of the Assembly he publicly declares his intention of systematically refraining from attending the proceedings of the Assembly, and the Speaker or other person presiding confirms that the member made that declaration in his hearing.

. . .

PART VII

CONTEMPT OF PARLIAMENT

29. Any act or omission which impedes or tends to impede the Assembly in the exercise of its functions, or affronts the dignity of the Assembly, is a contempt of Parliament, and the setting forth in the following provisions of this part of this Act or particular contempts shall not be taken to affect the generality of this section.

. . .

36. It is a contempt of Parliament for any person to make a statement or otherwise publish any matter which falsely or scandalously defames the Assembly or the Speaker, a member or officer in his capacity as such, or which contains a gross or scandalous misrepresentation of any proceedings of the Assembly.

. . .

[1] See *Yearbook on Human Rights for 1958*, pp. 82-3.

[2] Section 40 of the Act permits the National Assembly, by two-thirds majority and after due notice, to expel a member found by the Assembly to have been "guilty of conduct . . . so grossly improper as to indicate that he is unfit to remain a member".

THE REPRESENTATION OF THE PEOPLE (WOMEN MEMBERS) ACT, 1959

No. 72 of 1959, assented to on 3 December 1959[1]

3. There may be elected under this Act as additional members of the National Assembly not more than ten women who, when duly elected as prescribed by this Act and sworn, shall be known as members of Parliament and hold office and be subject to the same disabilities as if they had been duly elected as members of Parliament under the provisions of the Electoral Provisions Ordinance, 1953, anything in the ordinance or in the constitution order[2] to the contrary notwithstanding.

[According to sections 4-7, elections were to be effected through electoral colleges, one in each region, elected by the female voters on the register of electors.]

. . .

[1] Published in Supplement to *Ghana Gazette* dated 5 December 1959. The Act entered into force on 12 December 1959.

[2] That is to say, the Ghana (Constitution) Order in Council, 1957.

GREECE

NOTE[1]

1. Act No. 3924/59 (*Government Gazette*, No. 1/59) ratifies International Labour Convention No. 89, the Night Work (Women) Convention (revised), 1948. The Convention considers the question of the night work of women under a new light and in agreement with the modern notions on labour relations, to the advantage of the country's industrial needs, without, however, impairing the workers' interests.

2. The object of Act No. 3941/59 "on the organizing of the anti-cancer campaign" (*Government Gazette* No. 39) is to combat cancer on the basis of internationally agreed data. More specifically the law provides for the establishment, in Greece, as well as in other countries, of a plan adapted to Greek realities, offering every possibility for the development and perfection of the nation's endeavours towards combating cancer through the application of methods of research, diagnosis and cure, public enlightenment, etc.

3. Legislative decree No. 3970/59 "on increasing the teaching and supervising personnel of elementary, high school and vocational education" (*Government Gazette* No. 186) aims at reorganizing and raising the standard of education. More specifically it assures the creation of 300 new elementary schools, mostly in settlements until now deprived of such schools; the establishment of 1,600 new posts of schoolmasters and 560 posts of specialized professors, for the technical and vocational schools now created (see below) and for the high schools; and the readaptation of the organization of the elementary schools in accordance with demographic conditions now developing.

4. Legislative decree No. 3971/59 "on technical and vocational education, on the organization of the high school education and on the administration of education" (*Government Gazette* No. 187) lays the foundations for the reorganization of technical and vocational education in general — that is to say, of the schools educating only specialized skilled workers. Two technical public schools are founded in Athens and in Salonica, under the supervision of the Polytechnic. Public technical day schools are also founded in six towns of Greece, to train medium-level technicians for industry and production in general. Finally, provisions cover the reorganization of high school training, with a view to providing young men with knowledge useful in later life and giving them the possibility of a wider development of their personalities.

5. In view of the daily noted rapid development in all branches of science and (especially) in education, and of the immediate influence of education on the progress and welfare of individuals as well as of communities, legislative decree No. 3974/59, "amending and supplementing the existing provisions on the Highest Educational Institutions" (*Government Gazette* No. 188) provides for the creation of new chairs in the Athens and Salonica universities and in the Polytechnic, for the promotion of new and old branches of science, as well as for the creation of new laboratories, clinics, studies etc.

6. The legislative decree "supplementing Act No. 2795/54 and extending the provisions relating to the issue of drugs and medicines and to hospital care, as well as to funeral expenses, for public civil servants and the military" (*Government Gazette*, No. 196) has as its object the general extension of pharmaceutical and hospital care, as well as of funeral expenses, by the State to public servants and the military in general.

7. Legislative decree No. 3985/59, "extending the validity of royal decree No. 27/2 of May 1957 'on the freezing of rents', amending and supplementing some of its provisions, etc." (*Government Gazette* No. 199/59), extends, for the protection of the tenants, the freezing of rents till the end of 1960, and regulates some matters pertaining thereto.

8. Legislative decree 3989/59 (*Government Gazette* No. 201/59) ratifies the convention relating to the status of refugees, prepared under the auspices of the United Nations in 1951 and signed by Greece on 10 April 1952.[2] The ratification of the convention by Greece will allow it formally to complete the humanistic task of the protection of refugees which it has already carried out fully in practice.

9. Legislative decree No. 4003/59 ratifies "the convention signed on 18 June 1959 by the Royal Government of Greece and the Government of the Federal People's Republic of Yugoslavia, on collaboration in the scientific and cultural fields" (*Government Gazette* No. 235).

10. Legislative decree No. 4017/59 ratifies the European Convention on Social and Medical Assistance (*Government Gazette* No. 246). The convention,[3] signed

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

[2] See *Yearbook on Human Rights for 1951*, pp. 581-8.

[3] See *Yearbook on Human Rights for 1953*, p. 359.

in Paris on 11 December 1953, aimed at a tightening of the bonds between members of the Council of Europe, mainly in view of their social progress, in relation to the application of the existing laws on social and medical welfare — i.e. the extension of benefits of social welfare, care and education of children, help to the aged, invalids, incurables, etc., and extension of provisions regarding open and restricted medical care to the same persons.

11. Legislative decree No. 4019/59, approving Act No. 1018/58 of the Ministerial Council "on discontinuing the I.K.A. insurance of families of police employees" (*Government Gazette* No. 248) provides for hospitalization and medical care for the families of police officers, of the members of the administrative division of the police force and of retired officers and employees. The legislative decree also provides for financial subsidies to camps for the children of the above-mentioned officers and employees.

12. Legislative decree No. 4024/59, "approving the agreement between the Greek Public Treasury, the Bank of Greece and the National Land Bank of Greece, dated 19 October 1959, on financial aid to victims of earthquakes, with a view to restoring buildings used as dwellings or professional quarters" (*Government Gazette* No. 247/59) approves the above-mentioned agreement, which aims at helping financially, by housing loans, those whose dwellings or professional quarters have been damaged by earthquakes.

GUATEMALA

NOTE[1]

1. Decree No. 1262, of 16 December 1958 (*El Guatemalteco*, volume CLV, No. 64, of 11 March 1959), approves the Multilateral Treaty on Free Trade and Central American Economic Integration signed at Tegucigalpa, Honduras, on 10 June 1958 and its annexes.

2. Decree No. 1273, of 10 March 1959 (*El Guatemalteco*, volume CLV, No. 86, of 9 April 1959), approves the agreement on the regime for Central American integration industries, signed at Tegucigalpa, Honduras, on 10 June 1958.

3. Decree No. 1297, of 25 June 1959 (*El Guatemalteco*, volume CLVI, No. 70, of 28 July 1959), approves the second additional protocol to the Treaty of Free Trade and Economic Integration between Guatemala and El Salvador.

4. Decree No. 1307, of 26 August 1959 (*El Guatemalteco*, volume CLVII, No. 34, of 16 October 1959), approves the Convention on the Political Rights of Women, subject to the following reservations:

(i) Articles I, II and III shall apply only to women of Guatemalan citizenship as defined in article 16(2) of the constitution of the republic;

(ii) Article IX, for constitutional reasons, shall not be considered to affect the provisions of article 149(3)(*b*) of the constitution of the republic.

5. Decree No. 1325, of 30 October 1959 (*El Guatemalteco*, volume CLVII, No. 90, of 24 December 1959), contains the Medicines Act for reducing the cost of medicines.

[1] Information kindly furnished by Mr. Gilberto Chacón Pazos, Ministry of Foreign Affairs, Guatemala City, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

HAITI

DECREE ABOLISHING ALL LEGAL INEQUALITIES BETWEEN NATURAL AND LEGITIMATE CHILDREN

of 27 January 1959[1]

Art. 1. Natural filiation shall give rise to the same rights and obligations as those deriving from legitimate filiation.

Nevertheless, proof of natural filiation may be forthcoming only from voluntary recognition, or from judicial recognition where such is authorized by law.

Art. 2. The provision contained in the first paragraph of the preceding article shall not be applicable to estates which have already been settled, either amicably by means of a written document having a definite date, or legally by means of a decision which has become *res judicata*.

Art. 3. This decree, which supersedes all laws or provisions of laws and all legislative decrees or provisions of legislative decrees which are contrary to it, in particular articles 308, 583, 606 (second paragraph), 617 (first paragraph), 624 and 742 of the Civil Code, shall be promulgated and executed by the Secretary of State for Justice.

[1] Published in *Le Moniteur*, 114th year, No. 19, of 29 January 1959. Text kindly furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law at the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

HONDURAS

DECREE No. 189 PROMULGATING THE LABOUR CODE of 1 June 1959[1]

SUMMARY

The Labour Code dealt, among other matters, with individual contracts of employment and collective agreements; the work of women, young persons, domestic servants and other special categories; hours of work, rest days and annual leave; wages; occupational health and safety; trade unions; and labour disputes and their settlement.

Articles 12-13 of the Code provided as follows:

"12. It shall not be lawful to discriminate against any person on grounds of race, religion, political belief or economic situation in any social welfare, educational, cultural, recreational or commercial establishment operated for the use or benefit of the community in any undertaking or workplace, whether under private or state ownership. The social standing of a worker or his access to any of the establishments covered by this section shall not depend on the amount of his remuneration or the importance of his job.

"13. No person shall be denied freedom of passage over any highway or other public road leading to a centre of employment or be prevented from transporting goods over any such highway or road if the goods are intended for sale in such centre of employment."

Article 96(3) and (4) forbade an employer to "dismiss a worker or prejudice him in any other manner on account of his trade union membership or participation in lawful trade union activities" or to "influence the political decisions or religious convictions of a worker".

Article 98(6) forbade a worker to "prejudice the freedom of employees to work or not to work, to join or refrain from joing a trade union, or to remain in or withdraw from a trade union".

Among the acts defined in article 114 as constituting "valid grounds for the termination of a contract by the worker, without notice or liability on his part, but without prejudice to his entitlement to the appropriate statutory benefits and compensation as in the case of unwarranted dismissal" was "(*c*) any act committed by the employer or his representative with a view to inducing the worker to commit an unlawful act or any act not in accordance with his political or religious beliefs".

Article 367 provided as follows:

"In fixing the wage payable in each type of work, account shall be taken of the degree of concentration and quality involved, the climate, the living conditions and the length of service of the worker. Equal wages shall be paid for equal work without any discrimination whatsoever, on condition that the jobs, the hours and the workers' efficiency and length of service within the same undertaking are also equal. It is understood that such wages include not only all payments made on a day-to-day basis, but also all grants, allowances, accommodation and other items received by a worker in consideration of his ordinary work.

"It shall not be lawful to establish different wage rates on grounds of age, sex, nationality, race, religion, political opinion or trade union activities."

Article 469 provided that "No person may prejudice the right of trade union association" and made liable to a fine "any person who, by using threats or violence, prejudices the rights of free trade union association in any manner whatsoever".

Article 498 provided that "No trade union shall restrict the freedom to work, either directly or indirectly", while article 499 made it unlawful for a trade union:

"(*a*) To participate in party politics or religious affairs by being represented at political congresses, on political committees, or at religious gatherings or meetings, by making financial contributions to political parties or religious groups or by officially sponsoring candidates for public elections: Provided that the foregoing shall be without prejudice to the political rights and the freedom of conscience, worship, assembly and speech of the individual members of the union;

"(*b*) To compel any worker, either directly or indirectly, to join or withdraw from the union, save in cases of expulsion on grounds provided for in the by-laws and duly proved;

. . .

"(*e*) To encourage any cessation or suspension of work, save in the case of strikes called in accordance with the law;

"(*f*) To promote or support any campaign or

[1] Published in *La Gaceta* Nos. 16.827-34, of 15-18 and 20-23 July 1959.

movement implying a collective and active disregard, particularly by members of the union, for the law or for the decisions of the lawfully constituted authorities;

"(g) To promote or encourage an active disregard for the agreements or contracts to which its members are a party, without advancing any grounds or reasons for so doing."

According to its article 875, the Code was to enter into force on publication in *La Gaceta.*

Translations of the Code into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Hon. 1.

HUNGARY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS[1]

1. Act No. IV of 1959: Civil Code of the Hungarian People's Republic

In the Hungarian People's Republic provisions on human rights are included in the constitution. The rules of the new Hungarian Civil Code enacted as Act No. IV of 1959 extensively follow the constitution in its principles and framework; at the same time, the Code necessarily reflects the development which has taken place during the ten years since the enactment of the constitution; in doing so it naturally does not break away from the provisions of the constitution, but appropriately develops the constitutional precepts.

Section 1 of the Civil Code setting out its objectives emphasizes that the Act regulates, in addition to property relations, the personal relations of the citizens and organizations in so far as they fall under the provisions of civil law. The chapters and provisions containing the regulation of personal relations expound in essence the precepts of the constitution summarizing the rights and obligations of the citizens. From the point of view of civil legislation and also of the application of civil law, article 49 of the constitution is of the greatest importance in this respect; this article provides that the citizens are equal before the law and enjoy equal rights, and further that discrimination of any kind on grounds of sex, religion or nationality is severely punishable by law; a provision to exactly the same effect is to be found in chapter I of the second part of the code. From the precept of general, absolute and equal legal capacity it follows that every individual, without exception, is entitled to legal capacity and that there is no difference between individuals in respect of the extent of legal capacity. Though the code explicitly mentions age, sex, nationality or denomination, it is obvious that equal legal capacity must apply in all other relations not listed in this context. This provision of the Act thus also has regard for article 50 (1) of the constitution and applies the rule declaring that women enjoy equal rights with men in the domain of civil law, though this precept is primarily important from the viewpoint of relations falling under family law regulated by a special Act.

Article 52 of the constitution provides for the special protection of the interests of the young. This is reflected in the provisions of the Civil Code on disposing capacity. In fact the rules relating to persons of no or of restricted disposing capacity preclude the possibility of young people becoming, as a result of exploitation of their inexperience or lack of the capacity of discernment, parties to such civil law relationships and being burdened in consequence by such obligations as would entail considerable prejudice for them.

Under article 56 of the constitution the State guarantees the right of organization in order to develop the social, economic and cultural activities of working people. This provision is put into execution particularly by the rules contained in chapter VI of the Act. The code guarantees freedom of co-operation in harmony with the economic and political objectives of the State. Sections 68 to 70 on social organizations confirm the contents of article 56 (2) of the constitution, and finally the right of organization laid down in the constitution is given a concrete tenor by sections 71 to 80 regulating the manner of constitution of associations, their organization and their activity, but subject to the proviso that the organization really exerts its activity in order to realize constitutional objectives.

From the present viewpoint, those provisions of the code are worthy of particular attention which protect also by means of civil law the rights pertaining to persons in their capacity as such. In most non-socialist codes a comprehensive regulation of such protection is disregarded; the code, however, deals with the civil law protection of persons in a special chapter. In accordance with article 57 of the constitution, it guarantees the inviolability of the personal freedom of the citizens, the secrecy of correspondence, the right of privacy of the home, etc. A violation of these rights is also guaranteed against by means of civil law; in compliance with the socialist conception the Act provides that where the violation of any right pertaining to persons in their capacity as such does not result in damage to property the legal consequences shall also not affect property relations and that these legal consequences shall consist primarily of the court's declaring the commission of the wrong, forbidding the tort-feasor to do further wrong and giving satisfaction. In cases, however, where the violation of the right to life, health, honour, the use of name, etc., results also in damage to property, the code authorizes the court to adjudge compensation for the damage caused. The Act also pro-

[1] Note kindly furnished by the Acting Permanent Representative of the Hungarian People's Republic to the United Nations.

tects the memory of deceased persons and in addition it authorizes the procurator also to bring an action where the conduct violating the good reputation of the deceased person is contrary to the public interest.

Finally certain human rights are also referred to in chapter II of the constitution, recognizing and protecting all property acquired by labour. Closely connected therewith is section 3 (1) of the Civil Code extending the protection of the Act to all recognized forms of property. This declaration of principle is elaborated upon in the third part of the code, dealing with the right of ownership.

The constitution of the Hungarian People's Republic — and accordingly the Civil Code — thus builds up an extensive protection of human rights; it not only declares the rights, but, in determining also the concrete legal means for their protection, it really guarantees the enforcement of the rights. On the other hand both the constitution and the rules of the code expect all citizens strictly to comply with their obligations, primarily in protecting the property of the people, developing social property and enhancing the economic strength of the people's republic.

The following are the *main provisions of Act No. IV of 1959: Civil Code of the Hungarian People's Republic:*

Sec. 1. (1) This Act regulates the property relations and certain of the personal relations of the citizens as well as of the state, economic and social organizations, with the object of meeting systematically and to an ever-increasing extent the material and cultural demands of society, and of building socialism.

Sec. 2. (1) The Act protects the rights pertaining to the persons of citizens and pertaining to their organizations, as well as the rights to property and the lawful interests of these.

(2) The Act assures both to the citizens and their organizations the free exercise of the rights pertaining to them, in accordance with the social function of those rights.

Sec. 3. (1) This Act protects all forms of property recognized by the constitution.

Sec. 8. (1) In the Hungarian People's Republic everybody has legal capacity — i.e., may have rights and obligations.

(2) Legal capacity is equal, irrespective of age, sex, nationality or denomination.

(3) Any contract or unilateral declaration restricting legal capacity is void.

Sec. 12. (1) Minors having completed their twelfth year of age and not being incapable of disposition have restricted disposing capacity.

Sec. 14. (1) Unless otherwise provided by statute, the validity of any declaration at law made by a person of restricted disposing capacity shall require the consent or subsequent approval of his legal representative. Upon regaining full disposing capacity, the person of restricted disposing capacity is to decide by himself on the validity of his pending declarations.

Sec. 15. A minor not having completed his twelfth year of age has no disposing capacity.

Sec. 18. (1) Any declaration at law made by a person having no disposing capacity is void; his legal representative is to act on his behalf.

Sec. 43. (1) Workers' co-operatives constituted for promoting agricultural and industrial production or trade, as well as co-operatives that meet the needs of workers and do not carry on exploiting activity, shall be recognized and supported by the State.

Sec. 68. The political organizations, trade unions, women's and youth organizations, as well as all the other social organizations of the workers referred to in the constitution, are juristic persons.

Sec. 71. Associations of the workers created, by virtue of their constitutional right, in the interest of furthering social, cultural and other activity are juristic persons.

Sec. 72. (1) It shall be required for the coming into existence of an association that the constituting members, at least ten in number, decide, at the constitutive general assembly, to form an association, determine its by-laws, and elect the bodies managing and representing it, and that the state body of supervision, competent according to the sphere of activity of the association, duly register the same.

(2) Registration is admissible if the constituting members have complied with all legal requirements and the association is able to take up activity.

(3) The by-laws of the association shall in particular specify the name, object, seat and organization of the association, the bodies managing and representing it, the beginning and coming to an end of membership and the rights and obligations of members.

(4) Should model by-laws be fixed by statute for associations, then such contents of the model as are made compulsory by the statutory provision shall be included in the by-laws.

Sec. 73. (1) The members of the association participate in the work of the association and contribute to the performance of its tasks.

Sec. 77. The association ceases to exist if

(*a*) The general assembly decides on its dissolution by a majority of two-thirds of the votes;

(*b*) The association amalgamates with another association;

(*c*) The association is dissolved by the body of supervision because of its activity violating or endangering the state, social or economic order of the Hungarian People's Republic or the interests of the members;

(*d*) The body of supervision decides upon the termination of the association because the number of its members is permanently below the number prescribed by statute or because it has displayed no activity for a period exceeding one year.

Sec. 81. (1) The rights pertaining to persons in their capacity as such are under the protection of the law.

(2) Violations of the rights pertaining to the persons of citizens are in particular: improper discrimination of any kind because of sex, nationality or denomination; violation of the liberty of conscience of the citizens; restriction of personal freedom; and bodily injury to, or defamation of, citizens.

Sec. 82. (1) Within the scope of rights pertaining to the person as such, the right of the citizens and of juristic persons to the use of a name shall be protected; the unlawful use of the name of another person or a name similar to that of another person will especially be deemed to constitute a violation of this right.

(2) The protection of rights pertaining to the person as such also includes the protection of good reputation.

Sec. 83. (1) There shall similarly be deemed to exist a violation of the rights pertaining to the person as such if anyone violates the secrecy of correspondence or the exclusivity of the right of privacy of the home and of the premises used for the purposes of juristic persons. A similar violation of the secrecy of correspondence shall equally be committed by any person wrongfully using papers of a confidential character, other than correspondence, to the detriment of the lawful interest of another person.

(2) The wrongful use of the likeness or the recorded voice of another person, particularly the unauthorized utilization, reproduction, publication and alteration of such image or record shall constitute a violation of the rights pertaining to the person as such.

Sec. 84. The special rules dealing with the protection of personal rights attaching to intellectual activity are defined by the statutory rules on copyright and inventor's and innovator's rights, as well as by those on the protection of trade-marks and designs.

Sec. 85. (1) Any person whose rights pertaining to the person have been infringed may, according to the special circumstances of the case, make the following claims under the civil law:

(*a*) He may ask the court to declare the commission of the wrong;

(*b*) He may require the wrong to be discontinued and the tort-feasor to be forbidden to do further wrong;

(*c*) He may claim that the tort-feasor give satisfaction either by declaration or in some other appropriate manner and that due publicity be given, if necessary, to the amends made by the tort-feasor or at his expense;

(*d*) He may claim that the injurious situation be brought to an end, that the situation prior to the commission of the wrong be restored by the tort-feasor or at his expense, and that the state of affairs produced by the wrong be brought to an end, or deprived of its wrongful character.

(2) If the violation of the right pertaining to the person as such has resulted in damage to property, then damages are also due according to the rules of liability under the civil law.

Sec. 87. Any contract or unilateral declaration restricting the rights pertaining to the person as such shall be null and void.

2. Legislative Decree No. 9 of 1959 on the Procurator's Office in the Hungarian People's Republic

According to legislative decree No. 9 of 1959 on the procurator's office in the Hungarian People's Republic, the Procurator-General is to supervise the observance of the law, both directly and through his subordinate procurators. The aim of this supervision includes the protection of the rights guaranteed in the constitution to the citizens of the Hungarian People's Republic.

In order to implement these objectives the procurators are accorded extensive rights by the legislative decree. Thus, when supervising the lawful conduct of affairs by organs of the state administration, the procurator may lodge a protest against the decisions infringing human rights and may ask that the enforcement of such a decision be suspended. In certain cases the organ of the state administration is bound to suspend the decision. The protest of the procurator lodged against certain decisions of the state administration always delays the execution of the decision.

The legislative decree also grants extensive rights to the procurator in controlling the legal conduct of criminal investigation. These rights are set out in detail in the Code of Criminal Procedure; the most important provision of principle is defined by the legislative decree on the procurator's office. According to this provision the procurator shall do everything in his power to guarantee that no person is held responsible contrary to law or indicted upon an unfounded accusation; that nobody is deprived of personal freedom; and that no person is subjected to undue interference or unlawful restriction or deprivation of rights. The investigating agencies are to comply with the instructions issued by the procurator, and these agencies may order confinement under remand only with the approval of the latter.

The procurator may also institute civil judicial or extra-judicial proceedings if this is necessary for protecting the interests of the citizens and may in the interest of the rule of law intervene in any stage of civil judicial or extra-judicial proceedings; in a criminal action he may exercise the rights of a party and may also lodge an appeal in favour of the accused.

The procurator shall release at once any person held in detention without lawful decision or beyond the term set out in a lawful decision.

Another provision of the legislative decree serving the protection of the rights of the citizens is the rule that the procurator shall without delay examine the

complaints received by him and take the necessary steps when he finds that the law has been contravened.

These provisions show that the basic principles on personal freedom set out in articles 9, 12 and 14 of the Universal Declaration of Human Rights are extensively realized by the legislative decree on the procurator's office.

The following are the *main provisions of legislative decree No. 9 of 1959:*

Sec. 1. As provided in article 42 of the constitution of the Hungarian People's Republic:

(1) The Procurator-General shall supervise the observance of the rule of law in the Hungarian People's Republic.

(2) In exercising this function the Procurator-General shall supervise the observance of the law by the ministries, their subordinate authorities, offices, institutions and other agencies, by the local organs of state power and by citizens.

(3) The Procurator-General shall provide for all actions infringing or endangering the order, security and independence of the Hungarian People's Republic to be consistently prosecuted.

Sec. 2. (1) The Procurator-General of the Hungarian People's Republic is to be elected by Parliament for a term of six years. Parliament shall have the right to recall the Procurator-General.

(2) The Procurator-General shall be responsible, and shall report on his activities, to Parliament. (Constitution, section 43 (1) and (2).)

Sec. 4. (1) The Procurator-General shall supervise the observance of the laws, both directly and through his subordinate procurators.

(2) The aim of control of the observance of the laws is

(*a*) To ensure socialist rule of law;

(*b*) To protect the State and social order and public property; consistently to prosecute all acts violating or endangering the order, security and independence of the Hungarian People's Republic; and to enforce the penal policy of the Hungarian People's Republic in the course of criminal proceedings;

(*c*) To protect the rights guaranteed in the constitution to the citizens of the Hungarian People's Republic.

(3) In order to implement the duties set out in paragraph 2, the Procurator-General and his subordinate procurators shall

(*a*) Supervise the legality of decrees, decisions and instructions issued, and other measures taken, by the ministries, by agencies directly subordinate to the Council of Ministers, by the authorities under them, and by the institutions, economic agencies, local organs of state power and state administration, enterprises, co-operatives and social organizations (hereinafter called organs); further, they shall see that neither officials nor citizens contravene the provisions of law (general control on the rule of law);

(*b*) Ensure the prompt detection and investigation of crimes; exercise supervision over the activity of investigating authorities (control over the legality of investigation);

(*c*) Survey the proper application of the law by the courts of the Hungarian People's Republic (control over legality in judicial proceedings); secure the observance of statutory provisions and regulations regarding enforcement of punishment (control over the legality of enforcement of punishment).

Sec. 6. Procurators shall proceed independently of the administrative organs of the state and local authorities of state power. (Constitution, article 44.)

General Legality Control

Sec. 7. (1) If the laws of the Hungarian People's Republic are contravened in any way, the procurator shall, regardless of the persons involved, take in due time the measures provided by law.

(2) In order to guarantee the rule of law the procurator may in the course of general legality control:

(*a*) Inspect the orders, general instructions, information and circular letters of the organs and their decisions, and measures taken and instructions given in individual cases (hereinafter called dispositions);

(*b*) Require that the heads of the organs and other official persons put documents and data at his disposal or forward these and furnish information;

(*c*) Demand from the heads of the organs that they hold an inquiry in organs under their control;

(*d*) Conduct an inquiry in the organs to establish whether the law has not been contravened;

(*e*) Attend in an advisory capacity the meetings of the councils, council executive committees and people's control commissions.

Sec. 9. (1) If the procurator finds a contravention of the law in the measures taken by the organs (section 7 (2) (a)), he shall lodge a protest with the organ having contravened the law or with its superior authority in order to eliminate such a contravention. In his protest the procurator may propose the suspension of the disposition objected to.

Sec. 12. (1) The procurator

(*a*) Shall ensure quick detection of criminal acts and institution of criminal proceedings against those committing crimes against the Hungarian People's Republic, against the looters of public property, and against speculators and other criminals;

(*b*) Shall do everything in his power to guarantee that no person is held responsible illegally or indicted upon an unfounded accusation; that nobody is deprived of his personal freedom; and that no person is subjected to undue interference or unlawful restriction or deprivation of rights.

(2) The procurator in the course of control of the legality of investigations

(*a*) May order an investigation or supplementary investigation to be held;

(*b*) May attend himself to the investigation or to certain acts of investigation or may instruct any investigating agency to carry out such an act of investigation;

(*c*) May take over the investigation of criminal cases from the investigating organs;

(*d*) May at any time supervise the legality of the taking into custody of persons or of confining them under remand, and examine the instructions of the investigating agencies regulating the conditions and order of detention;

(*e*) May at any time supervise the legality of measures taken by investigating agencies on complaints and when carrying out the investigation;

(*f*) Shall provide, if the relevant requirements of the law are met, for the refusal or termination of the investigation or forward the case with an indictment to the competent court;

(*g*) Shall take a decision on complaints filed against decisions rendered in the course of investigation or on measures taken or the failure to take measures;

(*h*) May call a meeting of investigating agencies or other agencies concerned for discussing measures to be taken in the fight against criminality.

(3) Investigating agencies shall comply with the instructions given by the procurator in individual cases concerning the investigation, including instructions for taking the accused into custody or releasing him and instructions on conditions of detention and on the carrying out or invalidation of other preventive measures concerning the accused.

Sec. 13. (1) Investigating agencies may order confinement under remand only with the approval of the procurator.

Sec. 14. (1) Against instructions or decisions of the procurator the investigating agency may, through the superior investigating agency, lodge a complaint with the superior procurator.

(2) Such complaint shall have no delaying force.

Control over the Legality of the Activity of Courts

Sec. 15. (1) The procurator shall supervise the compliance of the decisions of the courts with the laws of the Hungarian People's Republic.

(2) To this end the procurator

(*a*) Shall act as a public prosecutor before the courts in criminal cases and make proposals at the hearings;

(*b*) May institute civil judicial or extra-judicial proceedings if this is necessary for protecting the interests of the State, of state, economic and social agencies or of citizens, except if some right can be enforced only by a certain person or only personally under the law;

(*c*) May in the interest of the rule of law intervene in any phase of civil judicial or extra-judicial proceedings;

(*d*) May ask for the file of any criminal or civil case to be forwarded for examination, in order to find whether the proceedings and decisions are in accordance with the laws;

(*e*) Shall resort to judicial and other legal redress defined in the law if the decision of the court contravenes the law or is unfounded;

(*f*) May investigate whether the execution of judicial decisions taken in civil cases is carried out in due time in accordance with the laws.

Control of the Legality of Detention

Sec. 16. (1) The procurator shall ensure that the decisions of criminal courts are executed in due time in accordance with the laws.

(2) The procurator in controlling the legality of detention

(*a*) May establish whether the competent organs carry out the decisions of criminal justice in accordance with the laws and in due time;

(*b*) May at any time inspect the prisons and working places for the enforcement of penalties, examine the conditions of detention and examine the documents on the strength of which persons are detained;

(*c*) May hear the detained persons and revise the complaints lodged by them;

(*d*) May review instructions issued by organs of detention establishments concerning the conditions and regulations of detention.

(3) The governors of detention establishments shall carry out the procurator's instructions regarding the observance of the law and the conditions of detention of detained persons. The governors of detention establishments may through their superior organs lodge a complaint with the superior procurator against the instructions of the procurator. Such a complaint shall have no delaying force.

Sec. 17. The procurator shall release at once any person held in detention without lawful decision or beyond the term set out in the decision.

Miscellaneous Provisions

Sec. 24. The procurator shall examine or have examined without delay the complaints received, take the necessary measures in cases of contravention of the law and inform the complainant of the action taken on his complaint.

Sec. 25. (1) The procurator may propose criminal or disciplinary action, or proceedings for infraction of regulations or for compensation against persons guilty of violating the law.

(2) The competent agency shall institute the proceedings proposed by the procurator and shall forward a copy of the relevant decision to the procurator.

(3) The contents of paragraphs 1 and 2 shall not apply to criminal and disciplinary actions against judges.

3. Decision No. 1013/1959/IV. 8 of the Government on the Right of Complaint of the Citizens

The decision aims at the more efficient execution of the chapter relating to the right of complaint of the citizens of Act No. IV of 1957 on dealing with the complaints of working people; the objective of the decision is that this right of complaint as an important human right be given increased protection.

The decision (clause 3) provides that the ministries, organs having national authority, and executive committees of the country councils are once a year to examine at a board meeting of department heads how the notices and complaints are being dealt with; they are to have the official in charge of complaints report quarterly and supervise his activity.

The objective of the decision is to enforce extensively principles of law on freedom of speech contained in article 19 of the Universal Declaration of Human Rights.

The following are the *main provisions of decision No. 1013/1959/IV. 8 of the Government on the right of complaint of the citizens:*

Sec. 4. In dealing with the complaints the endeavour shall be to establish exactly the facts, to adjudge the complaint on its legal merits and to give a thoroughly convincing reply and, by means of a reasoned decision, to give practical redress to the wrong committed. In order to accelerate administration and to reduce red tape the organs shall, whenever possible, avail themselves of the possibility afforded in section 43 of Act No. IV of 1957. The provision of the Act that the complaint shall be examined not by the person against whom it was lodged but by the superior organ shall be consistently enforced. The supervising organs shall, when making their general or special inquiries, also examine how the complaints are administered on their merits and they shall take the steps required. The secretariat of the Council of Ministers, Department for Councils, shall systematically supervise how complaints are dealt with by the councils.

Sec. 6. The heads of state organs and presidents of council executive committees shall show greater care in dealing with the petitions and complaints of the working people; they shall not consider them as an attack against their persons but as a criticism of the work of the machinery under their direction, assisting their activity in guiding it. They shall therefore deal with matters of complaint as manifestations of the views of the populations; the heads shall from time to time also themselves supervise this work and shall have it supervised by their deputies.

4. Legislative Decree No. 39 of 1959 on the Extension of Exemption by Law (Rehabilitation)

The concept of exemption from adverse effects attaching to a criminal record (rehabilitation) is an achievement of modern criminal legislation which applies the idea of humanity in the field of criminal law. As part of this concept a solution of a particularly humane character is statutory rehabilitation (rehabilitation by law) which applies automatically after the sentence has been served if the condemned has been law-abiding in his conduct during the time defined in the law.

Statutory rehabilitation was already regulated by Act No. II of 1950 on the general part of the Criminal Code and it was not unknown even in the former legal system. The importance of legislative decree No. 39 of 1959 lies in the fact that it took a further step in humanizing criminal law in this manner; hitherto rehabilitation by law applied only to penalties imposed on juvenile offenders and not exceeding one year's imprisonment and in the case of adults to penalties whose execution had been conditionally suspended by the court for a period of probation. Under the new regulation rehabilitation applies by law, *in addition to the above-mentioned cases*, when the condemned has been sentenced to reformatory educative work, to a fine as the enforceable principal penalty, or to enforceable imprisonment not exceeding one year. Under this legislative decree rehabilitation even applies by law if the penalties mentioned were imposed for crimes against the State.

The following are the *main provisions of legislative decree No. 39 of 1959 on the extension of exemption by law (rehabilitation):*

Sec. 1. The following provisions shall replace paragraph 2 of section 66 of Act No. II of 1950 on the general part of the Criminal Code.

(2) Rehabilitation shall apply by virtue of this Act:

(*a*) In respect of a fine as the principal penalty, if its execution has been conditionally suspended: on the day on which the sentence has become non-appealable;

(*b*) In respect of an enforceable fine as the principal penalty: after the expiration of one year subsequent upon its payment or the serving of a sentence replacing it or the termination of enforceability;

(*c*) In respect of reformatory-educative work: after the expiration of one year subsequent upon the serving of this penalty or imprisonment replacing it or the termination of enforceability;

(*d*) In respect of imprisonment if its enforcement has been conditionally suspended and the period of probation has ended without the execution of the sentence being ordered: on the day of expiration of the period of probation;

(*e*) In respect of enforceable imprisonment not exceeding one year: after the expiration of five years

subsequent upon the serving of the sentence or the termination of its enforceability.

(3) In the case referred to in clause (*e*) of paragraph 2, if the penalty has been imposed for a crime against the People's Republic (*Official Collection of Criminal Laws in Force*, clauses 1 to 94), rehabilitation shall take effect after ten years subsequent upon the serving of the sentence or the termination of its enforceability.

(4) Rehabilitation having taken effect by virtue of paragraph 2, clauses (*a*) and (*d*) shall become void if the condemned is subsequently sentenced to imprisonment for a crime committed during the period of probation.

5. DECREE NO. 26/1959/V.1 (OF THE HUNGARIAN REVOLUTIONARY WORKERS' AND PEASANTS' GOVERNMENT) CONCERNING SOME QUESTIONS ON THE PRESS

The decree has regulated anew questions relating to the press.

Provisions of the decree particularly important from the point of view of human rights deal with the right to rectification. By virtue of the right to rectification any person or organ about whom a paper, the radio or television has published or spread untruth or has misrepresented the truth may within thirty days claim the publication of a rectification. The publication of the rectification may be refused only if the truth of the statements set out in the request for rectification can be refuted at once. The implementation of the provisions of the decree is ensured by the right to file a complaint with the court. The decree provides that the complaint proceedings shall be instituted with urgency and fixes strict time-limits to ensure prompt termination of the proceedings. As a result of the proceedings the court, when finding the request for rectification to be well founded, obliges the responsible editor or the president of the radio or television company respectively to publish a rectification having the wording prescribed in the judgement.

The following are the *main provisions of decree No. 26/1959/V.1 of the Hungarian Revolutionary Workers' and Peasants' Government:*

Sec. 13. (1) Any state, economic or social organ or organization, or any person, about which or whom a newspaper, the radio, or television has published or spread an untruth or has misrepresented the truth may, within thirty days from the day of publication or transmission respectively of the communication, require, in writing, the publication of a rectification by the newspaper concerned or the Hungarian Radio and Television. Should the untrue allegation infringe the public interest the minister concerned (or head of an organ having national authority) may also require the publication of a rectification.

(2) Should the person mentioned in paragraph 1 have no disposing capacity or be prevented for sound reasons from making this request, his legal representative or next of kin (Criminal Code, general part, section 29) may require the rectification instead.

Sec. 14. (1) The publication of the rectification required, within the applicable time-limit, may be refused only if the truth of the statements contained in the request for rectification can be refuted at once.

(2) Daily papers shall publish the rectification within five days from the receipt of the request for rectification; other periodical papers shall do so in the next issue after receipt of the request; and the radio and television shall transmit it at the time of the day at which the original transmission was made.

(3) From the content of the rectification it must appear clearly which statements of the communication are untrue or which facts had been misrepresented therein.

Sec. 15. (1) Should the paper, the radio or television not publish an adequate rectification, the party requesting the rectification may lodge a complaint against the responsible editor of the paper or the president of the Hungarian Radio and Television and in case of a regional transmission against the head of the regional studio.

(2) The complaint shall be lodged within fifteen days from the first day of the obligation to publish the rectification as defined in section 14(2).

(3) The complainant shall set out precisely in the complaint the tenor of the rectification he requires to be published, he must prove that he asked for the rectification within the legal time-limit and — for newspapers — he must enclose the copy of the newspaper containing the communication objected to.

Sec. 17. (1) The court shall conduct the cases concerning rectification with urgency.

(2) The presiding judge of the court division shall fix a hearing for a date not later than the eighth day from receipt of the complaint unless the complaint was submitted beyond the time-limit or was lodged by a person not entitled to do so; in these cases the court shall discontinue proceedings by order in camera.

(3) The court shall notify the parties, their representatives and the procurator of the hearing fixed and may, if necessary, summon witnesses or experts. The writ of complaint, together with the communication, shall be delivered to the procurator and the party against whom the complaint has been lodged, to the latter with the warning that he may make his observations on it not later than the day of the hearing.

Sec. 18. (1) The procurator shall be entitled to intervene in any stage of the rectification proceedings in the interest of legality. In doing so the procurator shall be entitled to all the rights due to a party. The action of the procurator shall not affect the rights of a party.

6. Legislative Decree No. 8 of 1959 on the regulation of the activity of physicians

In the Hungarian People's Republic care for the health of the working people has become a responsibility of the State. This circumstance considerably enhances the importance of the medical profession, while simultaneously increasing the responsibility of physicians.

The primary objective of the legislative decree on the regulation of the activity of physicians is to give effect to the fundamental principle of socialist public health that all working people are entitled to a high-quality free health service. In this connexion the statute is linked with one of the most important of human rights, the right of the individual to life and to health. In addition to comprising in a uniform statute the fundamental principles of medical activity, the legislative decree contributes to giving effect to this human right.

The following are the *main provisions of legislative decree No. 8 of 1959 on the regulation of the activity of physicians:*

Sec. 3. (1) In his therapeutic and preventive activity the physician shall give the patient, as far as possible, medical treatment corresponding to the existing level of medical science and shall do all possible to prevent diseases. If necessary, he shall provide for the accommodation of the patient in a hospital. He shall take with the utmost care and attention all measures needed for saving the life of the patient, for his recovery and for restoring his working capacity.

(2) As part of his activity in connexion with duties relating to public health and epidemics the physician shall carry out the provisions directed at protection against infectious diseases. He shall further the elimination of deficiencies in the field of public health and take an active part in the development of health protection.

(3) By his work of health enlightenment the physician shall contribute to the improvement of the health of the working people.

(4) To make his activity comply with the requirements of socialist public health the physician shall systematically improve his knowledge by studies and by making use of extension training facilities.

Sec. 4. (1) The medical examination shall cover all complaints of the patient; the physician must apply expedient methods of examination and therapeutics ensuring successful treatment; he shall give detailed instructions in connexion with the treatment, with proper care, and shall endeavour in this way to win the confidence of the patient and of his next of kin and to retain it in the course of treatment.

(2) The patient or the next of kin shall be informed in a suitable manner of the disease and of the state of the patient. When justified, the physician may dispense with giving such information.

Sec. 7. (1) The physician shall receive the patient calling on him for medical care during his consultation hours and shall provide him with the medical care required, if the patient is in an immediate need thereof.

(2) As far as is laid down by the public health organs, the physician shall visit the patient when called upon and shall provide him with the medical care required.

(3) In case of urgent need (danger to life or first-aid) the physician shall provide the patient with the medical care required, regardless of his hours and place of consultation.

Sec. 8. (1) The physician shall refuse medical attention if it is to be used for an act contrary to law or socialist morals.

(2) The physician may, with the previous consent of his superior organ, refuse to treat the patient if the latter, for a long time and wilfully, does not observe his instructions on the treatment and thereby frustrates or delays the success of the treatment, or if the patient or his attendant physically or orally grossly attacks the physician. In case of danger to life the physician shall, even in these cases, take steps necessary for saving the life of the patient and for his recovery.

Sec. 9. (1) A physician not engaged in official employment in medical activity shall also be entitled, in case of urgent need (danger to life or first-aid), to the protection under criminal law due to public servants.

(2) All authorities shall assist the physician to enable him to exercise his medical activity.

Sec. 10. (1) The physician must not communicate to another person any information on the state of health of the person examined or treated of which he has come to know in exercising his profession and the disclosure of which may involve a loss or disadvantage to any person. This provision does not apply to cases where the physician is obliged by law to communicate the information or where he has been authorized by the interested party so to do.

(2) The physician shall report the result of an examination effected on instructions by an authority to the organ in question.

(3) The obligation of secrecy does not apply to a communication made for scientific purposes, provided that such communication is made without revealing the name of the patient, or made otherwise in such a manner that the communication will not permit the identification of the patient.

Sec. 13. (1) Patients entitled to free medical care shall be given high-quality medical treatment in accordance with this legislative decree. The physician shall by his conduct confirm in the patients entitled to free medical service the conviction that no special personal or material benefit need be promised or granted for their obtaining a medical treatment of the highest quality.

7. Decree No. 19/1959/IV.12 on the Institution of Social Scholarships

Decree No. 19/1959/IV. 12 of the Government provides for the institution of social scholarships to guarantee also by financial means the rights of working people to education.

Pursuant to the decree, state and economic organs may grant to persons not having completed their 30th year scholarships during their studies at universities, colleges, academies, teachers' and kindergarten teachers' training schools and secondary schools, if (in the case of studies at universities and colleges) they have obtained at their final examination in secondary school at least pass marks and (in the case of studies in secondary school) they are youths not having completed their eighteenth year and having completed the eighth grade of the general school with at least pass marks. The amount of the scholarship ranges from 400 to 650 forints per month for university and college students and from 200 to 350 forints for pupils in secondary schools; the scholarship is due for the duration of their studies. In some instances, if it is deemed warranted, the amount of the scholarship can be increased to 1,000 forints. The bodies concerned may, in allotting such social scholarships, give preference to their own outstanding employees and the gifted children of their employees.

The decree extensively enforces the basic rights to education contained in articles 26 and 27 of the Universal Declaration of Human Rights.

8. Decree No. 36/1959/VII.19 on the Establishment of Training Schools

Decree No. 36/1959/VII.19 of the Government provides for the establishment of training schools for youths who have completed their general schooling but do not continue their studies; the objective of this decree is the more efficient enforcement of the right to education and the raising of the cultural level of the citizens. The training schools are maintained by the State, and tuition is free of any charge. The aim of the training schools is to provide an appropriate schooling and moral education for youths between 14 and 16 years. Up to completion of their 16th year attendance at a training school is compulsory for all those who do not receive a systematic education in school or professional instruction unless family circumstances justify their exemption from this obligation. At the training schools the period of tuition is three hours of school work per day during ten months of the year and, in addition, practical studies of an industrial or agricultural character are also introduced. The pupils may take up employment during term-time.

The decree goes far in furthering enforcement of the rights set out in article 26 of the Universal Declaration of Human Rights and complies with the contents of the Draft Declaration on the Rights of the Child adopted at the fifteenth session, held in March-April 1959, of the Human Rights Commission of the United Nations.

9. Decree No. 41/1959/X.3 of the Government on the Training of Scientists and on Scientific Degrees

Decree No. 41/1959/X.3 of the Government complements the previous provisions on the training of scientists and on scientific degrees; its objective is to promote efficiently the enforcement of the human right to scientific activity and self-education. The decree regulates the instruction of post-graduate students during research work for a higher degree, the submission of scientific essays, scientific qualification and the duties of the universities (colleges) and research institutes in the field of scientific training. The decree provides that persons attending a post-graduate course to do research work for a higher degree shall receive a higher scholarship than previously, while those who attend work during their post-graduate studies are granted 36 working days' leave with full wages per annum and one day with full wages for research per week. Persons holding a scientific degree receive an allowance in addition to their salary. Those who are given permission to write a doctor's dissertation are given preference when awarding scholarships abroad and are entitled to six months' paid leave for preparing the dissertation. Those holding a scientific degree may receive three months' paid leave per year to pursue important studies and research work.

ICELAND

ACT No. 57 OF 10 APRIL 1956, CONCERNING PRINTING RIGHTS[1]

CHAPTER I

GENERAL PROVISIONS

Art. 1. For the purposes of this Act the term "work" means any work which is printed or reproduced by any other mechanical or chemical process. The term "work" shall also include maps, drawings and pictures, whether or not accompanied by letterpress, and music, if accompanied by a written text.

Art. 2. The provisions of this Act shall apply only to published works. A work shall be considered to have been published in this country when it has been released for sale or other means of distribution.

Art. 3. The name of the publisher of any work printed in this country shall appear on each copy thereof.

If the publisher employs one or more editors on the compilation of the work, the name of each editor shall also appear on the work.

Failure to give the names as required by the first and second paragraphs of this article, or the furnishing of incorrect information thereon, shall be punishable by a fine, or, in the case of a major offence, by detention.

CHAPTER II

PRINTERS AND PRINTING ESTABLISHMENTS

Art. 4. Any person operating a printing establishment in Iceland, or a workshop at which written works are reproduced by any other process as referred to in article 1 of this Act, shall be required to notify the chief officer of police in the district in which the establishment is operated, giving his name or the name of his firm and his proper address, not later than two weeks before any printed work is issued by the establishment. The chief officer of police shall likewise be notified immediately of any change in the name, name of the firm or address.

Art. 5. Any person engaged in the printing or reproduction of a work in this country shall see that his name or the name of the firm, and the place and year of printing, appear on each copy of the work.

The provisions of the foregoing paragraph shall not apply to the type of matters referred to in article 7 of this Act, even if it is printed or reproduced.

Art. 6. In the case of a work of the size of six printer's sheets or less, the party responsible for the printing or reproduction shall be required to deliver one copy thereof, on publication, to the chief officer of police of the district. In the case of a larger work, the chief officer of police may request a copy if he sees fit to do so.

Such copies shall be unabridged, and in other respects shall be of the same form as the copies intended for sale or distribution.

The provisions contained in the first paragraph of this article shall not apply to the type of material referred to in article 7 or to official government notices.

Art. 7. The special provisions of the second paragraph of article 5 and the third paragraph of article 6 shall apply to postcards and pictures, visiting cards and acknowledgement cards, invitation cards, merchandise labels, printed forms and other similar matter which, although printed or reproduced, may be assumed not to contain unlawful material.

Art. 8. Failure to give notification in accordance with article 4, or misinformation, failure to furnish the information specified in article 5, or misinformation, or failure to comply with the provisions of article 6, shall be punishable by a fine or, in the case of a major offence, by detention.

If the particulars required under article 5 are omitted or stated incorrectly and there is no indication as to who printed or reproduced the work, the publisher shall be liable to the penalty referred to in the foregoing paragraph.

CHAPTER III

PUBLICATION OF NEWSPAPERS AND PERIODICALS

Art. 9. For the purposes of this Act, newspapers and periodicals shall mean works which appear under the same name not less than twice a year, and any separate news sheets or supplements pertaining thereto.

Art. 10. The publisher of a newspaper or periodical shall be an Icelandic national, of legal age and domiciled in Iceland, or an Icelandic body corporate.

The editor of a newspaper or periodical shall be an Icelandic national, domiciled in Iceland and of legal age.

If a body corporate alone is the publisher of a newspaper or periodical, an editor fulfilling the re-

[1] Published in *Stjórnartíðindi* 1956, Part A, p. 238. Translation by the United Nations Secretariat.

quirements specified in the foregoing paragraph shall be appointed.

Failure to comply with the provisions of this article shall be punishable by a fine or, in the case of a major offence, by detention.

CHAPTER IV

DISTRIBUTION OF PUBLISHED WORKS

Art. 11. Every Icelandic national or body corporate shall be entitled personally or with the assistance of others to engage in the sale or distribution by other means of a publication.

Art. 12. Any person having for sale or distribution a work which omits the particulars required under article 3 or article 5, or knowing that those particulars have been incorrectly stated, shall be liable to a fine or, in the case of a major offence, to detention.

CHAPTER V

RESPONSIBILITY FOR MATERIAL PUBLISHED

Art. 13. Any person publishing or distributing or taking part in the publication or distribution of a work other than a newspaper or periodical, shall be liable to a penalty or damages, in accordance with the general provisions of the law, if the contents of the work are against the law.

Art. 14. In the case of a newspaper or periodical the main contents of which are devoted to crime or obscenity, or whose contents are liable to penalties under articles 86 to 89, the first paragraph of article 90, the first three paragraphs of article 91, article 93, articles 98 to 100 or article 102 of the Criminal Justice Act [Almenn hegningarlög] (Act No. 19 of 1940), or in the case of a deliberate violation of article 92 of the aforesaid Act, the provisions of article 13 shall likewise apply to liability for the contents of the work.

Art. 15. As regards liability for the contents of newspapers or periodicals other than those referred to in article 14, the following rules shall apply.

The author shall be liable to a penalty and damages in respect of the contents of the work if his name appears on it and if he is either domiciled in Iceland at the time of publication of the work or under Icelandic jurisdiction at the time when proceedings are instituted.

If no such author's name appears, the liability is borne by the publisher or the editor of the work, or, successively, by the person having the work for sale or distribution or the person responsible for printing or reproducing it.

Art. 16. If several persons publish a newspaper or periodical jointly, or if there is more than one editor of the work and one or other of them assumes liability for the work or for specific sections thereof, the other publishers or editors shall not be liable for the contents of the work except as provided in article 17.

Art. 17. If an editor who is not at the same time the publisher of a newspaper or periodical is sentenced to pay a fine, damages, trial costs or costs of publication of the sentence on account of the contents of such work, he may, if the terms of the sentence so stipulate, collect the amount or the due balance thereof, by distraint, from the publisher or publishers of the work.

If one publisher of a newspaper or periodical is sentenced to payment of a fine, damages or other costs as referred to in the foregoing paragraph, he may similarly collect the amount or the due balance thereof, by distraint, from the other publisher or publishers of the work.

CHAPTER VI

OBLIGATIONS OF A PUBLISHER (EDITOR) CONCERNING CORRECTIONS

Art. 18. The publisher (editor) of a newspaper or periodical shall be obliged to publish in the work, free of charge, a correction to a statement appearing therein or a notice concerning legal proceedings arising out of such a statement if so requested by any person who might incur material loss or damage if the statement remained unamended.

Request for publication of a correction or notice shall be made as soon as possible and not later than one month from the publication of the offending statement. Such correction or notice shall be confined to the facts and shall contain nothing unlawful.

Art. 19. If a publisher (editor) considers the contents of a correction or notice to be incompatible with the provisions of the second paragraph of article 18, or prefers not to publish the correction or notice in the form in which it is submitted, he shall forthwith notify the person requesting its publication. Failure to give such notification shall be punishable by a fine.

Art. 20. If a party does not accept the refusal of a publisher (editor) as provided in article 19, he may submit the dispute to the district magistrate who may order the publisher (editor) to pay a fine, which shall be adjudged to the person requesting the insertion, unless the correction or notice is published in due legal form in the first issue appearing after publication of the sentence, and not later than the second issue in the case of a daily newspaper.

The proceedings shall be conducted with the utmost possible dispatch. An appeal against the decision of the district magistrate may be lodged with the Supreme Court in accordance with the provisions of the Act concerning the conduct of civil cases in districts.

Art. 21. The correction or notice specified in article 18 shall be published in the first issue of the work appearing after the request for publication has been made, and not later than the second issue in the case of a daily newspaper, unless the party concerned has

previously been notified that his request will not be considered.

The correction or notice shall be printed in the same type as the text of the work and placed in a conspicuous position.

Failure to comply with the provisions of the first and second paragraphs of this article shall be punishable by a fine.

Art. 22. If an author or publisher (editor) is sentenced to a penalty, if his plea is rejected or if he is required to pay damages in respect of matter appearing in a newspaper or periodical, the judgement may provide, at the request of the injured party, that a specific part of that sentence shall be published in the work.

The publisher (editor) shall be required to publish the aforesaid extract from the sentence at the request of the successful party in the first issue appearing after the publication of the sentence, and not later than the second issue in the case of a daily newspaper.

The extract from the sentence shall be published free of charge and shall be printed in the same type as the text of the work and placed in a conspicuous position.

Failure to comply with the provisions of this article shall be punishable by a fine.

Chapter VII
WORKS PRINTED ABROAD

Art. 23. If a work which has been printed abroad is imported into Iceland, the chief officer of police in the district into which the work is first introduced may request one copy thereof to be furnished to him as provided in article 6.

The responsibility for furnishing a copy of the work in accordance with the foregoing paragraph shall lie with the persons delivering it for sale or distribution in Iceland.

Failure to comply with the provisions of this article shall be punishable by a fine or, in the case of a major offence, by detention.

Art. 24. The provisions of article 13 shall apply in respect of liability for the contents of all works printed abroad which are published in Iceland.

Art. 25. In all other respects the provisions of articles 1, 7 and 11 of this Act shall apply, as appropriate, in the case of works printed abroad and published in Iceland.

Art. 26. The Minister of Justice may cause the sale and distribution in Iceland of a work printed abroad to be banned by law, if he deems its contents to be unlawful. The ban shall be applicable to the person having the work for sale or distribution. If it is not known who that person is, the ban may be applied to every person having the work in his keeping. In other respects, the application of the ban shall be subject to the provisions of Act No. 18 of 1949 concerning sequestration and banning.

Art. 27. If a work which has been imported into Iceland is to be confiscated, the sentence may specify that the work shall be removed from the country within a given time-limit, subject to confiscation if the order is not complied with.

Chapter VIII
PROVISIONS CONCERNING CONFISCATION, LEGAL PROCEDURE AND ENTRY INTO FORCE OF THE ACT

Art. 28. If a work is confiscated in accordance with the provision of article 69 of the Criminal Justice Act, the procedure shall be as follows.

If confiscation relates only to a particular part of a work, the part shall be specified in the sentence, and the other parts shall as far as possible and at the expense of the convicted party be separated therefrom and returned.

Confiscation shall also apply to the type, pictures and other materials used in the printing or reproduction of the work.

Art. 29. If a work has been confiscated under a court sentence or attached under chapter VI of Act No. 27 of 1951, or if its sale and distribution have been banned in Iceland, the chief officer of police shall forthwith cause the court sentence or the decision to be published in the *Official Gazette*. If the confiscation, attachment or ban is annulled, the decision shall be published in the same way.

Art. 30. The sale or distribution by other means of a printed work shall be banned when a decision has been published in accordance with article 29, or when a party has previous knowledge of the confiscation, attachment or ban.

Failure to comply with the provisions of the foregoing paragraph shall be punishable by a fine or, in the case of a major offence, by detention.

Art. 31. Proceedings arising out of contraventions of this Act other than those referred to in article 20 shall be dealt with as "public cases".

Proceedings in respect of a contravention of articles 19, 21 and 22 shall be brought only if requested by the injured party.

Art. 32. This Act shall enter into force immediately.

Persons operating a workshop of the type referred to in article 4 at the time of entry into force of this Act shall transmit the notification referred to therein to the chief officer of police within one month from the entry into force of the Act.

Art. 33. With the entry into force of this Act, the provisions of the first, third and fourth paragraphs of articles 3, 4, 11 and 13 to 16 of the order of 9 May 1855 introducing to Iceland, with certain amendments, the Act of 3 January 1851 concerning freedom of the press, the provisions of Act No. 105 of 17 December 1954, amending that order, and any other legal provisions which conflict with this Act shall be superseded.

ACT No. 16, OF 9 APRIL 1958 CONCERNING THE RIGHT OF WORKERS TO NOTICE OF TERMINATION OF EMPLOYMENT AND THE RIGHT OF WORKERS AND REGULAR EMPLOYEES TO PAYMENT WHILE INCAPACITATED THROUGH SICKNESS OR ACCIDENT[1]

Art. 1. Any worker, whether skilled or unskilled, whose wages are paid by the hour or by the week and who has worked for the same employer for one year or more shall be entitled to one month's notice of termination of employment.

A person paid by the hour or by the week shall be considered to have worked with the same employer for one year if he has worked for the latter for a total of not less than 1,800 hours over the previous twelve months, including at least 150 hours during the month immediately preceding notice of termination. For this purpose, absences due to sickness, accident, leave, strikes and lockouts shall be considered equivalent to hours worked, up to a maximum of eight hours for each day of absence.

An employee who is entitled to notice of termination of employment in accordance with this article shall be required to give notice one month in advance if he wishes to leave the service of his employer.

Notice shall be given in writing and shall be reckoned from the end of the month.

Art. 2. If a worker, at the request of the employer for whom he is working, works for a given period for another employer, the hours worked during that period shall be considered to have been worked for the original employer for the purposes of the rights referred to in article 1.

Art. 3. If work with an enterprise comes to an end owing, for example, to a shortage of raw materials in a fish processing plant or a shortage of work for dockers in a shipping concern, or if an enterprise incurs unforeseeable damage — e.g., as the result of fire or shipwreck — an employer shall not be required to pay his employees compensation, even if their hours of work do not amount to 150 a month; however, such employees shall not lose their right to notice of termination in such circumstances.

If a worker loses his means of livelihood as a result of the aforementioned circumstances and is offered other employment which he wishes to take, he shall not be bound by the provisions of the third paragraph of article 1 concerning notice of termination of employment, provided that he forthwith notifies his employer if he has undertaken other employment for the future.

Art. 4. Regular employees and workers by the hour and week who are entitled to the notice specified in article 1 of this Act shall not forfeit any of their wages, whatever the mode of payment, during the first fourteen days of absence from work through sickness or accident.

Art. 5. If an employee wishes to exercise his rights in accordance with articles 1 and 4, he shall, if his employer so wishes, produce a medical certificate relative to his illness or accident, stating that he has been unfit for work on account of such illness or accident.

Art. 6. The provisions of this Act shall not affect agreements between employers' and employees' organizations concerning the payment by employers of sickness benefits to their employees whether they are paid into a benevolent fund, to a trade union or professional association or directly to the individuals concerned.

Art. 7. Any provisions of an agreement between an employer and an employee which conflict with this Act shall be invalid if they impair the rights of the employee.

Rights granted under specific laws or agreements or deriving from the practices followed in individual occupations shall continue to apply provided that they are more favourable to the employee than the provisions of this Act.

Art. 8. This Act shall enter into force immediately.

Article 86 of Act No. 24 of 29 March 1956 concerning national insurance shall simultaneously cease to be valid.

[1] Published in *Stjórnartíðindi* 1958, Part A, p. 33. Translation by the United Nations Secretariat.

ACT No. 11, OF 2 FEBRUARY 1956 AMENDING ACT No. 13, OF 20 OCTOBER 1905, CONCERNING COPYRIGHT AND PRINTING RIGHTS[1]

Art. 1. Article 4 of Act No. 13 of 20 October 1905 concerning copyright and printing rights shall read as follows:

"No one shall be entitled, without the authorization of the person having the rights of ownership in a work, to publish a translation of such work until twenty-five years have elapsed from the date on which the work was first published. If a work has been published in different languages, with proper authorization, before the aforesaid twenty-five years have elapsed, no translation of the work shall be published

[1] Published in *Stjórnartíðindi* 1956, Part A, p. 96. Translation by the United Nations Secretariat.

in any of those languages without the consent of the person having rights of ownership in it. If a work is published in parts, the said twenty-five years' time-limit shall take effect from the date of publication of the final part. In the case of a work published in volumes appearing at intervals, or reports published by a learned society, each volume or report shall be considered a separate work for the purposes of the time limit."

Art. 2. This Act shall enter into force immediately.

INDIA

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1958[1]

I. Legislation

A. POLITICAL RIGHTS

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ACT, 1958[2]

(Act No. 58 of 1958)

This Act of the Parliament of India has made a number of changes in the Representation of the People Act, 1950[3] (Act No. 43 of 1950), and the Representation of the People Act, 1951[4] (Act No. 43 of 1951), in the light of the further experience gained in the working of those two Acts since they were last amended in 1956. Only the more important changes are described here.

Section 19 of the Act of 1950, as amended by the amending Act of 1956,[5] laid down the following two conditions for registration in the electoral roll for any constituency: "(*a*) That the person is not less than twenty-one years of age on the qualifying date; and (*b*) that he is ordinarily resident in a constituency on the qualifying date." In actual practice it was found difficult for the Electoral Registration Officer to satisfy himself that the elector was a resident in a constituency on the particular date. Under article 326 of the constitution[6] only the age of the person to be registered as a voter is related to a particular date, for that article provides '. . . every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law. . . , shall be entitled to be registered as a voter at any such election". Therefore there is no reason why ordinary residence in a constituency should be made relatable to a particular date. Accordingly, section 19 has now been amended by the Representation of the People (Amendment) Act, 1958, by making only the age of an elector relatable to the qualifying date and *not* his residence in the constituency.

Clause (*d*) of section 7 of the Representation of the People Act, 1951, which dealt with disqualification for membership of Parliament or of a state legislature in case of contracts with the Government, was so wide that any kind of contract could be brought within its scope. Thus persons who only occasionally broadcast any talk from the government radio station or contributed any article to any government publication might be held to have come within the scope of that clause. This clause has accordingly been amended by the Representation of the People (Amendment) Act, 1958, to restrict its application to only two categories of contract entered into by a person with the Government in the course of his trade or business — namely, contracts for the supply of goods and contracts for the execution of any works.

Clause (*e*) of section 7 of the Act of 1951, which contained provisions disqualifying for membership any person who was a director or managing agent of, or held any office of profit under, any company or corporation (other than a co-operative society) in the capital of which Government had a share of not less than twenty-five per cent has also been amended by the amending Act of 1958 by restricting the application of the provisions of that clause to a person who is a director, managing agent, manager or secretary of any such company or corporation.

Certain consequential amendments have also been made by the amending Act of 1958 in sections 8 and 9 of the Act of 1951, the following provisions being deleted: clauses (*c*) and (*d*) of sub-section (1) of section 8, sub-section (2) of section 8, clause (*b*) of sub-section (1) of section 9 and sub-section (2) of section 9.[7]

The relevant provisions of the Representation of the People Act, 1950, and the Representation of the People Act, 1951, as amended by the Representation of the People (Amendment) Act, 1958, are included among those reproduced below:

"THE REPRESENTATION OF THE PEOPLE ACT, 1950

(Act No. 43 of 1950)

. . .

PART III. — ELECTORAL ROLLS FOR ASSEMBLY CONSTITUENCIES

14. *Definitions.* In this part, unless the context otherwise requires,

. . .

[1] Note kindly prepared by Mr. S. N. Mukerjee, Secretary, Council of States, New Delhi, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 567-576, of 30 December 1958.

[3] See *Yearbook on Human Rights for 1951*, pp. 144 and 153-154.

[4] See *Yearbook on Human Rights for 1951*, pp. 144 and 154-157.

[5] See *Yearbook on Human Rights for 1956*, p. 119.

[6] See *Yearbook on Human Rights for 1949*, p. 108.

[7] In addition, the Representation of the People (Amendment) Act, 1958 amended section 61 of the Representation of the People Act, 1951, dealing with the procedure for preventing personation of electors.

(*b*) [*as amended in 1958*[1]]. "Qualifying date", in relation to the preparation or revision of every electoral roll under this part, means the first day of January of the year in which it is so prepared or revised.

. . . .

17 [*as amended in 1958*[1]]. *No person to be registered in more than one constituency.* — No person shall be entitled to be registered in the electoral roll for more than one constituency.

. . .

19 [*as amended in 1958*[2]]. *Conditions of registration.* — Subject to the foregoing provisions of this part, every person who (*a*) is not less than twenty-one years of age on the qualifying date, and (*b*) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency."

. . .

"THE REPRESENTATION OF THE PEOPLE ACT, 1951

(Act No. 43 of 1951)

. . .

PART II. — QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP

Chapter III. — Disqualifications

7. *Disqualifications for membership of Parliament or of a state legislature.* — A person shall be disqualified for being chosen as, and for being, a member of either house of Parliament or of the legislative assembly or legislative council of a state —

. . .

(*d*) [*as amended in 1958* [3]]. If there subsists a contract entered into in the course of his trade or business by him with the appropriate government for the supply of goods to, or for the execution of any works undertaken by that government;

(*e*) [*as amended in 1958*[4]]. If he is a director, managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share;

. . .

[1] For former text, see *Yearbook on Human Rights for 1956*, p. 119.

[2] For former text, see *Yearbook on Human Rights for 1956*, p. 119.

[3] For former text, see *Yearbook on Human Rights for 1951*, p. 155.

[4] For former text, see *Yearbook on Human Rights for 1951*, p. 155.

B. SOCIAL AND ECONOMIC RIGHTS

1. THE EMPLOYEES' PROVIDENT FUNDS (AMENDMENT) ACT, 1958[5]

(Act No. 22 of 1958)

The Employees' Provident Funds Act, 1952[6] (Act XIX of 1952), did not apply to any establishment belonging to the Government or a local authority. The Employees' Provident Funds (Amendment) Act, 1958, passed by Parliament, has amended the Act of 1952 so as to remove this disparity of treatment between the establishments owned by the Government or a local authority and other establishments in the matter of application of the Act of 1952 by omitting the exemption clause in favour of the establishments belonging to the Government or a local authority from the provisions of that Act. The Act of 1958 has at the same time amended the definition of "appropriate government" in the Act of 1952 in order to enable the central government to exempt, in suitable cases, any establishment belonging to, or under the control of, the central government or connected with a railway company or a major port from the operation of the Act of 1952 or of any scheme framed thereunder.

2. THE MADHYA PRADESH MATERNITY BENEFIT ACT, 1958[7]

(Madhya Pradesh Act No. 24 of 1958)

This Act, which has been enacted by the Madhya Pradesh legislature, regulates the employment of women in certain establishments for a certain period before and after confinement and provides for the payment of maternity benefit to them. The Act empowers the state government to notify the establishments to which the Act would apply.

The Act prohibits the employment of and work by women in any establishment to which this Act applies, during six weeks immediately following the day of her delivery. The Act also provides for the payment of maternity benefit to a woman employed in any such establishment at the rate of 7/12 of her average daily earnings calculated on the total wages earned during the period of three months preceding the day of her confinement or at the rate of 75 naya paise per day, whichever is greater, for the actual days of her absence for the period immediately preceding her confinement and for not less than six weeks immediately following her confinement. The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be twelve weeks, of which not more than six weeks shall precede the date of her confinement.

[5] Published in the *Gazette of India Extraordinary*, part II, section 1, pp. 122-123, of 20 May 1958.

[6] See *Yearbook on Human Rights for 1952*, p. 113.

[7] Published in the *State Gazette of Madhya Pradesh*, of 3 October 1958.

II. Judical decisions

1. FREEDOM OF SPEECH AND EXPRESSION AND RIGHT TO CARRY ON TRADE OR BUSINESS — LAW IMPOSING RESTRICTIONS — VALIDITY — CONSTITUTION OF INDIA, ARTICLE 19

Virendra v. The State of Punjab and another (and connected petition)

Supreme Court of India[1]

6 September 1957

The facts: After the appointment in December 1953 of the States Reorganization Commission for the reorganization of the component units of the Indian Union, an agitation was started by the Akali Party in the state of Punjab for the partition of that state on a communal and linguistic basis which resulted in a serious communal tension between the Hindus and the Akali Sikhs. The Hindu inhabitants of the state and also a section of the Sikh community and the Congress Party were opposed to the proposal for the partition of the state. The Hindus started counter-propaganda in the press and from the platform against the Akali agitation. Ultimately, the Congress Party, which is the ruling party, accepted a regional formula in place of the Akali demand for the partition of the state. Tension, however, continued and the maintenance of communal harmony in the state was endangered. In the wake of this serious communal tension, the legislature of the state of Punjab enacted the Punjab Special Powers (Press) Act, 1956 (Punjab Act No. 38 of 1956) which came into force on 25 October 1956.

In May 1957, a movement known as the Save Hindi Agitation was started by an association called the Hindi Raksha Samiti. The Arya Samaj, which claims to be a cultural and religious society, also joined this movement. The chief aim of the sponsors of this movement was to get what they considered to be the objectionable features of the regional formula, as well as another formula, known as the Sachar formula on language, changed.

The two petitioners — Virendra in one case and K. Narendra in the other — were the editors, printers and publishers of the two daily newspapers, *Daily Pratap* and *Vir Arjun*, printed and published simultaneously from Jullunder and New Delhi respectively. The policy of the petitioners was to support the Save Hindi Agitation and admittedly they were publishing criticisms and news concerning the agitation. According to them the objectionable clauses of the regional and the Sachar formulae were not only unjust and unfair to the cause of propagating the national language in the country, but were also a contrivance to secure the political domination of the minority community over the majority. Those newspapers which supported the Akali Party in the state had also been publishing articles and news couched in a strong and violent language against the Save Hindi Agitation and the Hindu community. The agitation was followed by demonstrations, slogans and satyagraha by the volunteers and there was also a lathi charge by the police on the volunteers. Eventually it culminated in the Save Hindi Agitation volunteers' forcible entry into the secretariat of the Punjab Government at Chandigarh.

In view of these circumstances, two notifications under section 2(1)(*a*) of the Punjab Special Powers (Press) Act, 1956,[2] were issued against the petitioner, Virendra — one as the editor, printer and publisher of the *Daily Pratap*, published from Jullunder, and the other as the editor, printer and publisher of *Vir Arjun* published from the same place — prohibiting him from printing and publishing any article, report, news item, letter or any other material relating to or connected with the Save Hindi Agitation in those two papers respectively for a period of two months. Two other notifications in identical terms under section 3(1) of the said Act[3] were issued against the petitioner, K. Narendra — one as the editor, printer and publisher of *Daily Pratap*, published from New Delhi, and the other as the editor, printer and publisher of *Vir Arjun*, published from the same place — prohibiting the bringing into Punjab of the said two newspapers respectively printed and published at Delhi.

Thereupon the petitioners presented petitions to the Supreme Court under article 32 of the constitution challenging the validity of sections 2 and 3 of the Punjab Special Powers (Press) Act, 1956, under which the notifications referred to above had been issued, on the ground that both the sections had infringed the fundamental rights guaranteed to them

[1] Report (1958) S.C.R. 308.

[2] This provision reads as follows:

"2(1) The state government or any authority so authorized in this behalf, if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order, may, by order in writing adressed to a printer, publisher or editor,

"(*a*) Prohibit the printing or publication in any document or any class of document of any matter relating to a particular subject or class of subjects for a specified period or in a particular issue or issues of a newspaper or periodical:

"*Provided that* no such order shall remain in force for more than two months from the making thereof:

"*Provided further that* the person against whom the order has been made may, within ten days of the passing of this order, make a representation to the state government which may on consideration thereof modify, confirm or rescind the order;"

[3] This provision reads as follows:

"3(1) The state government or any authority authorized by it in this behalf, if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order, may, by notification, prohibit the bringing into Punjab of any newspaper, periodical, leaflet or other publications."

by articles 19(1)(*a*) and 19(1)(*g*) of the constitution.[1] They contended that the said two sections had imposed not merely restrictions on, but a total prohibition against, the exercise of those fundamental rights and that even if it was assumed that they had merely imposed restrictions and not a total prohibition, the restrictions were not reasonable and as such the sections were not saved by article 19(2) or article 19(6) of the constitution.[2]

Held: That the petition presented by Virendra which was directed against the notifications issued under section 2(1)(*a*) of the Punjab Special Powers (Press) Act, 1956, should be dismissed and that the petition presented by K. Narendra which challenged the validity of section 3 of the said Act and was directed against the notifications issued under that section should be allowed. The restrictions imposed by sections 2(1)(*a*) and 3 of the Act did not amount to a total prohibition of the exercise of the fundamental rights guaranteed by articles 19(1)(*a*) and 19(1)(*g*) of the constitution, for these restrictions had been imposed upon the exercise of those rights with reference to the publication of articles, etc., relating to a particular topic only and with reference to the circulation of the papers only in a particular territory. It would not, therefore, be correct to say that these two sections had imposed a total prohibition upon the exercise of those fundamental rights. Judged by the surrounding circumstances in which the Act of 1956 came to be enacted, the urgency and extent of the evil it sought to combat and prevent and the consequence that any abuse by the press of its powers might lead to and in consideration of the safeguards provided in section 2(1)(*a*) itself in regard to the exercise of the power conferred by it, the restrictions imposed by section 2(1)(*a*) of the Act must be held to be reasonable restrictions. Section 2(1)(*a*) of the Act had therefore been saved by the provisions of articles 19(2) and 19(6) of the constitution. Section 3 of the Act could not, however, be said to have been so saved, for, unlike section 2(1)(*a*) of the Act, section 3(1) had not provided any time limit for the operation of an order made under that section, nor had there been any provision made in section 3 for any representation by the aggrieved party to the state government and, in view of the absence of these safeguards in section 3, the restrictions imposed by that section could not be said to be reasonable restrictions.

The court said:

"The petitioners contend that both ss. 2 and 3 of the impugned Act are *ultra vires* the state legislature, because they infringe the fundamental rights of the petitioners guaranteed by arts. 19(1)(*a*) and 19(1)(*g*) of the constitution and are not saved by the protecting provisions embodied in art. 19(2) or art. 19(6). In the first place it is contended that these sections impose not merely restrictions on but total prohibition against the exercise of the said fundamental rights, for in the case of the notifications under s. 2 there is a total prohibition against the publication of all matters relating to or in connexion with the Save Hindi Agitation, and in the case of the notifications made under s. 3 there is a complete prohibition against the entry and the circulation of the papers published from New Delhi in the whole of Punjab. There is and can be no dispute that the right to freedom of speech and expression carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions. The point to be kept in view is that the several rights of freedom guaranteed to the citizens by art. 19(1) are exercisable by them throughout and in all parts of the territory of India. The notifications under s. 2(1)(*a*) prohibiting the printing and publishing of any article, report, news item, letter or any other material of any character whatsoever relating to or connected with the Save Hindi agitation or those under s. 3(1) imposing a ban against the entry and the circulation of the said papers published from New Delhi in the state of Punjab do not obviously take away the entire right, for the petitioners are yet at liberty to print and publish all other matters and are free to circulate the papers in all other parts of the territory of India. The restrictions, so far as they extend, are certainly complete, but whether they amount to a total prohibition of the exercise of the fundamental rights must be judged by reference to the ambit of the rights, and, so judged, there can be no question that the entire rights under arts. 19(1)(*a*) and 19(1)(*g*) have not been completely taken away, but restrictions have been imposed upon the exercise of those rights with reference to the publication of only articles, etc. relating to a particular topic and with reference to the circulation of the papers only in a particular territory and, therefore, it is not right to say that these sections have imposed a total prohibition upon the exercise of those fundamental rights.

"Learned counsel then urges that, assuming that these sections impose only restrictions, they are nevertheless void as being repugnant to the constitution, because the restrictions are not reasonable. As regards the rights to freedom of speech and expression guaranteed by art. 19(1)(*a*), it is qualified by art.

[1] Articles 19(1)(*a*) and (*g*) provide: "19(1). All citizens shall have the right (*a*) to freedom of speech and expression; . . . (*g*) to practise any profession, or to carry on any occupation, trade or business."

[2] Article 19(2) provides:

"(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the state, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Article 19(6) provides:

"(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, . . ."

19(2), which protects a law in so far as it imposes reasonable restriction on the exercise of the rights conferred by art. 19(1)(*a*) 'in the interests of . . . public order . . .' Likewise the right to carry on any occupation, trade or business guaranteed by art. 19(1)(*g*) is cut down by art. 19(6), which protects a law imposing 'in the interests of the general public' reasonable restrictions on the exercise of the right conferred by art. 19(1)(*g*). As has been explained by this court in Ramji Lal's case (petition No. 252 of 1956) decided in April 1957, the words 'in the interests of' are words of great amplitude and are much wider than the words 'for the maintenance of'. The expression 'in the interest of' makes the ambit of the protection very wide, for a law may not have been designed directly to maintain the public order or directly to protect the general public against any particular evil, and yet it may have been enacted 'in the interests of' the public order or the general public as the case may be. It is against this background, therefore, that we are to see whether the restrictions imposed by ss. 2 and 3 can be said to be reasonable restrictions within the meaning of arts. 19(2) and 19(6).

"The test of reasonableness has been laid down by this court in *The State of Madras* v. *V. G. Row*[1] in the following words:

" 'It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.'

"This dictum has been adopted and applied by this court in several subsequent cases. The surrounding circumstances in which the impugned law came to be enacted, the underlying purpose of the enactment and the extent and the urgency of the evil sought to be remedied have already been adverted to. It cannot be overlooked that the press is a mighty institution wielding enormous powers which are expected to be exercised for the protection and the good of the people, but which may conceivably be abused and exercised for anti-social purposes by exciting the passions and prejudices of a section of the people against another section and thereby disturbing the public order and tranquillity or in support of a policy which may be of a subversive character. The powerful influence of the newspapers, for good or evil, on the minds of the readers, the wide sweep of their reach, the modern facilities for their swift circulation to territories, distant and near, must all enter into the judicial verdict, and the reasonableness of the restrictions imposed upon the press has to be tested against this background. It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interest ordinarily demands the free propagation and interchange of views, but circumstances may arise when the social interest in public order may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. Our constitution recognizes this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order and on the freedom of carrying on trade or business in the interest of the general public. Therefore, the crucial question must always be: Are the restrictions imposed on the exercise of the rights under arts. 19(1)(*a*) and 19(1)(*g*) reasonable in view of all the surrounding circumstances? In other words, are the restrictions reasonably necessary in the interest of public order under art. 19(2) or in the interest of the general public under art. 19(6)?

"It is conceded that a serious tension had arisen between the Hindus and the Akalis over the question of the partition of the state on linguistic and communal bases. The people were divided into two warring groups, one supporting the agitation and the other opposing it. The agitation and the counter agitation were being carried on in the press and from the platforms. Quite conceivably this agitation might at any time assume a nasty communal turn and flare up into a communal frenzy and faction fight disturbing the public order of the state which is on the border of a foreign state and where consequently the public order and tranquillity were and are essential in the interest of the safety of the state. It was for preserving the safety of the state and for maintaining the public order that the legislature enacted this impugned statute. Legislature had to ask itself the question: Who will be the appropriate authority to determine at any given point of time as to whether the prevailing circumstances require some restriction to be placed on the right to freedom of speech and expression and the right to carry on any occupation, trade or business and to what extent? The answer was obvious — namely, that as the state Government was charged with the preservation of law and order in the state, as it alone was in possession of all material facts it would be the best authority to investigate the circumstances and assess the urgency of the situation that might arise and to make up its mind whether any, and if so, what, anticipatory action must be taken for the prevention of the threatened or anticipated breach of the peace. The court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in

[1] (1952) S.C.R. 597, 607.

possession of materials which are available only to the executive government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the press must of necessity be left to the judgement and discretion of the state Government and that is exactly what the legislature did by passing the statute. It gave wide powers to the state Government, or the authority to whom it might delegate the same, to be exercised only if it were satisfied as to the things mentioned in the two sections. The conferment of such wide powers to be exercised on the subjective satisfaction of the Government or its delegate as to the necessity for its exercise for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order cannot, in view of the surrounding circumstances and tension brought about or aided by the agitation in the press, be regarded as anything but the imposition of permissible reasonable restrictions on the two fundamental rights. Quick decision and swift and effective action must be of the essence of those powers, and the exercise of it must therefore be left to the subjective satisfaction of the Government charged with the duty of maintaining law and order. To make the exercise of these powers justiciable and subject to the judicial scrutiny will defeat the very purpose of the enactment. Even in his dissenting judgement in *Khare's case*[1] Mukherjea, J., conceded that in cases of this description certain authorities could be invested with power to make initial orders on their own satisfaction and not on materials which satisfy certain objective tests.

"It is said that the sections give unfettered and uncontrolled discretion to the state Government or to the officer authorized by it in the exercise of the drastic powers given by the sections. We are referred to the observation of Mukherjea, J., in *Dwarka Prasad Laxmi Narain* v. *The State of Uttar Pradesh*.[2] That case does not seem to us to have any application to the facts of this case. In the first place, the discretion is given in the first instance to the state Government itself and not to a very subordinate officer such as the licensing officer, as was done in *Dwarka Prasad's case* (*supra*). It is true that the state Government may delegate the power to any officer or person, but the fact that the power of delegation is to be exercised by the state Government itself is some safeguard against the abuse of this power of delegation. That apart, it will be remembered that the Uttar Pradesh Coal Control Order, 1953, with reference to which the observations were made, prescribed no principles and gave no guidance in the matter of the exercise of the power. There was nothing in that order to indicate the purpose for which and the circumstances under which the licensing authority could grant or refuse to grant, renew or refuse to renew or suspend, revoke, cancel or modify any licence under that order, and therefore the power could be exercised by any person to whom the State Coal Controller might have chosen to delegate the same. No rules had been framed and no directions had been given on the relevant matters to regulate or to guide the exercise of the discretion of the licensing officer. That cannot, in our judgement, be said about s. 2 or s. 3 of the impugned Act, for the exercise of the power under either of these two sections is conditioned by the state Government or the authority authorized by the said Government being satisfied that such action was necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect the public order. As explained by this court in *Harishankar Bagla* v. *The State of Madhya Pradesh*,[3] the dictum of Mukherjea, J., can have no application to a law which sets out its underlying policy so that the order to be made under the law is to be governed by that policy and the discretion given to the authority is to be exercised in such a way as to effectuate that policy, and the conferment of such a discretion so regulated cannot be called invalid. The two sections before us lay down the principle that the state Government or the delegated authority can exercise the power only if it is satisfied that its exercise is necessary for the purposes mentioned in the sections. It cannot be exercised for any other purpose. In this view of the matter neither of these sections can be questioned on the ground that they give unfettered und uncontrolled discretion to the state Government or one executive officer in the exercise of discretionary powers given by the section.

"It is next said that an executive officer may untruthfully say, as a matter of form, that he has been satisfied and there is nothing in the section which may prevent him from abusing the power so conferred by these sections. But, as pointed out in *Khare's case* (*supra*,) the exercise of a discretionary preventive power to be exercised in anticipation for preventing a breach of the public order must necessarily be left to the state Government or its officers to whom the state Government may delegate the authority. No assumption ought to be made that the state Government or the authority will abuse its power. To make the exercise of the power justiciable will defeat the very purpose for which the power is given. Further, even if the officer may conceivably abuse the power, what will be struck down is not the statute, but the abuse of power.

"Reference has been made to the principles enunciated by this court in *Ramesh Thappar's case*,[4] and applied in *Chintaman Rao's case*,[5] — namely, that if the language employed in the impugned law is wide enough to cover restriction both within and outside the limits of constitutionally permissible legislative action affecting the guaranteed fundamental rights

[1] (1950) S.C.R. 519.

[2] (1954) S.C.R. 803, 813.

[3] (1955) I S.C.R. 380, 386, 387.

[4] (1950) S.C.R. 594.

[5] (1950) S.C.R. 759.

and so long as the possibility of the statute being applied for purposes not sanctioned by the constitution cannot be ruled out, the sections must be struck down as *ultra vires* the constitution. We do not think those principles have any application in the instant case. It will be remembered that art. 19(2), as it was then worded, gave protection to a law relating to any matter which undermined the security of or tended to overthrow the state. Section 9(1-A) of the Madras Maintenance of Public Order Act was made "for the purpose of securing public safety and the maintenance of public order". It was pointed out that whatever end the impugned Act might have been intended to subserve and whatever aim its framers might have had in view, its application and scope could not, in the absence of limiting words in the statute itself, be restricted to the aggravated form of activities which were calculated to endanger the security of the state. Nor was there any guarantee that those officers who exercised the power under the Act would, in using them, discriminate between those who acted prejudicially to the security of the state and those who did not. This consideration cannot apply to the case now under consideration. Article 19(2) has been amended so as to extend its protection to a law imposing reasonable restrictions in the interests of public order, and the language used in the two sections of the impugned Act quite clearly and explicitly limits the exercise of the powers conferred by them to the purposes specifically mentioned in the sections and to no other purpose.

"Apart from the limitations and conditions for the exercise of the powers contained in the body of the two sections as hereinbefore mentioned, there are two provisos to s. 2(1)(*a*) which are important. Under the first proviso the orders made under s. 2(1)(*a*) can remain in force for only two months from the making thereof. Further, there is another proviso permitting the aggrieved person to make a representation to the state Government which may, on consideration thereof, modify, confirm or rescind the order. A power the exercise of which is conditioned by the positive requirement of the existence of the satisfaction of the authority as to the necessity for making the order for the specific purposes mentioned in the section and the effect of the exercise of which is to remain in operation for a limited period only and is liable to be modified or rescinded upon a representation being made cannot, in our opinion, in view of the attending circumstances, be characterized as unreasonable and outside the protection given by art. 19(2) of art. 19(6). Under cl. (*b*) of sub-s. (2) also there are several conditions — namely, that the matter required to be published must not be more than two columns; that adequate remuneration must be paid for such publication; and that such requirement cannot prevail for more than one week. A consideration of these safeguards must, in our opinion, have an important bearing in determining the reasonableness of the restrictions imposed by s. 2. The prevailing circumstances which led to the passing of the statute, the urgency and extent of the evil of communal antagonism and hatred which must be combated and prevented, the facility with which the evil might be aggravated by partisan news and views published in daily newspapers having large circulation, and the conditions imposed by the section itself on the exercise of the power conferred by it must all be taken into consideration in judging the reasonableness or otherwise of the law and, so judged, s. 2 must be held to have imposed reasonable restrictions on the exercise of the rights guaranteed by arts. 19(1)(*a*) and 19(1)(*g*) in the interest of public order and of the general public and is protected by arts. 19(2) and 19(6).

. . .

"The observations hereinbefore made as to the safeguards set forth in the provisions of s. 2(1)(*a*) and (*b*) cannot, however, apply to the provisions of s. 3. Although the exercise of the powers under s. 3(1) is subject to the same condition as to the satisfaction of the state Government or its delegate as is mentioned in s. 2(1)(*a*), there is, however, no time limit for the operation of an order made under this section; nor is there any provision made for any representation being made to the state Government. The absence of these safeguards in s. 3 clearly makes its provisions unreasonable and the learned Solicitor-General obviously felt some difficulty in supporting the validity of this section. It is surprising how in the same statute the two sections came to be worded differently."

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2. EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAWS — ESSENTIALS OF REASONABLE CLASSIFICATION — CONSTITUTION OF INDIA, ARTICLE 14

Macherla Hanumantha Rao and others v. The State of Andhra Pradesh

Supreme Court of India[1]

17 September 1957

The facts: The appellants were committed to take their trial before the Court of Session by the inquiring magistrate in a proceeding instituted against them on a police report. The magistrate followed the procedure laid down in section 207-A of the Code of Criminal Procedure, 1898, as required by section 207 of that code.[2] The appellants thereupon moved

[1] Report (1958) S.C.R. 396.

[2] Sections 207 and 207-A in chapter XVIII of the Code of Criminal Procedure, 1898, read as follows:

"207. In every inquiry before a magistrate where the case is triable exclusively by a court of session or high court, or, in the opinion of the magistrate, ought to be tried by such court, the magistrate shall,

"(*a*) In any proceeding instituted on a police-report, follow the procedure specified in section 207-A; and

"(*b*) In any other proceeding, follow the procedure specified in the other provisions of this chapter.

"207-A. (1) When, in any proceeding instituted on a

the High Court of Andhra Pradesh to quash the order of commitment mainly on the ground that the said order which was passed under the provisions of section 207-A of the Code was void as those provisions were unconstitutional for the reason that they introduced discrimination as against the accused persons against whom proceedings were instituted on a police report. The High Court held that the impugned provisions were not unconstitutional and that the order of commitment was therefore valid in law. The appellants thereupon appealed to the Supreme Court after having obtained a certificate under article 134(1)(*c*) of the constitution from the High Court of Andhra Pradesh.

The contention of the appellants was that sections 207 and 207-A in chapter XVIII of the Code provided for two separate procedures in the committing court — namely, (1) in respect of a case instituted on a police report for which the procedure laid down in section 207-A was prescribed; and (2) in respect of any other proceeding, for which the procedure laid

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police report, the magistrate receives the report forwarded under section 173, he shall, for the purpose of holding an inquiry under this section, fix a date which shall be a date not later than fourteen days from the date of the receipt of the report, unless the magistrate, for reasons to be recorded, fixes any later date.

"(2) If, at any time before such date, the officer conducting the prosecution applies to the magistrate to issue a process to compel the attendance of any witness or the production of any document or thing, the magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

"(3) At the commencement of the inquiry, the magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

"(4) The magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.

"(5) The accused shall be at liberty to cross-examine the witnesses examined under sub-section (4), and in such case, the prosecutor may re-examine them.

"(6) When the evidence referred to in sub-section (4) has been taken and the magistrate has considered all the documents referred to in section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the magistrate that such person should be tried before himself or some other magistrate, in which case he shall proceed accordingly.

"(7) When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

"(8) As soon as such charge has been framed, it shall be read and explained to the accused and a copy thereof shall be given to him free of cost.

"(9) The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial:

"*Provided that* the magistrate may, in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this sub-section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

"(10) When the accused, on being required to give in a list under sub-section (9), has declined to do so, or when he has given in such list, the magistrate may make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

"(11) When the accused has given in any list of witnesses under sub-section (9) and has been committed for trial, the magistrate shall summon the witnesses included in the list to appear before the court to which the accused has been committed:

"*Provided that* where the accused has been committed to the High Court, the magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly:

"*Provided also that* if the magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

"(12) Witnesses for the prosecution, whose attendance before the Court of Session or High Court is necessary and who appear before the magistrate, shall execute before him bonds binding themselves to be in attendance when called upon by the Court of Session or High Court to give evidence.

"(13) If any witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the magistrate may detain him in custody until he executes such bond or until his attendance at the Court of Session or High Court is required, when the magistrate shall send him in custody to the Court of Session or High Court as the case may be.

"(14) When the accused is committed for trial, the magistrate shall issue an order to such person as may be appointed by the state Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge; and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or where the commitment is made to the High Court, to the Clerk of the State or other officer appointed in this behalf by the High Court.

(15) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

(16) Until and during the trial, the magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant to custody.

down in other provisions of chapter XVIII of the Code was prescribed, and that a comparison and contrast of the two different procedures so prescribed would show that the procedure in respect of a case instituted on a police report was less advantageous to the accused than the other procedure. It was further contended by the appellants that in the sections following section 207-A in chapter XVIII of the Code, the accused persons had been granted facilities which were not available to them in the procedure laid down in section 207-A. It was therefore urged that the provisions of sections 207 and 207-A of the Code of Criminal Procedure, 1898, had infringed the fundamental right to equality guaranteed by article 14 of the constitution[1] and as such were unconstitutional.

Held: That the appeal should be dismissed. Sections 207 and 207-A of the Code were not discriminatory and they did not contravene the provisions of article 14 of the constitution.

The court said:

". . . there is no doubt that there are material differences in the two procedures relating to commitment according as the case has been investigated by a competent police officer who has submitted a charge-sheet and a report under s. 173 of the Code, or, a competent magistrate has taken cognizance of an offence on a complaint. In the latter case, the procedure before the committing magistrate is more elaborate. But is it always to the advantage of an accused person that there should be an elaborate procedure before such a magistrate and not a summary one? It is the avowed policy of the legislature, and there can be no doubt that it is in the general interest of administration of justice, that crimes should be investigated and criminals brought to justice as expeditiously as the circumstances of the case would permit. That must also be in the interest of an accused person himself if he claims not to be guilty of any offence. Generally speaking, therefore, only a real offender would be interested in prolonging the inquiry or trial so as to postpone the day of judgement. If a person has been falsely or wrongly accused of an offence, it is in his interest that he should get himself declared innocent by a competent court as early as possible. In view of these considerations, there cannot be the least doubt that the legislature has been well advised to amend the procedure relating to commitment proceedings in cases which have been investigated by a competent police officer. The legislature has rightly retained the old elaborate procedure only in those cases which have not been investigated by such a public officer, or, after investigation, have been declared not to be fit to be proceeded with in the public interest.

"Having found that there are substantial differences introduced by the impugned provisions, we have to consider the question of the constitutionality of those provisions. At the threshold, it is pertinent to observe that these provisions have not in any way affected the procedure at the trial. After a case has been committed to a court of session, the procedure for the trial of offences in either class of cases, remains the same. Hence, all those cases which came up to this court in which it was laid down that the law introduced substantial changes in the procedure at the trial, to the disadvantage of an accused person, have absolutely no relevance to the present case. The main attack on the constitutionality of those provisions is based on article 14 of the constitution. This court had to consider the provisions of that article in a series of cases — namely, *Chiranjit Lal Chowdhuri* v. *The Union of India*,[2] *The State of Bombay* v. *F. N. Balsara*,[3] *The State of West Bengal* v. *Anwar Ali Sarkar*,[4] *Kathi Raning Rawat* v. *The State of Saurashtra*,[5] *Lachmandas Kewalram Ahuja* v. *The State of Bombay*,[6] *Qasim Razvi* v. *The State of Hyderabad*,[7] *Habeeb Mohamad* v. *The State of Hyderabad*,[8] *The State of Punjab* v. *Ajaib Singh*,[9] which were all referred to in the case of *Budhan Choudhry and others* v. *The State of Bihar*,[10] which is the nearest case to the case now before us, with this distinction that in that case, there was a difference at the trial stage itself. In that case, the same accused person in respect of the same offence could be tried under s. 30 of the Code by a magistrate empowered under that section, and by a court of session, if the offence happened to have taken place in a jurisdiction to which s. 30 had not been applied. In that case, this court upheld the constitutionality of that section of the Code, and repelled the contention that the provisions of that section infringed the fundamental right to equality guaranteed by art. 14 of the constitution. In the course of his judgement, Das, J. (as he then was) made the following observations which apply to the case in hand with full force:

'. . . It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled — namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on a different basis — namely, geographical, or according to objects or occupations or the like. What

[1] Article 14 provides: "14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

[2] (1950) S.C.R. 869.
[3] (1951) S.C.R. 682.
[4] (1952) S.C.R. 284.
[5] (1952) S.C.R. 435.
[6] (1952) S.C.R. 710.
[7] (1953) S.C.R. 581.
[8] (1953) S.C.R. 661.
[9] (1953) S.C.R. 254.
[10] (1955) S.C.R. 1045, 1049.

is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this court that article 14 condemns discrimination not only by a substantive law, but also by a law of procedure.'

"The later case before this court dealing with the question of discrimination in respect of provisions of the Code is the one reported in *Matajog Dobey* v. *H. C. Bhari.*[1] In that case, the constitutionality of s. 197 of the Code was questioned. The contention raised in that case was that the section vested arbitrary power in the Government to grant or withhold sanction which could be withheld or granted at the sweet will of the Executive. This court overruled that contention and held that a discretionary power is not necessarily discriminatory.

"Applying the principles laid down by this court to the case in hand to judge whether or not there has been objectionable discrimination, there could not be the least doubt that the legislature has provided for a clear classification between the two kinds of proceedings at the commitment stage based upon a very relevant consideration — namely, whether or not there has been a previous inquiry by a responsible public servant whose duty it is to discover crime and to bring criminals to speedy justice. This basis of classification is clearly connected with the underlying principle of administration of justice that an alleged criminal should be placed on his trial as soon after the commission of the crime as circumstances of the case would permit. This classification cannot be said to be unreasonable and not to have any relation to the object of the legislation — namely, a more speedy trial of offences without any avoidable delay.

"For the reasons given above, it must be held that there is no discrimination and that the provisions of art. 14 of the constitution have not been contravened. The provisions of the Code impugned in this case must therefore be held to be constitutional. The appeal is accordingly dismissed."

3. WHETHER TOTAL BAN ON THE SLAUGHTER OF CERTAIN CATEGORIES OF ANIMALS AMOUNTS TO DENIAL OF THE EQUAL PROTECTION OF THE LAWS OR INFRINGES THE RIGHT TO CARRY ON OCCUPATION — DIRECTIVE PRINCIPLES OF STATE POLICY — EFFECT OF — CONSTITUTION OF INDIA, ARTICLES 14, 19, 25 AND 48

Mohd. Hanif Quareshi and others v. The State of Bihar (and connected petition)

Supreme Court of India[2]

23 April 1958

The facts: In pursuance of the directive principles of state policy set out in article 48 of the constitution, two Acts — namely (i) the Bihar Preservation and Improvement of Animals Act, 1955 (Bihar Act II of 1956), hereinafter referred to as the Bihar Act, and (ii) the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U.P. Act I of 1956), hereinafter referred to as the Uttar Pradesh Act, were enacted by the legislatures of the states of Bihar and Uttar Pradesh respectively; and another Act — namely, the Central Provinces and Berar Animal Preservation Act, 1949 (C. P. and Barar Act LII of 1949), which was enacted by the then legislature of the Central Provinces and Berar — was amended by the Madhya Pradesh Acts XXIII of 1951 and X of 1956 enacted by the legislature of the state of Madhya Pradesh. The Bihar Act banned totally the slaughter of all categories of animals of the species of bovine cattle. The Uttar Pradesh Act put a total ban on the slaughter of cows and their progeny, including bulls, bullocks, heifers and calves; but buffaloes (male or female adults or calves) were completely outside the protection of the Act. The C.P. and Berar Act as subsequently amended by the Madhya Pradesh Acts (hereinafter referred to as the Madhya Pradesh Act) banned totally the slaughter of cows, male or female calves of a cow, bulls, bullocks and heifers and permitted the slaughter of buffaloes (male or female adults or calves) only under certificates granted by the authorities mentioned in the Act. No exception was made in any of the said three Acts permitting slaughter of cattle even for bona fide religious purposes. The petitioners, all of whom were Muslims, were mainly engaged in the butcher's trade and its subsidiary undertakings, such as the sale of hides, tannery, glue making, gut making and blood dehydrating. Some of them were *kasais* — that is, butchers who slaughtered only cattle and not sheep or goats — while others were engaged in the sale and purchase of cattle and in their distribution over the various places within the Union of India.

The petitioners, who were all citizens of India, presented petitions to the Supreme Court under article 32 of the Constitution challenging the validity of the three enactments mentioned above on the ground that they had infringed the fundamental rights guaranteed to them under articles 14, 19 (1) (*g*) and 25 (1) of the constitution. The petitioners contended that the impugned Acts had created an odious discrimination between butchers who slaughtered cattle and those who slaughtered sheep or goats; and that in the Uttar Pradesh Act a distinction had been made even between the butchers who killed cattle and the butchers who killed buffaloes; and that the Madhya Pradesh Act had also made a similar discrimination by permitting slaughter of buffaloes under certificates while totally banning slaughter of cows, bulls, bullocks and calves, and as such they had offended against the equal protection clause in article 14 of the constitution.[1] The petitioners also

[1] (1955) 2 S.C.R. 925.

[2] Report (1959) S.C.R. 629.

[1] Article 14 of the constitution provides: "14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

contended that the impugned Acts had imposed restrictions on their right to carry on their occupation, trade or business and thereby violated their fundamental rights guaranteed under article 19(1)(*g*) of the constitution.[1] It was further contended by the petitioners that the impugned Acts had contravened article 25(1) of the constitution[2] as they prohibited the Muslims from performing the religious practice of the community to sacrifice a cow on the occasion of *Bakrid*. The petitioners also urged that the directive principles of state policy set out in article 48 of the constitution[3] could never override the fundamental rights contained in part III of the constitution.

Held: That the petitions should be partly allowed. The directive contained in article 48 of the constitution contemplated a ban on the slaughter of the several categories of animals mentioned therein — namely, cows and calves and other cattle which answered the description of milch or draught cattle. The protection was confined only to cows and calves and to those animals which would presently or potentially be capable of yielding milk or of doing work as draught cattle, but did not, from the very nature of the purpose for which it was recommended, extend to cattle which had at one time been milch or draught cattle but which had ceased to be such. Under article 37 of the constitution these directive principles would not be enforceable by any court, but would nevertheless be regarded as fundamental in the governance of the country, and it would be the duty of the State to apply these principles in making laws. The impugned Acts were made by the states in the discharge of the obligations laid on them by article 48 contained in part IV of the constitution embodying the directive principles of state policy. However, the directive principles of state policy must conform to and run as subsidiary to the fundamental rights in part III of the constitution. Article 13(2) of the constitution prohibited the making of any law which would take away or abridge the fundamental rights conferred by part III of the constitution. The directive principles could not, therefore, override the restriction imposed by article 13(2) on the legislative power of the State. Accordingly, in implementing the directive principles, the State should see that its laws did not take away or abridge the fundamental rights.

As regards the claim of the petitioners that the fundamental right guaranteed to them under article 25(1) of the constitution had been violated by the impugned Acts, it was not possible to uphold this claim as it had not been established that the sacrifice of a cow on *Bakrid* day was an obligatory overt act for a Muslim to exhibit his religious belief and idea.

The impugned Acts had not violated the equal protection clause in article 14 of the constitution, for the classification made therein of butchers who killed cattle was a permissible classification as it was founded on an intelligible differentia which distinguished them from those who killed goats and sheep, and this differentia had a rational relation to the object sought to be achieved by the impugned Acts — namely, the preservation, protection and improvement of livestock.

The court said:

"The meaning, scope and effect of art. 14, which is the equal protection clause in our constitution, has been explained by this court in a series of decisions in cases beginning with *Chiranjitlal Chowdhury* v. *The Union of India*[4] and ending with the recent case of *Ramakrishna Dalmia* v. *Union of India*.[5] It is now well established that, while art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled — namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases — namely, geographical, or according to objects or occupations or the like — and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him who attacks it to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge,

[1] Article 19(1)(*g*) of the constitution provides:

"19(1) All citizens shall have the right

. . .

"(*g*) To practise any profession, or to carry on any occupation, trade or business."

[2] Article 25(1) of the constitution provides:

"(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

[3] Article 48 of the constitution provides:

"48. The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."

[4] (1950) S.C.R. 869.

[5] C.As. Nos. 455-457 and 657-658 of 1957, decided on 28 March 1958.

matters of common report and the history of the times, and may assume every state of facts which can be conceived existing at the time of legislation. We therefore proceed to examine the impugned Acts in the light of the principles thus enunciated by this court.

"The impugned Acts, it may be recalled, have been made by the states in discharge of the obligations imposed on them by art. 48. In order to implement the directive principles, the respective legislatures enacted the impugned Acts in exercise of the powers conferred on them by art. 246 read with entry 15 in list II of the seventh schedule. It is therefore quite clear that the objects sought to be achieved by the impugned Acts are the preservation, protection and improvement of livestock. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for the agricultural economy of this country. Female buffaloes yield a large quantity of milk, and are therefore well looked after and do not need as much protection as cows yielding a small quantity of milk require. As draught cattle, male buffaloes are not half as useful as bullocks. Sheep and goats give very little milk compared with the cows and the female buffaloes and have practically no utility as draught animals. These different categories of animals being susceptible of classification into separate groups on the basis of their usefulness to society, the butchers who kill each category may also be placed in distinct classes according to the effect produced on society by the carrying on of their respective occupations. Indeed the butchers who kill cattle, according to the allegations of the petitioners themselves in their respective petitions, form a well-defined class based on their occupation. That classification is based on an intelligible differentia which places them in a well-defined class and distinguishes them from those who kill goats and sheep, and this differentia has a close connexion with the object sought to be achieved by the impugned Act—namely, the preservation, protection and improvement of our livestock. The attainment of these objectives may well necessitate that the slaugterers of cattle should be dealt with more stringently than the slaughterers of, say, goats and sheep. The impugned Acts, therefore, have adopted a classification on a sound and intelligible basis and can quite clearly stand the test laid down in the decisions of this court. Whatever objections there may be against the validity of the impugned Acts, the denial of equal protection of the laws does not, prima facie, appear to us to be one of them. In any case, bearing in mind the presumption of constitutionality attaching to all enactments founded on the recognition by the court of the fact that the legislature correctly appreciates the needs of its own people there appears to be no escape from the conclusion that the petitioners have not discharged the onus that was on them and the challenge under art. 14 cannot, therefore, prevail."

As regards the infringement of the right to carry on occupation, trade or business guaranteed under article 19(1)(*g*) of the constitution, clause (6) of article 19[1] would protect a law which had imposed in the interests of the general public reasonable restrictions on the exercise of such right. In case of dispute it would be the duty of the court to determine the reasonableness of the restrictions imposed by the law. In determining the question of reasonableness the court could not proceed on a general notion of what was reasonable in the abstract or even on a consideration of what was reasonable from the point of view of the person or persons on whom the restrictions had been imposed. What the court would be required to do was to consider whether the restrictions imposed were reasonable in the interests of the general public. The test of reasonableness had been laid down by the court in *The State of Madras* v. *V. G. Row* in the following terms:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgement in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the constitution is meant not only for people of their way of thinking, but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

It would be well to remember that the legislature was the best judge of what was good for the community by whose suffrage it had come into existence. This should be the proper approach for the court, but the ultimate responsibility for determining the validity of the law must rest with the court.

The object of each of the impugned Acts which had been enacted in implementation of the directive principles set out in article 48 of the constitution was to ensure the preservation, protection and improvement of the cows and calves and other milch

[1] Clause (6) of article 19 of the constitution provides:
"(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, . . ."

and draught cattle. Having regard to the fact that the country was in short supply of milch cattle, breeding bulls and working bullocks which were essential to the national economy for the supply of milk, agricultural working power and manure, and after giving careful consideration to the pros and cons of the problem and keeping in view the presumption in favour of the validity of the legislation and without the least disrespect to the opinions of the legislatures concerned, the court felt that in discharging the ultimate responsibility cast on it by the constitution it must approach and analyse the problem in an objective and realistic manner. So approaching and analysing the problem, the court made the following pronouncement on the reasonableness of the restrictions imposed by the impugned enactments, namely:

(i) That a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male and female, would be quite reasonable and valid and would be in consonance with the directive principles laid down in article 48,

(ii) That a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they were as milch or draught cattle would be also reasonable and valid, and

(iii) That a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they had ceased to be capable of yielding milk or of breeding or working as draught animals could not be supported as reasonable in the interest of the general public.

After examining each of the impugned Acts in the light of the aforesaid pronouncement, the court came to the following conclusions.

The Bihar Act, in so far as it prohibited the slaughter of cows of all ages and calves or cows and calves of buffaloes, male and female, was constitutionally valid but, in so far as it totally prohibited the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo) without prescribing any test or requirement as to their age or usefulness, it infringed the rights of the petitioners under article 19(1)(*g*) and was to that extent void.

The Uttar Pradesh Act was constitutionally valid in so far as it prohibited the slaughter of cows of all ages and calves of cows, male and female, but in so far as it purported to prohibit totally the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness, it offended against article 19(1)(*g*) and was to that extent void.

The Madhya Pradesh Act was constitutionally valid in so far as it prohibited the slaughter of cows of all ages and calves of cows, male and female, but it was void in so far as it totally prohibited the slaughter of breeding bulls and working bullocks without prescribing any test or requirement as to their age or usefulness. The Act was valid in so far as it regulated the slaughter of other animals under certificates granted by the authorities mentioned therein.

INDONESIA

NOTE ON THE CONSTITUTIONAL SITUATION[1]

On 5 July 1959, the President issued a decree invalidating the constitution of 15 August 1950[2] and reinstating that of 22 June 1945. The following are extracts from the constitution reinstated:

"*Art. 27.* (1) All citizens shall have the same status in law and in the government and shall, without exception, respect the law and the government.

"(2) Every citizen shall have the right to work and to expect a reasonable standard of living.

"*Art. 28.* Freedom of assembly and the right to form unions, freedom of speech and of the press and similar freedoms shall be provided by law.

"*Art. 29.* . . .

"(2) The State shall guarantee the freedom of the people to profess and to exercise their own religion.

. . .

"*Art. 31.* (1) Every citizen shall be provided with facilities for education.

. . .

"*Art. 32.* The Government shall develop national culture."

Enumerated in the preamble to the 1945 constitution are the precepts of the Indonesian state philosophy, the Pantja Sila — belief in God, humanism, social justice, nationalism and democracy. These precepts imply the exercise of rights not explicitly mentioned in the constitution itself.

Under the 1945 constitution, Indonesia is a democratic, unitary State. Sovereignty is vested in the Indonesian people and is exercised through the People's Consultative Assembly. Articles 27-32 of the 1945 Constitution deal with the fundamental human rights contained in the Universal Declaration of Human Rights.

Moreover, while the 1945 constitution serves as the basic written law of the land, the customary law which has emerged from Indonesian tradition and practice provides additional rights for the Indonesian people.

In addition, the political manifesto of 17 August 1959, which elucidates the broad outlines of state policy in accordance with the Indonesian revolution and the 1945 constitution, sets forth the following basic rights of the Indonesian people:

(1) The right to a "just and prosperous" society within which each citizen will live free from fear and want.

(2) The right of each citizen to economic and social justice.

(3) The right of each citizen to enough food, clothing and shelter.

(4) The right of each citizen to e ,oy his cultural heritage and develop fully his spiritual life.

(5) The right of Indonesia, both the State and its citizens, to be truly free from imperialism and colonialism in any form.

[1] Information kindly furnished by the Government of Indonesia.

[2] See *Yearbook on Human Rights for 1950*, pp. 148-55.

IRAN

STATUTE AND REGULATIONS OF THE ROYAL INSPECTION ORGANIZATION of 22 October 1958[1]

ROYAL ORDER

For the purpose of attending to the people's complaints against the officers and employees of the civil and judicial organs of the Government as well as of the armed forces, and also the municipalities and those public corporations which are either fully or partly owned and operated by the Government, we find it necessary to establish the Royal Inspection Organization, which will attend to the people's complaints and inform us of the results.

. . .

STATUTE AND REGULATIONS OF THE ROYAL INSPECTION ORGANIZATION

Chapter One

STATUTE

Art. 1. For the purpose of attending to the people's complaints and the punishment of violators in accordance with the existing laws, an agency under the name of Royal Inspection Organization is established upon the order of His Imperial Majesty.

. . .

Art. 2. The Organization will consist of two bodies: the council of the Organization and the secretariat.

. . .

Art. 6. For the purpose of the investigation of complaints received by the Organization, ministries, municipalities, and public corporations either fully or partly owned and operated by the Government shall provide the Organization with the necessary information and documentation, facilitate the work of the inspectors of the Organization and co-operate with the members of the Organization in all procedural and administrative matters.

. . .

Art. 7. The Organization may request the permission of His Imperial Majesty to send missions to any part of the country. . . .

Chapter Two

REGULATIONS OF THE ROYAL INSPECTION ORGANIZATION

Art. 1. Inspection operations shall be carried out in the following two ways:

(*a*) Execution of special inspection missions, upon the order of His Imperial Majesty.

(*b*) Consideration of the people's complaints received at the secretariat, where the full responsibility shall lie with the Organization.

. . .

Art. 3. The members of all inspection teams and all inspectors shall at all times observe the following rules:

(*a*) Inspection activities may at no times cause interruption or delay in the current work of government offices, or interfere with their operations or in general either influence or change the normal activities of government agencies.

(*b*) Intervention in personal affairs, participation in legal disputes and the granting of employment to individuals shall be beyond the official duties of the inspectors.

. . .

Art. 6. Inspection teams and inspectors shall submit all their reports to the chief of the Organization.

The submission of any kind of information regarding inspection missions to any other authority is forbidden. Inspection reports are to be considered confidential, and, as long as the chief of the Organization has not been informed of their contents, they shall be considered official secrets.

. . .

Art. 9. If, during a mission, the termination of the services of a number of government officials is necessitated, the action shall be taken by the judicial personnel of the team and a complete report shall be submitted to the Organization. These arrangements shall be made in such a way as not to interrupt the operations of the government agency concerned.

In the case of the termination of the services of the senior officials of towns and provinces, a special report shall be submitted to the headquarters for the approval of His Imperial Majesty.

. . .

[1] Text kindly furnished by Professor A. Matine-Daftary, Member of the Senate of Iran, President of the Iranian Association for the United Nations, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

Art. 12. The members of the inspection team and the inspectors, while on a special mission, shall also inquire about the performance of the civil and the military employees of each region, public opinion, the standard of living, health and educational conditions, roads and communications and the food and clothing situation, and shall submit their reports to the chief of the Organization.

. . .

LABOUR ACT

of 17 March 1959

SUMMARY

The Labour Act of 17 March 1959 governed, among other matters: hours of work; holidays and leave; employment of women and young persons; wages and salaries; trade unions; contracts of employment; collective agreements; settlement of disputes; occupational safety and health; and labour inspection. Article 23 provided that: "For equal work men and women workers shall be paid an equal wage." Under article 26, the Ministry of Labour was to agree to the registration of trade unions and trade union federations and confederations, provided that the rules submitted by them were not in conflict with the provisions of the Act and the regulations made thereunder. Article 28 forbade the use of "coercion, force or threats to induce workers to join a trade union or to prevent them from joining such a union". Article 62 defined the penalty for obliging a person to perform forced labour in contravention of International Labour Conventions Nos. 29 and 105. Among other exceptions to the application of the Act, article 8 provided that: "Agricultural workers and domestic workers shall be subject to special provisions to be contained in later Acts."

English and French translations of the Act have been published by the International Labour Office as *Legislative Series* 1959 — Iran 1.

IRAQ

NOTE[1]

1. In conformity with articles 9, 10 and 12 of the Provisional Constitution promulgated on 27 July 1958,[2] the Iraqi law-maker repealed article 1 of the annex to the Iraqi Penal Code and its amendment, as well as the provisions of the Military Penal Code which provided for the punishment of persons upholding certain social beliefs (article 1 (9) of the Act repealing Laws contrary to the Provisional Constitution).

2. The governments existing before the revolution of 14 July 1958 had deprived certain Iraqi politicians of their nationality and ordered their deportation from Iraq because of the beliefs and ideas upheld by them. On 17 July 1958 the Government of the revolution issued a decision cancelling all denationalization decisions, and thus all denationalized persons were able to return to Iraq after their nationality had been restored to them. Subsequently, and in conformity with the principle of freedom of thought and conscience embodied in the provisional constitution, Act No. 67 of 1959 was issued repealing the ordinance on the denationalization of Iraqis issued in 1954.

3. The Government of the Republic of Iraq guaranteed the right to the enjoyment of political asylum on Iraqi territory by promulgating the Act on Refugees, No. 114 of 1959. Political refugees, both civilian and military, were granted, under article 14 of this law, all the rights enjoyed by Iraqis.

4. The Act on Public Meetings and Demonstrations, No. 115 of 1959, made provisions to guarantee the freedom to hold public meetings and demonstrations having as their aim the furtherance of the public interest (article 2). The Act on the General Federation of Peasant's Associations, No. 78 of 1959, and its amendments guaranteed the peasants the rights to form associations aimed at improving their social and economic conditions.

5. The Government of the Republic of Iraq has guaranteed the citizens their right to organize themselves into trade unions. Various laws were enacted for the creation of these unions, such as the Act on the Teachers' Union, No. 66 of 1958, and its amendments; the Act on the Nurses' Union, No. 33 of 1959; the Act on the Engineers' Union, No. 62 of 1959; the Act on the Surveyors' Union, No. 76 of 1959; the Act on the Union of the Medical Profession, No. 91 of 1959; and the Act on the Journalists' Union, No. 98 of 1959.

6. The Labour Act, No. 1 of 1958, which entered into force on 16 July 1958, introduced many reforms as compared with the previous law and extended its benefits to a larger body of wage-earners, covering both industrial and commercial establishments. The workers have, in general, the right to a daily rest period, a weekly rest day with pay and a day's paid holiday a month in addition to public holidays. They are entitled to a week's notice of dismissal. The law contains clauses restricting the employment of children, and there are provisions regulating night work, which is prohibited altogether for women, children and young persons.

7. Long-service dismissal indemnities may be earned at the rate of two weeks' wages for every year's continuous service after the fifth year. Compensation is payable by employers for loss of earning power due to employment injuries, occupational diseases and poisonings, and free medical treatment must be made available for injuries at work. Sick leave on full pay is granted at the rate (which is cumulative) of four days for every three months' continuous employment. Women are entitled to leave with pay for three weeks before and after confinement, to a quarter of an hour twice a day for nursing their children and to security against dismissal during such absence or during a longer period resulting from illness arising out of pregnancy or confinement.

8. Employers are required to take all reasonable precautions to ensure the safety and protection of their workers.

9. An effective inspection system is maintained to ensure adherence to the Labour Act and particularly to ensure strict application of the provisions protecting the rights of workers and employees.

10. Employment agencies undertake the recruitment of workers and provide employers with suitable workers according to need and skill.

11. A vocational training centre is being established for the training of adult workers and up-grading of semi-skilled workers for employment in industry.

12. To protect workers against unemployment, a regulation restricting the employment of non-Iraqis, except in highly specialized occupations and for limited periods, has been issued. Other notifications and instructions restricting the dismissal of workers and

[1] Information kindly furnished by the Ministry for Foreign Affairs of Iraq.

[2] See *Yearbook on Human Rights for 1958*, page 110.

preventing the unconditional termination of employment have been issued.

13. A number of regulations have been issued under the Labour Act, dealing with the formation of conciliation and arbitration boards and wage-fixing boards, the protection of the health and safety of workers and the building of houses for workers by certain large industrial undertakings.

14. Several laws have also been promulgated for the betterment of social conditions, such as the Act on Social Institutions, No. 42 of 1958, of which article 2 provided for the setting up of institutes and other establishments for the care of juvenile orphans, the destitute, the blind, vagrants, deaf mutes, the mentally backward, inmates of reformatories, and aged people, as well as for the building of nursery schools, juvenile prisons, and institutions for the care of penitent prostitutes. The following regulations were issued under this law:

(i) Regulation on the Care of Juveniles, No. 45 of 1958.

(ii) Regulation on Institutions of the Blind, No. 3 of 1959.

(iii) Regulation on Institutions for the Care of Aged People, No. 10 of 1959.

(iv) Regulation for the Reformatory Detention of Women, No. 9 of 1959.

15. The law-maker also promulgated the Act on the Board of Social Services, No. 32 of 1957, amended by Act No. 48 of 1958. This was followed by the promulgation of the Anti-prostitution Act, No. 54 of 1958, and the Social Relief Act, No. 77 of 1958. The latter provides for the rendering of assistance to the needy, the destitute and the distressed, as well as for their orientation towards work and production. The law-maker also repealed the Regulation on Tribal Civil and Criminal Actions which discriminated between the citizens by subjecting urban citizens to general civil and criminal laws and subjecting the tribes to tribal customs and conventions which were often diametrically opposed to the principles laid down in the Universal Declaration of Human Rights. Through the abolition of this regulation the citizens were placed on an equal footing in both rights and obligations and the old tribal judicial system was eliminated.

16. In the field of the protection of the family the promulgation of the Personal Status Act, No. 188 of 1959, marked a revolution in Iraqi legislation since it equated the female with the male in inheritance, and abolished polygamy, making marriage to more than one woman permissible only under strict conditions and subject to the approval of the *qadhi* (judge). The Act also gave the wife the right to apply for divorce in certain cases.

17. In the field of social justice the law-maker envisaged the elimination of the feudal system, which reduced the peasants to the status of slaves. The Act on Agrarian Reform, together with its amendments, was consequently enacted. It put an end to large land-holdings and divided lands into small units for distribution to small landless farmers.

18. The Government of the Republic of Iraq has guaranteed the right of education for every individual and made it free for citizens in almost all its stages. Primary education has been declared compulsory and the decision of the Ministry of Education in this respect will come into force as from the beginning of the next scholastic year.

IRELAND

NOTE ON SOCIAL WELFARE LEGISLATION[1]

1. *Social Welfare Act, 1957.* This Act increased the rates of old-age and blind pensions, widows' (non-contributory) pensions and unemployment assistance. These increases, together with those referred to below, were introduced to compensate for increases in the cost of bread and butter which resulted from the discontinuance of subsidies on these commodities.

2. *Social Welfare (Children's Allowances) Act, 1957.* This Act increased the rates of children's allowances as from May 1957.

[1] Information derived from *Report of the Department of Social Welfare 1954-1958*, kindly furnished by the Permanent Representative of Ireland to the United Nations. See also *Yearbook on Human Rights for 1955*, p. 135 and *Yearbook on Human Rights for 1956*, p. 129.

JUDICIAL DECISION

THE STATE (O'LAIGHLEIS) v. O'SULLIVAN AND THE MINISTER FOR JUSTICE

Judgement of the Supreme Court of Ireland delivered by Chief Justice Maguire on 3 December 1957[1]

MAGUIRE, C. J.:

This is an appeal from an order of the High Court dated 14 October 1957 allowing the cause shown against a conditional order of *habeas corpus ad subjiciendum* dated the 18th day of September 1957 and discharging the order.

The applicant Gearoid O'Laighleis is at present detained in the Curragh Internment Camp by virtue of a warrant dated the 12th day of July 1957 signed by the Minister for Justice in exercise of the powers conferred on him by sec. 4 of the Offences against the State (Amendment) Act 1940 and made in the form set out in the schedule to that Act. In the warrant the Minister affirms his opinion that the applicant is engaged in activities which, in his opinion, are prejudicial to the security of the State and orders the arrest and detention of the applicant under sec. 4.

Article 40.4.1° of the constitution provides that "no citizen shall be deprived of his personal liberty save in accordance with law".

Section 4.2° provides: "Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith inquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law."

The applicant having complained that he is being unlawfully detained it is the duty of the court to inquire into this. The High Court and this court have no more important or onerous function.

The Offences against the State (Amendment) Act 1940 under which the detention is sought to be justified was before being signed as a law referred by the President in the form of a Bill under the powers conferred on him by article 26 of the constitution for a decision on the question whether it was repugnant to the constitution or any provision thereof. The court decided that there was no repugnancy. The President accordingly signed the Bill and the Act was thereupon promulgated as law.

Article 34.3.3° of the constitution declares: "No court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under article 26 of this constitution."

The court is therefore bound to approach the consideration of this appeal on the basis that the Act is valid and incapable of being challenged as repugnant to the Constitution in these or any other proceedings. This is accepted by Mr. MacBride.

The conditional order was served on Commandant Carl O'Sullivan in charge of the Curragh internment camp and on the registrar of the commission set up under sec. 8 of the Offences against the State (Amendment) Act, 1940 (which is subsequently referred to as the Act of 1940). On cause being shown by the said Commandant O'Sullivan the notice of motion to make absolute the conditional order was served

[1] The text of this judgement was kindly forwarded by the Permanent Representative of Ireland to the United Nations. Publication is made with the permission of the Incorporated Council of Law Reporting for Ireland.

on the State Solicitor who appeared for the Commandant, on the registrar of the commission and on the Minister for Justice. In the course of the hearing before us the court intimated a view that the Attorney-General should be represented and subsequently Mr. Walsh, S.C. and Mr. Hederman, counsel for the Commandant, informed the court that they were instructed also to appear for and represent the Attorney-General. It will be necessary subsequently to refer to some of the affidavits, in detail, but the story set out in them may be broadly summarized as follows.

The applicant, a builder's labourer and unmarried, on the 11th day of July last was about to board the mail boat at Dunlaoghaire pier to go to England for the purpose, as he says, of obtaining employment. He had purchased a single third-class ticket to London. Detective-Sergeant Connor with two other guards prevented the applicant from going on board and took him in a car to the Bridewell. The applicant says that no warrant was produced and no reason given for the arrest but Detective-Sergeant Connor has sworn that he informed the applicant that he was being detained pursuant to the provisions of sec. 30 of the Offences against the State Act, 1939, on the grounds that he believed him to be a member of an illegal organization. At the Bridewell the applicant was handed over to the custody of Sergeant Clifford who was informed in the presence of the applicant that he was being detained pursuant to sec. 30. The occurrence book of the Bridewell contains a note dated 11 July to this effect. The evidence of Sergeant Connor is corroborated by Sergeant Clifford.

On the 12th day of July Chief Superintendent Michael Farrell, acting under sec. 30 of the 1939 Act made an order that the applicant be detained for a further period of 24 hours expiring at 7.45 p.m. on 13 July.

The applicant deposes that early on the morning of 13 July he was awakened in his cell in the Bridewell, told to dress, and when dressed, was taken in a car to Mountjoy prison outside which a lorry was waiting. Together with 15 men who had been discharged from Mountjoy prison that morning and rearrested, he was driven to the military detention barracks at the Curragh and at about 11 a.m. was visited there by Captain Kevin Barry who handed him a copy of the warrant to which we have referred and a copy of sec. 8 of the Act of 1940. This was done pursuant to sec. 4(4) of that Act. The applicant is still detained at the Curragh detention camp under and by virtue of that warrant.

The applicant, acting by his solicitor, Mr. P. C. Moore on 8 September, applied in writing to have his detention considered by the commission set up under sec. 8 of the Act of 1940. A correspondence ensued which it is not at this stage necessary to detail. On 17 September the Commission sat, the applicant and his counsel Mr. Sean MacBride and Mr. Sorahan being present. Mr. Walsh and Mr. Hederman were also present representing the Attorney-General, instructed by the Chief State Solicitor, for the purpose of assisting the commission on certain questions which they had raised as to their powers and procedure. After argument the commission determined that they had power to sit in public or in camera and that they were not satisfied that they had power to administer an oath. They announced their decision that the remainder of the proceedings should take place in camera. When the proceedings were resumed in camera the commission made certain rulings on procedure.

Mr. MacBride took exception to these rulings. The commission adjourned to Friday 20 September. On 19 September the conditional order was obtained and was served on Commandant O'Sullivan. On Friday 20 September the commission further adjourned the hearing *sine die*.

Before us Mr. MacBride maintained that his client was illegally interned on a number of grounds. The respondent relied upon the Act of 1940, the proclamation made thereunder and the warrant of the Minister of Justice as justifying the detention. It will be convenient to set out sections 3, 4 and 8 of that Act on which the arguments chiefly centred.

"3. (1) This part of this Act shall not come into or be in force save as and when and for so long as is provided by the subsequent sub-sections of this section.

"(2) If and whenever and so often as the Government makes and publishes a proclamation declaring that the powers conferred by this part of this Act are necessary to secure the preservation of public peace and order and that it is expedient that this part of this Act should come into force immediately, this part of this Act shall come into force forthwith.

"(3) If at any time while this part of this Act is in force the Government makes and publishes a proclamation declaring that this part of this Act shall cease to be in force, this part of this Act shall forthwith cease to be in force.

"(4) Whenever the Government has made and published a proclamation under the second subsection of this section, it shall be lawful for Dail Eireann, at any time while this part of this Act is in force by virtue of such proclamation, to pass a resolution annulling such proclamation, and thereupon such proclamation shall be annulled and this part of this Act shall cease to be in force, but without prejudice to the validity of anything done under this part of this Act after the making of such proclamation and before the passing of such resolution.

"(5) A proclamation made by the Government under this section shall be published by publishing a copy thereof in the Iris Oifigiuil and may also be published in any other manner which the Government shall think proper."

"4. (1) Whenever a Minister of State is of opinion that any particular person is engaged in activities

which, in his opinion, are prejudicial to the preservation of public peace and order or to the security of the State, such Minister may by warrant under his hand and sealed with his official seal order the arrest and detention of such person under this section.

"(2) Any member of the Gárda Síochána may arrest without warrant any person in respect of whom a warrant has been issued by a Minister of State under the foregoing sub-section of this section.

"(3) Every person arrested under the next preceding sub-section of this section shall be detained in a prison or other place prescribed in that behalf by regulations made under this part of this Act until this part of this Act ceases to be in force or until he is released under the subsequent provisions of this part of this Act, whichever first happens.

"(4) Whenever a person is detained under this section, there shall be furnished to such person, as soon as may be after he arrives at a prison or other place of detention prescribed in that behalf by regulations made under this part of this Act, a copy of the warrant issued under this section in relation to such person and of the provisions of sec. 8 of this Act.

"(5) Every warrant issued by a Minister of State under this section shall be in the form set out in the schedule to this Act or in a form to the like effect."

"8. (1) As soon as conveniently may be after this part of the Act comes into force, the Government shall set up a commission (in this section referred to as the commission) to perform the functions imposed upon the commission by this section.

"(2) The following provisions shall apply and have effect in relation to the commission, that is to say:

"(*a*) The members of the commission shall be appointed and be removable by the Government;

"(*b*) The commission shall consist of three persons of whom one shall be a commissioned officer of the defence forces with not less than seven years' service and each of the others shall be a barrister or solicitor of not less than seven years' standing or be or have been a judge of the Supreme Court, the High Court, or the Circuit Court or a justice of the District Court;

"(*c*) There may be paid out of moneys provided by the Oireachtas to any member of the commission such (if any) fees or remuneration as the Minister for Finance shall determine.

"(3) Any person who is detained under this part of this Act may apply in writing to the Government to have the continuation of his said detention considered by the commission, and upon such application being so made the following provisions shall have effect, that is to say:

"(*a*) The Government shall, with all convenient speed, refer the matter of the continuation of such person's detention to the commission;

"(*b*) The commission shall inquire into the grounds of such person's detention and shall, with all convenient speed, report thereon to the Government;

"(*c*) The Minister for Justice shall furnish to the commission such information and documents (relevant to the subject-matter of such inquiry) in the possession or procurement of the Government or of any Minister of State as shall be called for by the commission;

"(*d*) If the commission reports that no reasonable grounds exist for the continued detention of such person, such person shall, with all convenient speed, be released."

Mr. MacBride's first series of arguments was based upon the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe which was signed at Rome on 4 November 1950 by the Minister for External Affairs, confirmed and artified by the Government of Ireland on 18 February 1953, and laid before Dail Eireann on 29 March 1954. In the instrument of ratification the Government of Ireland undertook faithfully to perform and carry out all the stipulations of the Convention. Mr. MacBride contended:

(*a*) That the State, through the Government, having become a party to, and having confirmed and ratified the Convention and having undertaken faithfully to perform and carry out all the stipulations therein contained (subject to a reservation not now material contained in the instrument of ratification) it was not open to the Government to rely on powers which are in violation of that convention; and

(*b*) In the alternative, that since the 3rd day of September 1953, the date upon which the convention entered into force, the Offences against the State Acts, 1939 and 1940, and decisions relating thereto, must be construed so as to avoid violating the said convention solemnly entered into and ratified by the State.

The provisions of the convention on which Mr. MacBride relied are as follows:

"*Art. 1.* The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this convention."

Section I includes the following articles:

"*Art. 5.* (1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

"(1)(*c*) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

"(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

"(3) Everyone arrested or detained in accordance with the provisions of paragraph 1 (*c*) of this article shall be brought promptly before the judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

"(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is now lawful.

"*Art. 6.* (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Mr. MacBride submitted that article 5 of the Convention had been violated, for two reasons — firstly, because sec. 4 of the Act of 1940 authorizes detention of a kind not provided for in section 1 of the article and secondly, because the Commission established under sec. 8 of the Act of 1940 is not a tribunal of the character specified in sec. 3 of the article. He submitted in the alternative, that detention under sec. 4 of the Act of 1940 was not a violation of article 5 of the Convention if it could be regarded as falling within the middle limb of section (1) (*c*) of the article, viz. detention reasonably considered necessary to prevent the commission of an offence. He also submitted that the functions of the Commission established under sec. 8 of the Act of 1940 could likewise be regarded as not being in violation of sec. 3 of article 5 of the Convention if sec. 8 be construed as entitling the person detained to a judicial trial.

Ireland has a written, rigid constitution which came into force on 29 December 1937, having been enacted by the people on 1 July 1937. Article 29 of the constitution deals with "International Relations". Mr. MacBride relied upon sections 1 and 3 of article 29, which are as follows:

"1. Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality.

"3. Ireland accepts the generally recognized principles of international law as its rule of conduct in its relations with other States."

These provisions, Mr. MacBride submitted, reproduce the pre-existing common law, and by the common law, he said, those principles which were commonly accepted as binding by civilized nations became part of the domestic law unless they could be shown to be contrary to it. He referred to the English authorities: [*West*] *Rand Central Gold Mining Co.* v. *The King* 1905 2 K.B. 391 at 406-407; *Chung Chi Cheung* v. *The King* 1939 A.C. 160. From the latter case he cited in particular this passage from the speech of Lord Atkin (p. 167):

"So far, at any rate, as the courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own domestic law. There is no external power that imposes its rules upon our own code of substantive law or procedure. The courts acknowledge the existence of a body of rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what the relevant rule is, and having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals."

Sections 1 and 3 of article 29 of the constitution clearly refer only to relations between States and confer no rights on individuals; they can in no way assist Mr. MacBride's argument.

Nor is Mr. MacBride's submission aided by what he says is the position at common law, as set out in Lord Atkin's speech. Inconsistency with municipal law is there stated to be a ground upon which the common law rejects the principles of international law. Mr. MacBride submits that the Act of 1940 is inconsistent with the provisions of the Convention. If it is then clearly by the common law principles relied upon the Act prevails over the Convention. When the domestic law makes its own provisions it cannot be controlled by any inconsistent provisions in international law: *Mortensen* v. *Peters* 14 Sc. L.T. 227, 8 sess. cases 93. The principle of incorporation upon which Mr. MacBride relies applied to such parts of international law as are based on universally recognized custom and not to such parts as depend upon convention.

The insuperable obstacle to importing the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms into the domestic law of Ireland — if they be at variance with that law — is however the terms of the constitution of Ireland. By article 15 (2) 1° of the constitution it is provided that "the sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State." Moreover, article 29, the article dealing with international relations, provides at section 6 that "no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas".

The Oireachtas has not determined that the Convention of Human Rights and Fundamental Freedoms is to be part of the domestic law of the State, and accordingly this court cannot give effect to the Con-

vention if it be contrary to domestic law or purports to grant rights or impose obligations additional to those of domestic law.

No argument can prevail against the express command of sec. 6 of article 29 of the constitution before judges whose declared duty it is to uphold the constitution and the laws.

The court accordingly cannot accept the idea that the primacy of domestic legislation is displaced by the State becoming a party to the Convention for the Protection of Human Rights and Fundamental Freedoms. Nor can the court accede to the view that in the domestic forum the executive is in any way estopped from relying on the domestic law. It may be that such estoppal might operate as between the High Contracting Parties to the Convention, or in the court contemplated by section IV of the Convention if it comes into existence, but it cannot operate in a domestic court administering domestic law. Nor can the court accept the contention that the Act of 1940 is to be construed in the light of and so as to produce conformity with a convention entered into ten years afterwards. The intention of the Oireachtas must be sought in the conditions which existed when it became law.

The court must therefore reject Mr. MacBride's first series of arguments.

In the course of the arguments reference was made to the provisions in article 15 of the Convention for a High Contracting Party derogating from its obligations under the Convention in certain circumstances viz., "time of war or other public emergency threatening the life of the nation". Mr. MacBride said these circumstances were to be equated with the circumstances specified in article 28.3.3° of the constitution as warranting legislation in derogation of constitutional rights viz., "time of war or armed rebellion" or "national emergency . . . affecting the vital interests of the State" arising out of an armed conflict in which the State was not a participant. The circumstances under which part 11 of the Act of 1940 may be brought into force (part 11 was not in operation at the time of the signing of the Convention for the Protection of Human Rights and Fundamental Freedoms) are a declaration by the Government, by proclamation, that the powers conferred by part 11 are necessary to secure "the preservation of public peace and order". The latter circumstances Mr. MacBride submitted were not such as would justify notice of derogation under article 15 being given.

In the view which the court takes of the status of the Convention of Human Rights and Fundamental Freedoms under our municipal law it has not been necessary for the court to enter into this question, and the court does not express any opinion upon it. For the same reason, the court does not find it necessary to express any opinion on the question whether the provisions of the Act of 1940 are in violation of the Convention. The court has not examined nor has it been invited to examine whether in fact circumstances exist which would justify notice of derogation under article 15.

There remain for consideration the six other grounds which Mr. MacBride put forward in support of the applicant's appeal.

The first of these grounds is that part 11 of the Act of 1940 (under which the applicant is detained) is not in operation and cannot be brought into operation because of defect of form in the Act.

Part 11 of the Act of 1940 commences at sec. 3: subsections (1), (2) and (5) have already been quoted but it is convenient to quote them again, are as follows:

"(1) This part of this Act shall not come into force save as and when and for so long as is provided by the subsequent sub-sections of this section.

"(2) If and whenever and so often as the Government makes and publishes a proclamation declaring that the powers conferred by this part of this Act are necessary to secure the preservation of public peace and order and that it is expedient that this part of this Act shall come into force immediately this part of this Act shall come into force forthwith."

"(5) A proclamation made by the Government under this section shall be published by publishing a copy thereof in the Iris Oifigiuil and may also be published in any other manner which the Government shall think proper."

Mr. MacBride submitted that because of the omission of an express power to make a proclamation in the terms of sub-section (2) it was not possible to bring part 11 of the Act into force. He gave as examples of an enabling provision s. 35(2) of the Offences against the State Act 1939 (No. 13/1939), since repealed, and section 1 (1) of Public Safety Emergency Powers Act, 1926 (No. 42/1926).

In the opinion of the court sec. 3 of the Act of 1940 clearly authorizes the making of a proclamation if and when the Government consider the situation exists requiring it. When a statute provides that certain consequences follow if and when an act is done, power to do that act is given. Many parallels could be quoted. One is the provision of article 28.3.3° of the constitution. Article 28 does not provide that each house of the Oireachtas may pass the resolution referred to in the article, but merely enacts that certain consequences shall follow when they do so. No one can doubt that the houses of the Oireachtas are given power to bring the provisions of the article into effect by passing the resolutions. This submission is wholly unsustainable.

The next ground of appeal is that the applicant was entitled to be released at the expiration of 48 hours from his arrest. Section 30 of the Offences against the State Act 1939 (No. 13/1939) is relied upon. The applicant was first arrested under this section. The

section authorizes detention for a period of 24 hours and, if an officer of the Gárda Síochána not below the rank of chief superintendent so directs, for a further period of 24 hours. A direction was given extending the applicant's detention. Sub-section (4) then provides that a person so detained "may at any time during such detention be charged before the district court or a special criminal court with an offence and shall if not so charged be released at the expiration of the detention authorized . . ." The applicant was not at any time during such detention charged with an offence. Mr. MacBride submitted that the provision in sub-section 4 for release was in the circumstances mandatory.

The period of 48 hours' detention authorized under sec. 30 of the Act of 1939 was due to expire at 7.45 o'clock on the afternoon of 13 July 1957. At 6 o'clock on the morning of the same day Detective-Sergeant Connolly attended at the Bridewell Gárda station where the applicant was being detained and took the applicant into his custody. The detective-sergeant's instructions were to remove the applicant from the Bridewell Gárda station in order to have him conveyed to the military detention camp at the Curragh for detention there.

The applicant's detention under sec. 30 then ceased. He was thereafter detained under the authority of the Minister's warrant. Whether or not the detention under sec. 30 continued until 7.45 o'clock on 13 July 1957 is immaterial. At that moment he was already detained under another and continuing authority viz: the Minister's warrant; and it is that warrant which is relied upon as justifying the applicant's detention. It frequently happens that a convicted person is imprisoned under two warrants for different terms of imprisonment. When the warrant for the shorter term of imprisonment expires the convicted person is not entitled to be released but his imprisonment is properly continued under the second warrant.

The applicant's next ground of appeal is a challenge to the validity of the Minister's warrant. It is submitted on the applicant's behalf that sec. 4 of the Act of 1940 authorizes only the detention of persons who had been arrested under the section. The submission is rested upon sub-section (3) of sec. 4 which is in these terms: "Every person arrested under the next preceding sub-section of this section shall be detained in a prison or other place prescribed in that behalf by regulations made under this part of this Act until this part of this Act ceases to be in force, or until he is released under the subsequent provisions of this part of this Act whichever first happens." The preceding sub-section, sub-section (2) permits of an arrest without warrant by any member of the Gárda Síochána of any person in respect of whom a warrant has been issued by a Minister of State under sub-section 1.

In our opinion the applicant's submission is based upon a misconstruction of sec. 4. Sub-section (3) has for its subject matter the place and duration of detention. The power to arrest and detain is conferred by sub-section 1 of the section, cited earlier. This power is to be read distributively. There is power to arrest and a power to detain. Where a person is already in custody under a conviction or other authority an arrest — save in a formal sense — may not be possible. But the power to detain is not therefore done away with. On the contrary, the power to detain is the substantive power; the power to arrest is ancillary.

Moreover, a transfer of custody of a person by an authority holding under one order or warrant to an authority claiming to receive and hold that person under another order or warrant is, in the opinion of the court, an arrest by that latter authority.

The applicant's next ground of appeal is that his arrest at the Bridewell Gárda station under the Minister's warrant was unlawful because he was not told the reason for it. The arrest was made without a warrant being produced. Sub-section 2 of section 4 authorizes such arrest provided the Minister's warrant has been issued. Sub-section 4 of section 4 however requires that a copy of the warrant shall be furnished to a person detained under the section as soon as may be after he arrives at the prescribed place of detention. Counsel for the respondent submitted that it was sufficient to comply with the requirement of sub-section 4 and that this requirement was of itself an indication that no more was necessary for a lawful arrest under section 4. We accept it as settled law that in the case of an arrest without the production of a warrant the arrest will not be lawful unless the person being arrested is told why he is being arrested or unless he otherwise knows. (See *Christie* v. *Leachinsky* 1947 A.C. 573 at 587). The reason for the rule is not far to seek. Arrest must be for a lawful purpose; and since no one is obliged to submit to an unlawful arrest the citizen has a right before acquiescing in his arrest to know why he is being arrested. The court sees nothing in section 4 of the Act of 1940 which manifests an intention on the part of the Oireachtas to modify this wholesome rule of law; and accordingly the court is of opinion that a person arrested under a Minister's warrant must be told that such a warrant exists and that he is being arrested and will be detained under it.

But can this avail the applicant? Firstly, he has not established that he did not know why he was being arrested at the Bridewell Garda station. Secondly, a *prima facie* case is not made out that he was not told why he was being arrested. The point he makes in his affidavit about his arrest at the Bridewell Gárda station is that he was not told where he was being taken and not that he was not told and did not know why he was taken in custody by the detective-sergeant. In contrast with this the applicant in his account of his arrest in Dun Laoire two days earlier 11 July, says forthrightly that no reason was given to him for the arrest. In the case of that arrest the respondent was in a position to file an affidavit

in reply and he did so. It is enough, however, to say that the applicant has not laid the ground for challenging the lawfulness of the arrest at the Bridewell Gárda station. Moreover, an invalidity in the arrest would not render the subsequent detention under the Minister's warrant unlawful thought it might give the applicant other rights in respect of the period from the arrest until the warrant was produced and shown to him.

The applicant's next ground of appeal was that the High Court misdirected itself in law in not holding that the Minister should have made an affidavit to prove that he did in fact entertain the opinion set out in his warrant, viz. that the applicant was engaged in activities which in the Minister's opinion were prejudicial to the security of the State.

Mr. MacBride said that he did not question the Minister's bona fides; but, he went on, the applicant's affidavit had so challenged the basis for the Minister's opinion that an inquiry into the truth of the respondent's return was called for under sec. 3 of the Habeas Corpus Act, 1816.

Counsel for the respondent accepted for the purpose of his argument that the Act of 1816 applies. But section 3 of the Act is an enabling not a mandatory provision. As an enabling provision sec. 3 would permit, if the court thought fit, an inquiry as to whether the Minister did in fact entertain the opinion he states in his warrant. But Mr. MacBride since he has said he does not question the Minister's bona fides makes no point about the existence of the Minister's opinion. His real purpose, it appears, is to seek in these proceedings to question the validity of the Minister's opinion. The applicant swore in his affidavit that he was not engaged in illegal activities at the time of his arrest. The applicant's assertion, Mr. MacBride submitted, puts the Minister on proof that the applicant was a person to whom section 4 of the Act of 1940 applied. What Mr. MacBride seeks to do cannot be done. In the course of its consideration of the Offences against the State (Amendment) Bill, 1940, before it became law (1940) I.R. 470, this court had occasion to consider the meaning of section 4. Chief Justice Sullivan, delivering the judgement of the court said: "The only essential preliminary to the exercise by the Minister of the powers contained in sec. 4 is that he should have formed opinions in the matters specifically mentioned in the section. The validity of such opinions cannot be questioned in any court" (p. 479).

Mr. MacBride wishes to do precisely what in 1940 the court said cannot be done.

Moreover, attention has been called by counsel for the respondent to the form of the applicant's assertion. The applicant did not say he was not engaged in activities of the kind specified in the Minister's warrant, but merely that he was not engaged in such activities when he was arrested. Even if the validity of the Minister's opinion were examinable, the applicant, it may be said, has not laid the ground for such an examination.

On this branch of his argument, Mr. MacBride cited from the speech of Lord Atkin in the English cases of *Liversidge* v. *Anderson* 1942 A.C. 206, and *Greene* v. *Secretary of State for Home Affairs* 1942 A.C. p. 284. *Liversidge's Case*, it will be recalled, was an action for false imprisonment, and *Greene's Case* was an *habeas corpus* application. Liversidge had been detained under regulation 18B of the Defence (General) Regulations, 1939, and the question was whether the Home Secretary should be ordered to furnish particulars of the grounds upon which he made an order for Liversidge's detention. Regulation 18B authorized the Home Secretary to order detention *if he had reasonable cause to believe* any person to be of hostile associations and that by reason thereof it was necessary to exercise control over him. Lord Atkin, contrary to the view of the majority of the House, was of opinion that particulars should be ordered.

In *Greene's Case* the Home Secretary had sworn an affidavit showing cause, and, as Lord Atkin said (p. 246) he appeared to be ready to meet the allegation of absence of reasonable cause. Lord Atkin's colleagues however were of opinion that it was unnecessary for the Home Secretary to make an affidavit, because the question whether or not the cause which moved the Home Secretary to order detention was reasonable could not be examined by the courts.

Lord Atkin's view, on the other hand, was that "reasonable cause" for a belief had always been treated as an objective fact to be proved by one or other party and to be determined by the appropriate tribunal (p. 288).

Mr. MacBride says Lord Atkin's reasoning supports his submission that the Minister must make an affidavit. Mr. MacBride's submission, however, ignores the reason why Lord Atkin thought an affidavit was necessary in *Greene's case* and that particulars should be delivered in *Liversidge's Case*. Lord Atkin regarded "reasonable cause" for a belief as an objective fact, examinable and triable like any other fact. The contrast he drew was between "reasonable cause" for a belief and "mere belief" that a fact exists. His difference with his brethren was as to the construction of regulation 18B. The Act of 1940 does not require a Minister of State to have "reasonable cause" for his belief: he is authorized to act on his opinion. "Mere belief" is enough. Lord Atkin clearly regarded "mere belief" as a subjective state which was not examinable or triable by a court.

It remains to consider the applicant's last ground of appeal — namely, that the Commission set up under section 8 of the Act of 1940 having failed and neglected properly to discharge its functions in a number of matters materially affecting the applicant's rights, the applicant is now deprived of his only safeguard against indeterminate imprisonment and accordingly is not detained in accordance with law and is entitled to his liberty.

Having regard to our decision that the appellant is lawfully detained under the warrant of the Minister, and that this warrant is lawful and valid, it is difficult to see how the matters relied upon in support of this ground of appeal can be raised on an application for an order of *habeas corpus*. However, as a considerable part of the argument of counsel for the appellant was directed to this ground of appeal it is necessary that it should be examined in detail.

As has been stated earlier, the applicant, acting by his solicitor, Mr. P. C. Moore, on 8 September 1957, applied by letter to the Secretary of the Government to have his detention inquired into by the commission set up by the Government under sec. 8 of the Act of 1940. The third and fourth paragraphs of Mr. Moore's letter were as follows: "I would like to make it clear that my client's application is put forward on the condition that he be legally represented at the proposed inquiry by his solicitor and counsel and that his legal representative be accorded the usual rights regarding the production of documents, the right to cross-examine state witnesses, the right to sub-poena witnesses and all the usual rights and privileges enjoyed by legal representatives in a court of law.

"I consequently would be obliged if you would inform me at your earliest convenience of the date of the proposed inquiry and the venue where same will be held, and I also require before the hearing a summary of the evidence which it is proposed to produce against my client on behalf of the State."

The assistant secretary to the Government, by letter dated 11 September 1957, replied that the Government had referred the matter of the *continuation of the detention* of Mr. O'Laighleis (the phraseology of sub-section (3) of section 8 of the Act) to the Commission. The letter then continued: "I am to point out that, in the Act, there is no provision for entertaining such applications subject to conditions imposed by the applicant. While the manner of conducting the inquiry is for the Commission to settle, I am to say that the third and fourth paragraphs of your letter appear to be based on a mistaken view of the statutory position. Copies of your letter and the application have been forwarded to the Commission."

As stated earlier, the Commission, when it sat on 17 September, after argument, announced certain rulings on procedure.

Mr. MacBride thereupon on behalf of the applicant submitted that his client's interests had already been gravely prejudiced by the transmission to members of the Commission of some anonymous documents marked "secret and confidential" the original of which was undisclosed and the authenticity of which was unsubstantiated and said that unless the applicant's legal advisers were made aware of all the evidence tendered to the Commission to justify the detention of the applicant it would be impossible for them to discharge their duty to the applicant. He requested the Commission to divest itself of the documents forthwith and to refuse to read them or act upon them unless and until they had been duly proved and made available to the applicant's legal advisers. The Commission then adjourned to Friday 20 September.

On the day following the adjournment 18 September Mr. MacBride moved for and obtained in the High Court a conditional order of *habeas corpus* on, among other grounds, the ground that part 11 of the Act of 1940 was not in force and accordingly that the Commission had not been lawfully constituted. In these circumstances the Commission when it sat on 20 September thought fit to adjourn its sittings until the legality of its constitution had been ruled upon in the High Court proceedings although Mr. MacBride requested them to proceed with the inquiry.

The application is still before the Commission. The Commission has not yet inquired into the grounds of his detention. So far the Commission has concerned itself only with procedural matters, and even if it were to be shown that the Commission's rulings on those questions were wrong that would not render the applicant's detention unlawful. The applicant is not detained by virtue of anything the Commission has done but under the Minister's warrant and the applicant's challenge to the validity of the warrant has not been sustained.

While a case is at hearing in the court erroneous rulings on procedural matters cannot ground an application for *habeas corpus*. An examination of sec. 8 of the Act of 1940 shows that the Commission set up under the section is not a court, and an application to the Commission is not a court proceeding. It is what the section says it is and no more — an inquiry. The Commission's only duty is to inquire into the grounds of detention and to report thereon to the Government.

The Commission is entitled to have before it such information and documents (relevant to the subject matter of its inquiry) in the possession of procurement of the Government or of any Minister of State, as it shall call for. The requirement of the statute is that such information and documents shall be furnished to the Commission for the purpose of its inquiry. The statute does not require the Commission to disclose to the applicant such information or documents.

It having been determined that the provisions of the Act are not repugnant to the constitution the only matter with which this court is concerned is the meaning and intendment of sec. 8. The section contemplates an inquiry which is entirely of an administrative character and the applicant's submissions have proceeded on the wrong basis that the Commission is a court.

This ground of appeal, together with applicant's other grounds of appeal fails. Accordingly his appeal must be refused and the order of the High Court allowing the cause shown affirmed.

ISRAEL

HUMAN RIGHTS IN ISRAEL IN 1959[1]

I. LEGISLATION

1. The year of 1959 was another year of general elections, both to the Knesset, the national legislature, and to the local and municipal councils. The laws regarding election procedure were brought into line with the Basic Law on the Knesset[2] and generally consolidated.[3] To simplify and accelerate election procedures, a permanent register of voters in Knesset elections was established.[4] Special legislation was enacted to ensure the proper and ethical conduct of the elections,[5] both national and local.[6] The campaigning restrictions under the law apply during a period of 150 days before, and on, the day of elections;[7] among them are prohibitions of election propaganda by the use of ships or aircraft,[8] films,[9] or mobile loudspeakers.[10] Nor may election propaganda be accompanied by theatrical, musical or artistic performances, or by torch-bearing; or by the distribution of gifts, including drinks or foodstuffs other than in private houses.[11] The display of posters is subject to detailed regulation with regard to the places where they may be affixed, their sizes, forms, and contents[12] — so as to avoid the accumulation in public places of filth and refuse, to prevent slanderous abuses of campaigning, and to protect private property from trespass. No campaigning may be conducted by or on behalf of a political party in such a manner as to obstruct the campaigning of any other political party;[13] and all parties participating in the elections are assured adequate campaigning accommodation in public halls[14] and equal broadcasting time over the radio networks.[15] The chairman of the General Elections Committee (who is a justice of the Supreme Court)[16] shall publish, at prescribed intervals before the elections and on election day, in all daily newspapers and over the radio and in such additional manner as he may think fit, a statement "which will bring home to the voters that they have the right to vote according to their free choice and to their own conscience, and which will explain in detail the provisions of the law destined to assure the freedom, the secrecy, and the integrity of the elections".[17] The penalty for any infringement of these campaigning restrictions is six months' imprisonment or a fine of I£10 or both.[18]

2. The law relating to the civil service was enriched by two acts of legislation, one to govern the selection and appointment of civil servants,[19] and the other to restrict their political activity.[20] Under the former, a Commissioner of Civil Service is appointed by the Cabinet who shall be responsible to, and subject to the supervision of a Civil Service Commission composed of seven members, three of whom are members of the public and not civil servants.[21] All appointments to the civil service are to be made by the Commissioner,[22] and individual ministers are no longer empowered to make appointments even within the ministries of which they are in charge. No appointment is to be made unless the post to be filled was approved of by the Commissioner or the Commission as part of the establishment of the department concerned,[23] the vacancy was duly published,[24] and the appointee passed the tests and examinations to be prescribed under the law, with the best marks.[25] A candidate for appointment may

[1] Note kindly furnished by Justice Haim Cohn, Supreme Court of Israel, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] See *Yearbook on Human Rights for 1958*, p. 121.

[3] Elections to the Knesset Law, 5719-1959, published by the Minister of Justice under the authority of the Elections to the Knesset (Amendment) Law, 5719-1959, as a consolidated version of the Law with all Amendments thereto, on 19 April 1959 (*Sefer Ha-Hukim* 281 p. 114).

[4] Knesset Voters Register Law, 5719-1959, passed on 6 January 1959 (*Sefer Ha-Hukim* 369 p. 24).

[5] Elections (Campaigning) Law, 5719-1959, passed on 6 July 1959 (*Sefer Ha-Hukim* 284 p. 138).

[6] Section 1, ibid.

[7] Section 2, ibid.

[8] Section 3, ibid.

[9] Section 5, ibid.

[10] Section 4, ibid.

[11] Section 8, ibid.

[12] Sections 6, 7, 9 and 10, ibid.

[13] Section 13, ibid.

[14] Section 14, ibid.

[15] Section 15, ibid.

[16] Section 11, Elections to the Knesset Law, 5719-1959.

[17] Section 16, Elections (Campaigning) Law, 5719-1959.

[18] Section 17, ibid.

[19] State Service (Appointments) Law, 5719-1959, passed on 6 April, 1959 (*Sefer Ha-Hukim* 279 p. 86).

[20] State Service (Party Activity and Fund-raising Restrictions) Law, 5719-1959, passed on 4 August 1959 (*Sefer Ha-Hukim* 289 p. 190).

[21] Sections 6 and 7, State Service (Appointments) Law, 5719-1959.

[22] Section 17, ibid.

[23] Sections 13 to 15, ibid.

[24] Sections 19 and 20, ibid.

[25] Sections 24 to 28, ibid.

be disqualified as a result of medical examinations, but the special provisions of other laws regarding the employment of war invalids remain unaffected.[1] Members of the same family, in degrees of relationship to be prescribed by the Commission, may not occupy managerial or executive posts in the same department.[2] A civil servant is required to make a solemn declaration, before taking up his duties, that he will be loyal to the State and obey its laws and faithfully and honestly discharge all duties incumbent upon him as a civil servant.[3] He is further required to file, at such times and intervals as may be prescribed by rules, declarations of his property and the property of all members of his household, including his and their debts; any information obtained by any person as a result of any such declaration may not be disclosed except where such disclosure is prescribed or authorized by law.[4] A civil servant must possess Israeli nationality.[5] A candidate for appointment, however otherwise qualified, may be disqualified at the discretion of the Commissioner if he has a criminal record or has used improper means to obtain his appointment;[6] and any misrepresentations for the purpose of obtaining an appointment are made a criminal offence.[7] The law does not apply where a person is engaged for state service as a labourer on a daily basis,[8] or — with the approval of the Commissioner — as an employee for a temporary specified work or on the basis of a special contract.[9] Nor does the law apply where the appointment is for the exercise of a given statutory power, and the appointee is not, by vesting that power in him, made a civil servant.[10] The law is to be read in conjunction with, and not in derogation of, the Labour Services Law, 5719-1959.[11]

The State Service (Party Activity and Fund-raising Restrictions) Law, 5719-1959, prohibits holders of such offices in the civil service as may be prescribed by the Cabinet,[12] from being active members of the executive organs of a political party or other political organization, from organizing and presiding over political public meetings or participating in political demonstrations, and from campaigning in the elections for the Knesset or for local or municipal councils.[13] In case of doubt, the question whether any organization is a political party or other political organization for the purpose of the law, is determined by the Cabinet.[14] A civil servant may not, save as specifically authorized by the Cabinet by resolution gazetted in the Reshumot, raise or receive moneys except on behalf of the treasury of the State.[15] Any contravention of the law is a disciplinary offence only.[16]

3. In the field of labour legislation, the major opus of the year of 1959 was the Labour Services Law, 5719-1959,[17] nationalizing the labour exchanges which had theretofore been owned and conducted by the various labour federations (trade unions). The new Labour Service established by the law is subject to the general supervision and control of the Minister of Labour;[18] its objects are to collect information on, and regulate, the labour market; to seek employment for the unemployed; to maintain labour exchanges which will provide labour to employers; and to co-operate with other bodies for the promotion of professional and technical education.[19] In several specified trades, no labourer may be engaged for work except through a labour exchange, unless the labourer is a member of the employer's family;[20] any person is entitled to register with a labour exchange as a labourer, and, if he is found duly qualified, he is provided with a place of work in due order of precedence as prescribed by rules.[21] A labour exchange may not discriminate between persons seeking employment on account of age, sex, race, religion, nationality, origin, beliefs or party affiliation, and no employer may refuse to employ any person for any such reason; provided that the character or type of the work concerned, or the interests of state security, do not require some such discrimination.[22] A person aggrieved or discriminated against by any act or decision of a labour exchange may appeal to an appeal board which is presided over by a district court judge.[23] A labour exchange will not provide labour, but an employer may engage labourers otherwise than through the labour exchange, in cases of strikes or lockouts, so long as the strike or lockout continues.[24] Private labour exchanges or agencies are not prohibited, but require a licence from the Minister of Labour; and no

[1] Sections 29 to 32, ibid.

[2] Section 33, ibid.

[3] Section 34, ibid.

[4] Sections 35 and 36, ibid.

[5] Section 16, ibid.

[6] Section 46, ibid.

[7] Section 45, ibid.

[8] Section 2(7), ibid.

[9] Sections 37 to 40, ibid.

[10] Section 43, ibid.

[11] Infra, para. (3); section 42, ibid.

[12] For the time being, the Cabinet directed that the law be applied to holders of the three highest grades in the Civil Service and several specified offices requiring contact with the general public: Resolution gazetted 11 October 1959.

[13] Section 1, State Service (Party Activity and Fund-raising Restrictions) Law, 5719-1959.

[14] Section 2, ibid.

[15] Sections 5 to 7, ibid.; such special authorization was given by the Cabinet to fund-raising on behalf of several institutions of learning, such as the Hebrew University of Jerusalem.

[16] Section 8, ibid.

[17] Passed on 13 January 1959 (*Sefer Ha-Hukim*) 270, p. 32). English and French translations of the law have been published by the International Labour Office as *Legislative Series* 1959 — Isr. 1.

[18] Sections 1 and 6, Labour Services Law, 5719-1959.

[19] Section 2, ibid.

[20] Sections 32 to 35, ibid.

[21] Sections 39-41, ibid.

[22] Section 42, ibid.

[23] Section 43, ibid.

[24] Section 44, ibid.

such licence may be issued for a labour exchange or agency operating in any of the specified trades in which the mediation of the official labour exchange is obligatory.[1] A private labour exchange or agency may not provide labour or labourers from or for abroad, unless specifically so authorized.[2] Officers of the Ministry of Labour and of official labour exchanges have a limited right of search and investigation for the purpose of carrying the law into effect, but any information obtained by them must be kept secret.[3]

4. In the field of commercial law, the Restrictive Trade Practices Law, 5719-1959[4] should be mentioned, under which restrictive trade agreements require registration with a registrar to be appointed for the purpose, and approval by a Restrictive Trade Supervision Board composed of five members and presided over by a district court judge.[5] A restrictive trade agreement is any arrangement restricting any party thereto with regard to the price or consideration to be offered or asked for any commodity or service; or to the profit to be derived; or to other conditions, scope, quantity, or quality, of any trade or merchandise; or to the persons or groups or classes of persons to be traded with; or to the place where any trade is carried on; or to the investment to be made in any trade.[6] For the purposes of the law, "trade" includes the production of goods, their purchase and their sale, and any services, works or operations.[7] An agreement containing only such restrictive provisions as are allowed or prescribed by any law is not a restrictive trade agreement within the meaning of the law;[8] nor is an agreement providing for restrictive users of patents, designs, merchandise marks or copyrights;[9] nor are restrictions imposed by a trade union on its members with regard to their working conditions.[10] Also exempted from the operation of the law are restrictive trade agreements between producers or marketers of certain agricultural products;[11] and between a producer of goods and his sales agent,[12] and between corporations in all of whom the State has a controlling interest, or between corporations controlled by each other or the same majority shareholders.[13] Upon registration of a restrictive trade agreement, a provisional permit may be given to carry it into effect,[14] pending the approval thereof by the Board; the Board shall give the parties to the restrictive trade agreement and any person opposing it, an opportunity to be heard;[15] and it shall not give its approval to the restrictive trade agreement unless satisfied that it is in the public interest.[16] The law enumerates some of the considerations which the Board may bear in mind for the purpose of determining whether any such agreement is in the public interest: where, for instance, the restrictions are calculated to secure the required expert knowledge in the purchase, use, or installation of certain goods or services; or where the restrictions result in an advantage to the public which could not otherwise be attained; or where it is intended to prevent some other person from restricting free competition; or where the regular and orderly supply of any commodity or service could not otherwise be secured; or where the restrictions result in greater efficiency or lesser cost of the production of any goods or services.[17] An appeal lies to the Supreme Court sitting as high court of justice on any decision of the Board.[18] The approval by the Board of any restrictive trade agreement does not affect any cause of action accruing to any person owing to the making of the agreement or its execution.[19] The carrying into effect of a restrictive trade agreement without a provisional permit or without the Board's approval is made not only a criminal offence, but also a cause of action for damages in favour of any person who has suffered any damage as a result thereof.[20]

5. The Water Law, 5719-1959[21] declared all water sources in the State to be public property, under the control of the State, so as to meet the needs of all its inhabitants, and to promote the development of the country.[22] Water sources include springs, streams, rivers, lakes and other water reservoirs, whether natural or artificial, and whether above the earth or subterranean.[23] Every person is entitled to receive and use water according to his needs, subject to the provisions of the law;[24] but any rights a person has in land does not confer on him any right to any water source in or on that land.[25] All rights to water are subject to the duty to observe economy and efficiency in using it, to keep all water installations clean and in good repair, and to prevent the blocking or draining or impurifying of any water source.[26] Persons whom the law deprived of water sources from which they

[1] Sections 62 to 64, ibid.
[2] Section 65, ibid.
[3] Sections 73 to 76, ibid.
[4] Passed on 28 July 1959 (*Sefer Ha-Hukim* 286, p. 152).
[5] Sections 13 and 18, Restrictive Trade Practices Law, 5719-1959.
[6] Section 2, ibid.
[7] Section 1, ibid.
[8] Section 5, ibid.
[9] Section 6, ibid.
[10] Section 7, ibid.
[11] Section 8, ibid.
[12] Section 10, ibid.
[13] Section 9, ibid.
[14] Section 19, ibid.
[15] Section 27, ibid.
[16] Section 25, ibid.
[17] Section 28, ibid.
[18] Section 36, ibid.
[19] Section 46, ibid.
[20] Sections 42 to 45, ibid.
[21] Passed on 3 August 1959 (*Sefer Ha-Hukim* 288, p. 169).
[22] Section 1, Water Law, 5719-1959.
[23] Section 2, ibid.
[24] Section 3, ibid.
[25] Section 4, ibid.
[26] Section 9, ibid.

derived any benefit or the value of whose land has decreased owing to the divesting them of their rights in the water sources, are entitled to compensation;[1] failing agreement between the claimant and the Water Board, the amount of compensation is determined by a Water Tribunal,[2] composed of a judge as chairman and two non-legal members.[3] The same tribunal also exercises jurdiction whenever a dispute arises betwee the Water Commissioner or the Water Board, appointed under the law, and any producer, supplier, or consumer of water.[4] The decision of the tribunal is appealable to the Supreme Court.[5] A decision of the Watcr Commissioner or the Water Board may not be executed until after the expiration of five days from the date of its notification to the person affected thereby so as to give him opportunity to obtain from the tribunal an order staying the execution pending the proceedings before the tribunal.[6]

6. The revision of the criminal law continued in 1959 with a restatement and modification of the law relating to bigamy[7] and with legislation making the concealment of certain offences a criminal offence.[8] The punishment for bigamy remains, as before, imprisonment not exceeding five years,[9] but it is now made irrelevant whether the first marriage was a civil or a religious marriage; whether the second marriage was void or valid; or whether the second marriage was celebrated in Israel or, where the accused was a national or resident of Israel, abroad.[10] Where the accused had been married before, the burden of proof is on him that his previous marriage was validly dissolved and that he was, under the personal law applicable to him, entitled to remarry.[11] The dissolution of a marriage by unilateral act of the husband (by the delivery of a Get under Rabbinical law or of a Talak under Muslim law), without first obtaining the consent of a competent court in a final judgement, is an offence likewise punishable with five years' imprisonment.[12] Any officer or minister celebrating a marriage or participating in divorce proceedings in contravention of the law is liable to six months' imprisonment.[13]

The Penal Law Revision (Concealment of Offences) Law, 5719-1959, provides that no person may take part in proceedings calculated or intended to expel a person from membership in any body or organization or to deprive him of any rights as a member therein, or to give adverse publicity to his conduct, or to impose upon him any sanction (other than purely religious) — unless notice is first given to the Attorney-General or his representative, whenever in any such proceedings the suspicion arises that one of the specified offences had been committed.[14] The specified offences are: all offences against the Penal Law Revision (Security of the State) Law, 5717-1957[15] or the Penal Law Revision (Bribery Offences) Law, 5712-1952; offences against life, person or morals punishable with at least three years' imprisonment; and offences against property, where the property concerned was state property.[16] Where notice was given as aforesaid and the Attorney-General decided to prosecure, he may order the other proceedings to be stayed.[17] Failure to give the prescribed notice, or taking part in such proceedings without such notice having been given, is punishable with one years's imprisonment;[18] but it is a good defence for any accused under the law that notice in respect of the same proceedings had already been given by somebody else, or that the person against whom such proceedings were taken had already been prosecuted or interrogated by the police in respect of his conduct in question.[19] The purpose of the law is, of course, to prevent serious offences, in the trial and punishment for which there is a public interest, from being tried by internal and private courts of honour or discipline, and to prevent the shielding of perpetrators of such offences from their lawful judges.

7. The national insurance system[20] was augmented by the introduction of an insurance scheme for large families,[21] under which every householder is receiving a monthly allowance for his or her fourth and each subsequent child.[22]

The laws relating to the compensation and rehabilitation of war invalids were consolidated and brought in line with each other.[23]

[1] Sections 90 and 91, ibid.

[2] Section 94, ibid.

[3] Sections 140 and 141, ibid.

[4] Sections 13, 16, 31, 43, 61, 75, 89, 119, 145, ibid.

[5] Section 146, ibid.

[6] Section 153, ibid.

[7] Penal Law Revision (Polygamous Marriages) Law, 5719-1959, passed on 20 July 1959 (*Sefer Ha-Hukim* 285, p. 144).

[8] Penal Law Revision (Concealment of Offences) Law, 5719-1959, passed on 5 August 1959 (*Sefer Ha-Hukim* 290, p. 207).

[9] Section 181, Criminal Code Ordinance, 1936 (Palestine).

[10] Section 4, Penal Law Revision (Polygamous Marriages) Law, 5719-1919.

[11] Sections 3, 5, 6, ibid.

[12] Section 7, ibid. (re-stating section 181 A of the Criminal Code Ordinance, as enacted by the Equal Rights of Women Law, 5711-1951).

[13] Section 8, ibid.

[14] Section 1.

[15] See *Yearbook on Human Rights for 1957*, p. 149.

[16] Schedule to the Penal Law Revision (Concealment of Offences) Law, 5719-1959.

[17] Sect. 2, ibid.

[18] Section 3, ibid.

[19] Section 4, ibid.

[20] See *Yearbook on Human Rights for 1953*, p. 147.

[21] National Insurance (Amendment No. 4) Law, 5719-1959, passed on 3 August 1959 (*Sefer Ha-Hukim* 287, p. 160).

[22] Section 1, ibid.

[23] Invalids (Compensation and Rehabilitation) Law, 5719-1959 (*Sefer Ha-Hukim* 295 of 23 September 1959, p. 276), and Reserves (Compensation) Law, 5719-1959 (*Sefer Ha-Hukim* 298 of 27 September 1959, p. 306).

The Family Law Revision (Maintenance) Law, 5719-1959[1] is reproduced below:

1. In this law,

"Adult" means a person who has completed his eighteenth year;

"Infant" means a person who is not an adult;

"Child" includes a child whether born in or out of wedlock and an adopted child;

and where a child was adopted, the provisions of this law relating to parents and their relatives shall apply to the adoptive parents and their relatives.

2. (*a*) The obligation of spouses to maintain each other is governed by their respective personal laws, and the provisions of this law shall not apply to such maintenance.

(*b*) A person who is not a Jew, a Muslim, a Druze, or a member of one of the recognized religious communities, or to whom no personal law is applicable, shall be under obligation to maintain his or her spouse, and the provisions of this law shall apply to such maintenance.

3. (*a*) The obligation of parents to maintain their infant children and the infant children of his or her spouse is governed by their respective personal laws, and the provisions of this law shall not apply to such maintenance.

(*b*) Whoever, under the personal law applicable to him, is under no obligation to maintain any of his or her infant children or any of the infant children of his or her spouse, or to whom no personal law is applicable, shall be under obligation to maintain them, and the provisions of this law shall apply to such maintenance.

4. A person is under obligation to maintain his following additional relatives — namely:

(1) His and his spouse's parents;

(2) His adult children and their spouses;

(3) His grandchildren;

(4) His and his spouse's grandparents;

(5) His and his spouse's brothers and sisters.

5. A person shall not be liable to provide maintenance to a relative under section 4, except where the following conditions are fulfilled — namely:

(1) Having provided for the needs of himself, his spouse, and his and his spouse's infant children, he is in a position to provide such further maintenance;

(2) The relative concerned is unable, notwithstanding his efforts, to provide for his own needs by work, or from property, or from any other source;

(3) The relative concerned is unable to obtain maintenance under section 2 or section 3, or from an estate, or from a relative preceding that person in the order of relatives set out in section 4.

6. The scope and measure of maintenance, and the modes of providing the same, shall, failing agreement between the parties, be determined by the court considering the circumstances, and — save for maintenance under section 3 — according to the needs of the person entitled to, and the means of the person obligated to provide, the maintenance.

7. Where two or more persons of the same degree of relationship are under obligation to provide maintenance, the court may determine the *rata* of obligation of each of them, and may obligate them jointly and severally.

8. The court may direct security to be given for the payment of maintenance, or the amount of maintenance to be deposited, for such period as it may prescribe; and the court may order any debtor of the person liable for maintenance to pay his debt, in whole or in part, directly to the person entitled to such maintenance.

9. The court may, where it deems it just and equitable so to do, discharge a person from his obligation to provide maintenance, in whole or in part, if the person entitled to maintenance has conducted himself towards him in a disgraceful manner.

10. Where an action for maintenance has been instituted, the court may order interim maintenance to be paid *pendente lite*.

11. (*a*) The court may dismiss an action for maintenance for the reason only that it was instituted after the expiration of more than one year from the period in respect of which maintenance is claimed, and no reasonable ground was shown for the delay.

(*b*) Maintenance which was not collected within two years from the period in respect of which it was adjudicated may not be collected, unless special leave of the court is first obtained.

12. (*a*) An agreement in respect of the maintenance of an infant, and any waiver of any such maintenance, shall not be binding upon the infant, unless and until confirmed by the court.

(*b*) An agreement in respect of the maintenance of an adult, and any waiver of any such maintenance, shall be made in writing, and may be confirmed by the court.

(*c*) An agreement in respect of maintenance which has been confirmed by the court shall be deemed to be a judgement of the court for the maintenance therein stipulated.

13. (*a*) The court may vary any stipulation in an agreement for, a waiver of, or a judgement for maintenance, if it considers that previously unknown or meanwhile intervening circumstances justify such variation.

(*b*) The court may refuse to entertain an application under this section where six months have not passed from the date of a previous application.

(*c*) The provisions of this section do not derogate from any remedy under any other law for the rescission

[1] Passed on 2 March 1959 (*Sefer Ha-Hukim* 276, p. 72).

or variation or annulment of any agreement or judgement.

14. A right to maintenance is not assignable, and is not subject to any charge, set-off or attachment, except in favour of a person who has supplied the person entitled to maintenance with means of living, whether commodities or services.

15. (*a*) The right to maintenance ceases upon the death of the person entitled to, or upon the death of the person liable for maintenance.

(*b*) A right to maintenance arising out of a marital relationship ceases upon the dissolution of the marriage.

16. (*a*) A person who has provided maintenance in excess of his obligation, not intending thereby to make a gift, may recover such excess from the recipient, or from a person who has not provided maintenance to the same recipient to the extent of his obligation, in so far as such excess does not exceed the extent of the latter's unsatisfied obligation.

(*b*) A person who has provided maintenance without being under obligation so to do, and has not intended to make a gift, may recover the amount of such maintenance from the recipient, or from the person liable for such maintenance — to the extent of the latter's liability.

17. (*a*) The obligation of spouses to maintain each other shall be governed by the law of their domicile, or, failing a joint domicile, by the law of the domicile of the debtor.

(*b*) The obligation to maintain an infant shall be governed by the law of the infant's domicile.

(*c*) Any other obligation under this law shall be governed by the law of the debtor's domicile.

18. Subject to the provisions of section 19, the court exercising jurisdiction under this law shall be the district court.

19. (*a*) This law does not add to or derogate from the jurisdiction of religious courts; and where a religious court is, under any enactment, exercising jurisdiction, any reference in this law to a court shall be read as including such religious court.

(*b*) This law adds to, but does not derogate from, any right to maintenance under any religious or personal law applicable to the parties.

(*c*) This law does not derogate from any agreement for maintenance exceeding in amount or in scope the maintenance recoverable under this law.

20. Maintenance paid under an agreement confirmed by the court, or under a judgement, by virtue of this law, shall be deductible from income tax to the extent provided for in the Income Tax Ordinance, 1947, in respect of the relatives concerned, but without limitation as to the number of relatives so maintained.

II. JUDICIAL DECISIONS

1. Subsidiary legislation — Forfeiture of property — Administrative action without judicial warrant

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[1]

Municipal Council of Tel-Aviv v. *Joseph Lubin*

30 January 1959

An Act of the Knesset (Parliament)[2] empowered local authorities to make by-laws for the prohibition of sale of certain foodstuffs. The Act contained the following provision: "Where a local authority has made a prohibition or restriction under this Act, it may, in by-laws, provide for the examination, seizure and forfeiture of the foodstuffs the sale of which is so prohibited or restricted."

The municipal council of Tel-Aviv made a by-law authorizing municipal inspectors to seize prohibited foodstuffs and providing that all foodstuffs so seized shall be forfeited to the municipal council.

On an application for review by a full bench of an earlier decision[3] according to which the said by-law was unreasonable and *ultra vires*, it was

Held: That the authorization to provide for the forfeiture of prohibited foodstuffs applied only where a competent court had first convicted the owner of such foodstuffs of an offence under the by-law.

Per Landau, J.:" . . . It must always be assumed that the sovereign legislator did not intend to violate those general principles which are the fundamental basis of our whole legal system . . . Wherever there is a doubt as to the construction of an authorizing Act, the court will prefer that construction which will give effect to, and not derogate from, the principles of natural justice . . . The rule of law on which our unwritten constitution is founded requires that the citizen may not be deprived of some fundamental rights, among which is also his property, without specific authorization by law. There is, as Lord Radcliffe said,[4] a well-known rule of statutory interpretation, that Acts which affect the rights of citizens, in regard both to their persons and to their properties, are to be construed strictly: that means, that where the meaning of an Act is doubtful or ambiguous, the court may adopt such interpretation as leaves the rights of the citizen unaffected . . . The Act before us is said to enable the forfeiture of property without prior adjudication, not only by a court or other judicial tribunal, but even by the municipal council and its inspectors . . . On the other hand, the forfeiture

[1] Judgement reported in 13 *Piskei Din* 118.

[2] Local Authorities (Special Authorization) Act, 5717-1956.

[3] *Lubin* v. *Municipal Council of Tel Aviv* (1958) 12 *Piskei Din* 1048.

[4] *A. G. for Canada* v. *Hallet and Carey Ltd.* (1952) A.C. 427 at p. 450.

presupposes the existence of several facts which are not always easy to determine — e.g., whether the foodstuffs were intended for sale, whether they were sold or to be sold within the jurisdiction of the municipal council, and whether they were the foodstuffs to which the by-law applies . . . It is therefore my opinion that the true interpretation to be given to the Act is that the forfeiture to be provided for in by-laws may apply only to such foodstuffs as were the subject matter of an offence of which their owner was duly convicted in a competent court . . ."

2. Dismissal of civil servant — Right of audience — Commission of inquiry — Natural justice

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[1]

Eshed v. *Minister for Foreign Affairs*

23 January 1959

The petitioner was dismissed from the diplomatic service. Complaints having been received against him, an informal commission of inquiry was appointed by the respondent; the commission reported that some of the complaints against the petitioner were justified. The petitioner argued that the proceedings of the commission were contrary to natural justice, as he had not been permitted to be present or represented throughout the whole of them.

Held: The dismissal was lawful.

Per Olshan, P.: ". . . This commission was not a quasi-judicial body which might have been under obligation to allow the petitioner to be present at all its meetings. It had no power to find the petitioner guilty or innocent of the charges brought against him. It notified the petitioner of all complaints received and gave him full opportunity to rebut them . . . The petitioner made use of the opportunity afforded to him, and brought his arguments and his evidence before the commission in his defence. That was all that was needed in an investigation like this . . ."

Per Berenson, J.: ". . . In my opinion, this commission was a quasi-judicial tribunal, and hence under the obligation to proceed with due regard to the requirements of natural justice . . . But I agree that the commission conducted itself properly. It is true that documentary and other evidence was received in the absence of the petitioner, but he was allowed to inspect the same before he himself testified; and he appeared three times before the commission and argued his case, and in addition submitted material in writing . . . All that is required of a quasi-judicial tribunal is that it act in good faith and give the person concerned a fair hearing . . . It is not required to conduct itself in all respects as if it were a court of justice . . ."

[1] Judgement reported in 13 *Piskei Din* 144.

3. Fair trial — Speedy proceedings — Undue haste

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[2]

Ottasan v. *Attorney-General*

13 February 1959

Under section 6 of the Criminal Procedure Revision (Inquiries into Crimes and Causes of Death) Act, 5718-1957,[3] a person accused of a crime, or his defending attorney, is allowed to inspect the district attorney's file relating to the charge preferred against him, even before a charge is filed against him in court, where a notice of an intended charge has been given to him. Upon receiving such notice, the accused may apply for a preliminary investigation into the charge by a judge of a district court; a similar application may also be made by the prosecution.

The petitioner was arrested on 9 December 1958, and on 10 December a notice of charge was served on him. On the same day, the prosecution applied for a preliminary investigation to be held, and on 11 December a judge was appointed to conduct the investigation. On application by the district attorney to take immediately the evidence of two witnesses who were due to leave the country that same day, the judge ordered the accused to be brought before him, and, overruling his attorney's objections, proceeded to take the evidence of the two witnesses.

On cause being shown by the Attorney-General why the proceedings before the judge conducting the investigation should not be set aside for irregularity, it was

Held: That the petitioner was deprived of his statutory right to inspect the evidentiary material in the district attorney's file before the preliminary investigation started; and, as he had thus no sufficient time nor proper opportunity to prepare his defence, the proceedings at the preliminary investigation would be quashed as a nullity.

4. Bail — Revocation of bail on application by accused

IN THE SUPREME COURT[4]

Fishman v. *Attorney-General*

16 March 1959

The petitioner, accused of a crime, was released on I£400 bail. While awaiting trial, he was convicted of other offences and sentenced to imprisonment. Thereupon he applied for revocation of bail and the refund to him of the I£400 deposited by him. His application having been refused by a magistrate and by a president of a district court, he applied for review to the president of the Supreme Court.

[2] Judgement reported in 13 *Piskei Din* 193.

[3] See *Yearbook on Human Rights for 1958*, pp. 111-12.

[4] Judgement reported in 13 *Piskei Din* 335.

Held: An application for revocation of bail could legitimately be made not only by the prosecution, but also by the accused. The fact that the accused was now anyway in custody for some other offence was a perfectly valid and sufficient reason to have the bail revoked and the deposit refunded to him.

5. Husband and wife — Criminal trespass — Inviolability of private dwelling

IN THE SUPREME COURT SITTING AS COURT OF CRIMINAL APPEALS[1]

Shalom v. *Attorney-General*

19 February 1959

A husband forcibly entered the matrimonial home, where his wife was living alone, with the intention of procuring evidence against her for the divorce suit pending between them.

On appeal from his conviction of the offence of criminal trespass,[2] the conviction was

Held confirmed.

Per Agranat, J.: ". . . The fact that the appellant had a right to possession of the dwelling-house and entered it in purported exercise of that right is quite irrelevant. The intention of the legislator in creating this offence was to protect the person in actual possession of the premises, even against their lawful owner . . . Under section 10 of the Criminal Code Ordinance, 1936, a person is not criminally responsible in respect of an offence relating to property, if the act done . . . by him with respect of the property was done in the exercise of an honest claim of right and without intention to defraud or injure . . . I am prepared to assume that the appellant honestly thought he had a right to enter this house, even without the permission and against the will of the occupier; . . . but another condition was not fulfilled, and that is, that he had no intention to injure: the fact alone that he intended to, and did, forcibly break the door in order to enter is sufficient evidence of his intention to injure . . . It was further argued on appellant's behalf that one of the elements of criminal trespass was not present in this case — namely, the intent to annoy or to intimidate. It is true, so the argument ran, that some annoyance would be caused to the wife if the evidence sought after was obtained; but it was the intent to obtain the evidence, and not the intent to annoy, which prompted the appellant . . . I hold that the knowledge that the annoyance of the wife would be a certain consequence of the appellant's act is sufficient to establish the necessary intent to annoy . . ."

[1] Judgement reported in 13 *Piskei Din* 421.

[2] Section 286, Criminal Code Ordinance, 1936 (Palestine).

6. Illegitimacy — Bastardization — Discretionary remedies — Policy of the law

IN THE SUPREME COURT SITTING AS COURT OF CIVIL APPEALS[3]

Anonymous v. *Anonymous*

28 May 1959

The appellant had brought an action in the district court for a declaratory judgement to the effect that he, and not the mother's husband, was the father of the child A. Both the mother and her husband were made defendants to the action, and in their statement of defence denied the appellant's allegations, and pleaded that the action was malicious and slanderous. They applied to the district court to have the action dismissed *in limine*, by virtue of a rule of procedure under which the court may strike out a statement of claim where it discloses no cause of action.[4] The district court acceded to the application, pointing out that the action was designed to have a court declare the infant to be a bastard: "I do not think that any court in this country is entitled to grant any remedy which is calculated to prejudice an infant child . . . A declaration of this sort can be issued only where it is first established that it would be in the interest of the child . . ."

On appeal to the Supreme Court to have the action reinstated, the decision was.

Held: confirmed. Where the remedy claimed in an action is discretionary, such as a declaratory judgement, any cause *a priori* negativing the exercise of discretion in favour of the plaintiff is tantamount to failure of a cause of action.

Per Olshan, P.: ". . . In a case such as this, the law, on the clearest grounds of public policy and decency, will not allow an inquiry as to who is the father of a child born during wedlock . . .[5] And under ancient Jewish law, so long as the mother's husband does not claim that the child is not his own, no stranger could be heard to claim paternity of the child. . ."

Per Berenson, J.: ". . . The plaintiff does not disclose the purpose for which he requires this declaratory judgement. No court of equity would exercise its discretion to make such a declaration as would, by its very nature, gravely injure some other person, without ostensibly benefiting the plaintiff. By "some other person" I do not mean the mother; for as far as she is concerned, I do not see sufficient reason to prevent a judicial inquiry to ascertain the truth, however painful and damaging the truth may be to her and to her marriage. If the allegations of the plaintiff are true — and for the purposes of this appeal we cannot assume that they are not true — the

[3] Judgement reported in 13 *Piskei Din* 903.

[4] Rule 21, Civil Procedure Rules, 1938 (Palestine).

[5] Citing the Irish case of *Tool* v. *Ewing* (1904) *Irish Law Reports Reprint*, Vol. 7, p. 807 at p. 811.

mother does not seem to be entitled to any special regard or protection from this court . . . But there is the child to be considered. What has the child done to deserve that his social and legal status be questioned? Would it not be preposterous for a court of justice to endanger, by acceding to the plaintiff's claim, the future and happiness of a child who is not a party to the action and unable to defend himself? Had the plaintiff at least disclosed the purpose for which he brought this action, then we could have weighed one against another the potential damage to the child and the beneficial interest of the plaintiff . . . As we do not know what benefit can possibly accrue to the plaintiff from this action, we are left with the grave disadvantages that will almost certainly be caused to the child. Not every plaintiff may claim a declaratory judgement as a matter of course. He has got to satisfy the court that his case is a proper one in which to exercise its discretion in his favour — not only that he is likely to succeed on the merits, but that he stands in practical, actual need of the remedy, and that he comes to the court with clean hands . . ."

7. Fair hearing — Natural justice — Ecclesiastical courts

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[1]

Levi v. *Rabbinical Court, Tel-Aviv*

29 June 1959

The respondent court had granted the petitioner alimony *pendente lite* in a divorce action pending between her and her husband. On a day set down for the continuation of the hearing of the divorce suit the husband's attorney informed the respondent court that the petitioner had left the matrimonial home, and asked for the order to pay alimony to be suspended until she returned. The petitioner admitted then and there that she had left the matrimonial home. The respondent court thereupon made an order suspending until further order the husband's liability to pay alimony.

On a writ of *certiorari* to show cause why this suspension order should not be quashed, it was

Held: That the irregularity of the proceedings before the respondent court amounted to a denial of natural justice, and the High Court would interfere to quash the order made.

Per Sussman, J.: ". . . The disregard of the principles of natural justice is tantamount to an excess of jurisdiction, and any order so made is a nullity, or at least voidable.[2] The jurisdiction of the High Court can be invoked not only where an ecclesiastical court is exceeding its jurisdiction, whether by disregarding the principles of natural justice or otherwise, but also where the judgement of any such court discloses an error of law on the face of it . . ."

Per Silberg, J. (dissenting): ". . . There is no denying the fact that there was here a violation of natural justice . . . But natural justice is not a monopoly of secular law; it is also deeply rooted in the traditions of Rabbinical law . . . And where, as in the present case, the learned Rabbinical judges erred in disregarding these principles, the petitioner's remedy is to appeal to the Rabbinical Court of Appeals . . ."

8. Discrimination — Conditions of imprisonment

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[3]

Menkas v. *Commissioner of Prisons*

7 July 1959

The petitioner was sentenced to life imprisonment. He was required to serve his sentence in one of several prisons, and in his petition maintained that he was being unlawfully discriminated against, as the several prisons differed from each other, and in some of them conditions of living were better than in the one in which he had to serve his sentence.

On the return to an order *nisi* to show cause why the petitioner should not be given the same accommodation and treatment as all other prisoners, it was

Held: That no unlawful discrimination was proved.

Per Cheshin J.: ". . . The respondent performs his duties with such means as are placed at his disposal. He cannot be blamed if the buildings allotted to him are not all suitable for their purposes to the same degree. It is quite true that in some of the prisons the living conditions are much more comfortable, but there is neither reproach nor praise due to the respondent for that. The question is whether it is the petitioner who is being discriminated against; and so long as there is no discrimination between the petitioner and other prisoners who serve their sentences in the same prison as he does — we are not satisfied that he has just reason for complaint . . ."

9. Women labourers — Pregnancy — Dismissal

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[4]

Rabi v. *Minister of Labour*

24 September 1959

Under section 9 of the Women Labour Act, 5714-1954, a woman labourer may not be dismissed during pregnancy without a special permit of the Minister of Labour, and such permit may not be given where there is reasonable ground to assume that the pregnancy was the only cause of the dismissal.

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[1] Judgement reported in 13 *Piskei Din* 1182.

[2] Citing *R.* v. *North* (1927) 1K.B.491; and *R.* v. *Wandsworth Justices* (1942) 1K.B.281.

[3] Judgement reported in 13 *Piskei Din* 1363.

[4] Judgement reported in 13 *Piskei Din* 1615.

The petitioner was a temporary woman labourer who was dismissed during pregnancy, the permit of the Minister of Labour having first been obtained.

On an application for an order directing the Minister to revoke the permit, it was

Held: That (1) as the legislature cannot be presumed to have intended to bestow upon a temporary labourer the status of a permanent labourer by reason of her pregnancy only, the statutory prohibition of dismissals does not apply to temporary labourers, and hence no permit was required to dismiss the petitioner;

(2) The test whether a labourer is temporary or permanent for this purpose is whether notice of formal dismissal is required for the termination of her services, or whether these services terminate either by effluxion of time or by the completion of certain work;

(3) As the Minister purported to permit the dismissal of a temporary labourer, the permit is void; and if the petitioner establishes that, under the foregoing definition, she is not a temporary but a permanent labourer, her dismissal will be set aside.

10. Public service — Elected councillors — Education — Retroactive legislation

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[1]

Abu Gosh v. *Minister of Interior*

10 October 1959

The petitioner was elected chairman of a local council. After the elections, and after he had assumed office, a law was enacted to the effect that a member of a local council who does not know how to read and write shall be disqualified to act as chairman thereof.

On the return to an order *nisi* to show cause why petitioner should not be allowed to continue in office as chairman of the local council, it was

Held: That the disqualification operated as from the date when the law came into force and had no retroactive effect; but as from the date when the law came into force, the petitioner, who admitted that he did not know how to read and write, was disqualified from further acting as chairman of the local council.

11. General elections — Right of everybody to participate — Prisons

IN THE SUPREME COURT SITTING AS HIGH COURT OF JUSTICE[2]

Geller v. *Minister of Interior*

16 October 1959

The petitioner was a prisoner who expected still to be detained in prison on the day of general elections to the Knesset.

An application for an order to show cause why election ballots should not be made available to prisoners within prison walls was

Held: dismissed.

Per Olshan, P.: ". . . I have much sympathy with the petitioner's complaint, but there is no way in which this court can help him. The law is that every voter has to vote at the place where he is registered as such,[3] and there are many, apart from petitioner, who may have cause of complaint at being thereby deprived of the means to vote. The legislature has seen fit to make exceptions in the case of soldiers; but patients in hospitals, seamen at sea, diplomats in foreign parts, and many others, are all in the same predicament as the petitioner is. His suggestion to establish a polling station within the prison should have been made to the Central Elections Committee, which under the law has exclusive and final jurisdiction in all matters relating to polling stations.[4] And as to his suggestion that the prison authorities should see to it that every prisoner be on election day conducted to the polling station where he is registered, we can only say that however logical this demand may be in theory, it is obviously impossible of fulfilment in practice . . . The power of the Minister of Police to grant prisoners leave of absence[5] for the purpose of taking part in the elections, remains, of course, unaffected . . ."

12. Plurality of wives — Insanity — Right to inheritance

IN THE SUPREME COURT SITTING AS COURT OF CIVIL APPEALS[6]

Sasson v. *Sasson*

22 December 1959

A wife was by reason of her mental disease incapable of accepting a bill of divorcement. A rabbinical court thereupon ordered the husband, in accordance with rabbinical law, to deposit the bill of divorcement with the court, and allowed him to re-marry. After his death, his second wife claimed to be the only surviving widow, the deposit of the bill of divorcement having validly dissolved the first marriage. On appeal against the dismissal of her claim by the district court, the dismissal was

Held: affirmed. The first wife had not accepted a bill of divorcement, and, as she could not be divorced against her will,[7] she was still married to the deceased at the time of his death. The permission granted to the husband to re-marry had the effect of exempting him from the prohibition of bigamy, but not of dissolving his first marriage. Both widows would therefore equally share that portion of the estate which under the law devolved upon a surviving spouse.

[1] Judgement reported in 13 *Piskei Din* 1693.

[2] Judgement reported in 13 *Piskei Din* 1703.

[3] Section 4, Knesset Elections Act, 5719-1959.

[4] Section 70, ibid.

[5] Prisons (Amendment) Act, 5717; see *Yearbook on Human Rights for 1957*, p. 148.

[6] Judgement reported in 13 *Piskei Din* 2069.

[7] Equal Rights of Women Law, 5711-1951.

ITALY

THE DEVELOPMENT OF HUMAN RIGHTS (1959)[1]

I. LEGISLATION

Two legislative enactments of particular importance in the field of human rights emerged in the course of 1959. One, concerning economic conditions for workers, gives effect to the principle laid down in article 23 (3) of the Universal Declaration, and embodied in article 36 of the Italian constitution; the other, for the first time in Italy, admits women to the police force. This is in accord with two principles laid down by the Declaration and embodied in the Italian constitution — the elimination of sex discrimination in the right of equal access to public service (article 2 (1) and article 21 (2) of the Declaration, and article 51 of the Italian constitution); and the special care to be given to young persons by the State (article 25 (2) of the Declaration, and article 31, second paragraph, of the Italian constitution).

Act No. 741 of 14 July 1959 (*Gazzetta Ufficiale* No. 225, of 18 September 1959),[2] which lays down *interim provisions guaranteeing minimum wages and conditions for workers*, although not extensive in scope, is none the less of considerable political and social significance. The Act is a provisional measure pending the definitive implementation of article 39 of the constitution concerning trade union organization, and is designed to make up for the lack of regulations governing the trade unions and social legislation generally. It is governed and conditioned by articles 35 and 36 of the constitution,[3] and thus it meets the need to establish a law for all workers, guaranteeing the same wages and conditions as are considered equitable and feasible in freely negotiated agreements. At the same time the Act endeavours to protect entrepreneurs who fulfil the obligations assumed by their organizations, in the face of competition from those who have chosen to evade such obligations and must be prevented from profiting from lower costs, achieved at the expense of the workers by paying wages and providing benefits below the contractual minimum.

Valuable assistance in the drafting of this Act was provided by the National Economic and Labour Council, which put forward views and suggestions.[4]

The extension *erga omnes* of the conditions laid down in the collective agreements existing at the time of entry into force of the Act is effected under article 1 by the delegation of legislative powers to the Government, which is required, within the appointed time-limit — i.e., within one year from the date of entry into force of the Act (art. 6) — to "issue regulations, having the force of law, with a view to ensuring compulsory minimum wages and conditions applicable to all persons belonging to a given category. In formulating such regulations the Government must adhere to all the clauses of the individual wage agreements and collective contracts, including inter-category agreements, drawn up by the trade union associations prior to the date of entry into force of the present Act" (art. 1). The Government must also conform "to the provincial adjustment contracts referred to in national collective agreements, or to collective agreements drawn up locally by associations affiliated to national associations, provided that the working conditions laid down in such agreements are not inferior to any existing national regulations" (art. 4). In any case, the delegated regulations may not conflict with imperative rules of law (art. 5).

The above-mentioned regulations must be applied to all categories of workers covered by wage agreements and collective contracts governing labour relations, joint agricultural ventures, leases to small holders, and collaboration, entailing regular work on a continuing and co-ordinated basis (art. 2). This means that the scope of the new legislation will coincide with the field covered by collective agreements, and that the delegation of these powers to the Government does not carry with it any authorization to lay down regulations concerning labour relations for which no collective agreements or contracts exist.

The regulations in question will give effect to all the clauses in wage agreements and collective contracts duly deposited by the contracting associations

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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 Comunità internazionale*, a publication of that association, and government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] See International Labour Office: *Legislative Series* 1959 — It. 3.

[3] *Art. 35* of the constitution. The republic protects labour in all its forms and applications.

. . .

Art. 36. Workers are entitled to payment commensurate with the quantity and quality of their work and sufficient in all cases to provide them and their families with an independent and decent livelihood.

. . .

[4] See *Yearbook on Human Rights for 1957*, p. 157.

with the Ministry of Labour and Social Welfare, which is responsible for verifying their authenticity (art. 3). Verification is necessary since validity would not extend to clauses in the collective contracts which were originally null and void as conflicting with provisions of the law. Article 3 further provides that each agreement or contract shall be published in an appropriate bulletin, and that the regulation giving effect to it may not be issued until one month has elapsed from the date of such publication. This is designed to enable any objections to be raised concerning the authenticity and propriety of the agreements deposited.

The agreement clauses which have become compulsory under the delegated legislation retain their validity even after the expiry and renewal of the agreement or contract, until subsequent changes are made in the laws or collective agreements and contracts applying to all persons belonging to the particular category. The minimum wages and conditions laid down in the delegated legislation replace *de jure* those in operation, unless the latter are more favourable to the worker. Departures from the delegated regulations are allowed pursuant only to collective or individual agreements or contracts for the benefit of the worker (art. 7).

An employer who fails to fulfil his obligations as laid down in the delegated regulations is liable to a fine for each worker in respect of whom the obligation has not been fulfilled (art. 8). Since these fines are imposed for violation of the contents of the delegated regulations they apply to all persons covered by them — i.e., both members of professional associations and non-members.

Article 9 provides that responsibility for the enforcement of the Act shall be vested in the Ministry of Labour and Social Welfare, through the Labour Inspectorate, and by the Ministry of the Merchant Navy for matters falling within its competence, without prejudice to the supervisory powers of other ministries.

Act No. 1083 of 7 December 1959 (*G.U.* No. 309 of 22 December 1959) provides for the *establishment of a Women's Police Corps*. Both in the report accompanying the bill as presented to Parliament, and in the discussions which followed, emphasis was laid on the essentially social purpose underlying this measure — namely, the supervision of wayward or unprotected minors and of women who are delinquent or in danger of becoming so. In the exercise of its functions it is assumed that the Women's Police Corps will represent a middle course between the rigidity of the laws and regulations by which the police are bound and the flexible and understanding approach of a social service which can be adapted to suit each individual case. Although the Act is related to article 12 of the "Merlin Act" of 1958[1] — which provides for the establishment of a special women's corps as part of the legislative solution to the problem of "closed houses" — it is prompted by more profound and far-reaching moral, civil and social considerations, which have now become more pressing in view of the disturbing statistics of juvenile delinquency. In other words, the Act fulfils a moral need to protect not only the minor embarking on a career of prostitution, but *all* minors who for any reason whatever, family or personal, come into contact with the security or criminal police.

As was reported in Parliament, the most recent scientific investigations in the fields of medicine, psychology and education have shown the need, in each case of juvenile delinquency, to seek a personal solution taking into account the special circumstances and deep-seated motives of the delinquent. Hence the necessity for entrusting the work of prevention and eradication of delinquency to specially selected persons of great understanding. Relations between the police and the women, whether they are in danger, temporarily aberrant or "fallen", are no less difficult. Steps must be taken to ensure, for example, that a young woman does not have her first contact with prison through violation of the rules of the statutory personal movements card; and there are many other instances in which action by women workers is better suited to solving problems than anything men could do. These are the main reasons which, in the view of the Italian legislative organs, justify the establishment of the Women's Police Corps.

In determining the structure and functions of this new police corps, the legislators have tried to avoid either placing it on the level of a "social service", or modelling it on the lines of the American or English system, which provides for such a wide range of activities and functions that the women's police force overlaps into the more specific field of services traditionally provided by the men's police force.

Article 2 of the Act defines the functions of policewomen as follows: "(*a*) Prevention and detection of offences against public morals and decency, the family and the integrity and health of the race, as well as offences connected with the protection of workers, women and minors; (*b*) investigation and criminal police reports of offences committed by women or persons under eighteen years or against them; (*c*) supervision and care of women and minors in respect of whom public security or criminal police measures have been taken or who have for any reason been summoned before the public security officers; (*d*) assistance, where necessary, to women and minors in a state of moral and social neglect, through appropriate contacts with authorities and institutions specifically engaged in such tasks."

The Corps comprises two categories (article 1): supervisory (policewomen inspectors) and operational (policewomen proper); they come under the Public Security Administration. Appointment to the posts of both inspector and policewoman is by public competitive examination. Candidates are required to

[1] See *Yearbook on Human Rights for 1958*, p. 122.

be either unmarried or widowed. For the post of inspector, a degree in law or political science is required and for that of policewoman a secondary school diploma — second grade (art. 5). Article 6 specifies the subjects to be included in the written and oral examinations, while article 7 provides that both inspectors and policewomen, after appointment, are to be assigned to a police school for a four-month course of training. Inspectors and policewomen are then at liberty to marry, subject to authorization by the Ministry of the Interior (art. 9). A regulation uniform is provided for both categories of officer (art. 11). Both inspectors and policewomen are retired at the age of sixty (art. 12).

As regards legislation of an economic and social nature, designed to promote employment opportunities (Declaration, article 23 (1)) and to extend social security benefits to all categories of workers (Declaration, article 25 (1)), mention should be made of two laws concerning handicraft workers, supplementing the basic legislation enacted in 1956 to govern this sector of labour which is particularly important in Italy.[1]

Act No. 623 of 30 July 1959 (*G.U.* No. 198 of 19 August 1959) provides *new incentives for medium and small industries and for handicrafts.* The matter is dealt with in detail in twenty four articles. Article 1 provides that:

"For the purpose of assisting efforts to promote the development of production and to utilize economic resources and manpower, . . . medium and small enterprises may be granted loans of not more than 500 million lire for the building of new industrial plant and of not more than 250 million lire for the renewal, conversion or expansion of existing industrial plant, at a yearly rate of interest of not more than 5 per cent, including all necessary expenses and charges."

For some southern regions, these amounts are increased to 1,000 million and 500 million lire, respectively, and the rate of interest is reduced to 3 per cent. Special consideration in the granting of assistance is to be given to the depressed areas, to enterprises financed by persons of medium or small means, enterprises which utilize local resources, enterprises which, having due regard for the size of their investment, result in increased employment or productivity, and enterprises working in sectors complementary or subsidiary to sectors served by semi-governmental enterprises.

Act No. 463 of 4 July 1959 (*G.U.* No. 165 of 13 July 1959), extending the *compulsory invalidity, old-age and survivors' insurance scheme to handicraft workers and the members of their families,*[2] comes within the scope of article 38 of the constitution, the second paragraph of which provides that workers "are entitled to be provided with and assured of adequate means of existence in case of accident, sickness, disability, old age or involuntary unemployment".

Under article 1, the invalidity, old-age and survivors' insurance scheme is extended to the owners of handicraft undertakings who are insured against sickness under Act No. 1533 of 29 December 1956.[3] The compulsory insurance scheme also includes members of the family helping in the undertaking, "who are habitually and principally employed in the undertaking and who are not already covered, as part owners, by the compulsory insurance scheme instituted by this Act or who are not already covered, as employed persons or as apprentices insured under Act. No. 25 of 19 January 1955, as subsequently amended, by the legislation governing compulsory invalidity, old-age and survivors' insurance.

"For the purposes of the preceding paragraph the term 'members of the family' means: (1) the spouse; (2) legitimate and legitimated children and grandchildren in the direct line of descent; (3) relatives in the ascending line; (4) brothers and sisters.

"Adopted children and children adopted under the *affiliazione* system, illegitimate children who have been legally recognized or judicially declared, children born by a previous marriage of the other spouse and minors duly entrusted to the insured person's care by the competent authorities in accordance with the law shall be placed on the same footing as legitimate or legitimated children. Adoptive parents, persons *in loco parentis* under the *affiliazione* system, step-parents and persons to whose care the owner of a handicraft undertaking was duly entrusted as a founding shall be placed on the same footing as the parents."

The minimum pensionable age will be sixty-five for men and women during a transitional period from 1960 to 1965; from 1966, the minimum age will remain sixty-five for men, but will be reduced by stages to sixty (in 1970) for women (this age-limit, which is higher than that applicable to hired workers,[4] is justified by the fact that self-employed persons are usually able to work longer); the more favourable rates for the assessment of basic pensions applied to men are extended to women.

Lastly, there is Act No. 612 of 24 July 1959 (*G.U.* No. 195 of 14 August 1959) which provides for *Italian participation in the control of safety, working and living conditions of Italian labour employed in coal mines abroad.* Control will be exercised by specially qualified technical personnel, and the provisions will remain in force until definitive regulations on the subject have been issued in connexion with the revision of the existing laws on emigration.

[1] See *Yearbook on Human Rights for 1956*, p. 139.

[2] See International Labour Office: *Legislative Series* 1959—It. 2.

[3] See *Yearbook on Human Rights for 1956*, p. 139.

[4] The minimum pensionable age in Italy is normally sixty for men and fifty-five for women.

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS, WHICH BECAME OPERATIVE IN ITALY IN 1959

Convention between Italy and the Principality of Monaco concerning insurance against industrial accidents and occupational diseases, signed at Rome on 6 December 1957.

Ratified and made effective in Italy by Act No. 631 of 24 July 1959 (*G.U.* No. 199 of 20 August 1959).

III. JUDICIAL DECISIONS

1. Constitutional Court — Decision No. 19 of 5 March 1959

In this decision the court confirms the right of the citizen to freedom of movement and the right to seek asylum in other countries for political reasons — rights set forth in article 13 and article 14 (1) of the Universal Declaration and recognized by article 16 of the Italian Constitution.

The case concerned G. K., an Italian citizen of the Alto Adige, who had attempted to go secretly to Austria, where he had requested political asylum to evade conviction in Italy on a charge of "affront to the nation and insulting behaviour towards a public official". Having been charged under the first paragraph of article 158[1] of the Consolidated Text of Public Security Laws, G. K. came up for trial by the court of Bolzano. In a decision of 11 April 1957, this court failed to recognize the existence of political motives for the clandestine departure, and convicted the defendant of simple clandestine departure, under the second paragraph of the aforesaid article 158.[2]

The Trento Court of Appeal, to which the case was referred — as the result of an appeal lodged by the Public Prosecutor against the decision of the Bolzano court — raised of its own motion the question of the constitutional legality of the third paragraph of article 158.

The Constitutional Court found that the doubt expressed by the Court of Appeal was justified, and affirmed the "constitutional illegality" of the third paragraph of article 158 of the Consolidated Text of Public Security Laws, on the grounds that it conflicted with "article 16 of the constitution and the basic principles laid down therein concerning the freedom and equality of all citizens".

In its decision, the Constitutional Court draws an interesting comparison between the *second paragraph* of article 158 (the "constitutional legality" of which it recognized in its decision No. 34 of 23 January 1957) and the *first paragraph* of the same article taken in conjunction with article 16 of the constitution.[3] The provision contained in the "second paragraph" is one of the "legal obligations" referred to in article 16 and thus merely embodies a procedure for applying the right to a freedom — the freedom to leave a country. The provisions of the "first paragraph", on the other hand, repudiate this right in cases in which the act of leaving the national territory is prompted by political motives. But if it is true that the first paragraph of article 16 of the constitution prohibits the restriction on political grounds of freedom of movement and sojourn in the territory of the republic,[4] it is also true, states the decision, "that the same *ratio legis* governs both paragraphs of this article from the point of view of the legislative precept embodied in them. The latter relates to one and the same principle of freedom — that is, freedom of movement within the territory of the republic and freedom to leave the territory and re-enter it, subject, as aforesaid, to compliance with legal obligations. On the other hand, any departure on political grounds from the principle of freedom, specifically guaranteed in respect of travel by article 16 of the constitution, would be in patent conflict with the fundamental principle of political freedom underlying the entire constitution and enunciated, in its broadest and most explicit terms, in article 3. Any differentiation in the penalty carried by an offence, because of the political nature of the motives, would be tantamount to establishing before the law definite discrimination in the treatment of citizens according to their political opinions and such discrimination is clearly inadmissible."

2. Constitutional Court — Decision No. 59 of 1 December 1959

The principle laid down in article 10 of the Universal Declaration concerning the "fairness" of the public hearing by a court, to which everyone is entitled in full equality, is upheld by this decision of the Constitutional Court on the basis of article 24, second paragraph, of the constitution.[5]

In the criminal proceedings before the examining judge [pretore] of Pescara, three defendants charged with participating in a fraud were assisted by a single

[1] Article 158 (first paragraph) of the Consolidated Text of Public Security Laws: "Any person, not holding a passport or other equivalent document recognized by international agreement, who expatriates or attempts to expatriate, being prompted wholly or in part by political motives, shall be punished by a term of rigorous imprisonment (article 23, Penal Code) of not less than two or more than four years (article 29, Penal Code) and by a fine (article 24, Penal Code) of not less than 160,000 lire."

[2] Ibid. (second paragraph): "In all other cases, any person expatriating or attempting to expatriate without holding a passport shall be punished by a term of simple imprisonment of not less than three months or more than one year and by a fine of not less than 16,000 lire or more than 48,000 lire."

[3] See *Yearbook on Human Rights for 1947*, p. 164.

[4] In its judgement, the court explains how the origin of this constitutional provision confirms that the prohibition of restrictions on political grounds applies to both paragraphs of article 16.

[5] Article 24 of the constitution . . . The right of defence at every stage and level of juridical proceedings is inviolable.

ex officio defense counsel appointed under article 133 of the Code of Criminal Procedure, and by a judgement of 11 April 1957 they received various sentences. All three defendants appealed, and each engaged his own counsel to conduct his appeal.

At the court of Pescara, the counsel for one of the defendants contended that the proceedings before the examining magistrate, and hence the decision, were null and void, on the ground of violation of article 185, sub-paragraph 3, of the Code of Criminal Procedure, which includes among the grounds for general nullity non-observance of the provisions of the law concerning assistance and representation of the defendant. The right of the defendant to assistance was alleged to have been seriously impaired in that the first judge appointed a single *ex officio* counsel for all three accused, whose lines of defence were not only incompatible, but actually conflicting. Counsel added that, if article 133 were not to be considered abrogated by article 185, sub-paragraph 3, of the Code of Criminal Procedure, it should be held to be unconstitutional as it conflicted with article 24, second paragraph, of the constitution, which provides that the right of defence at every stage and level of juridical proceedings is inviolable. This principle is also the basis of Act No. 517 of 18 June 1957.[1]

The court rejected the plea that article 133 was implicitly abrogated by article 185, but allowed the plea of unconstitutionality and referred the dossier to the Constitutional Court.

The court considered that it was called upon to decide whether there was any conflict between *the second proposition* of article 133, first paragraph, and the principle of inviolability of the right of defence as set forth in the second paragraph of article 24 of the constitution.

Having stated, in the first proposition, that, if there is no incompatibility, the cases of more than one defendant may be entrusted to a single defending counsel, article 133 goes on to say, in the second proposition, that the plea of incompatibility must be made by the person concerned in sufficient time to allow for a replacement without suspending the proceedings; it may not be put forward later as an objection or as grounds for challenging the decision.

This, the court declared, constitutes a restriction on the exercise of the right of defence violating the provision contained in the second paragraph of article 24 of the constitution. In fact, the decision states, "the participation, assistance and representation of the defendant should serve as a judicial instrument to guarantee the substance of the defence, which cannot be effective if the defending counsel is himself confronted with irreconcilable *de facto* and *de jure* situations. The conflict of interests resulting from the lines of defence of different defendants paralyses the defence itself and the outcome of the incompatibility is that assistance is withheld . . . As this court has had occasion to state (decision No. 46 of 8 March 1957), the right of defence, which is also guaranteed to persons without means (article 24, third paragraph, of the constitution), implies proper opportunities for expert professional assistance in order to enable the case to be argued and to remove every obstacle to hearing both sides. The defence of the accused thus becomes part of the *iter* of the trial, an absolutely essential part intimately bound up with the regular exercise of jurisdictional powers.

"It follows that, in the higher interests of justice, incompatibility must be pointed out at every stage and level of the proceedings and that the onus of proving incompatibility cannot be placed upon the interested party. The removal of the restrictions imposed by article 133 of the Code of Criminal Procedure would thus give the defence the scope intended by the constitution."

For these reasons the court found the provisions of the second proposition contained in the first paragraph of article 133 of the Code of Criminal Procedure to be unconstitutional.

3. Concerning the protection of original work, to which everyone has a right (Universal Declaration, article 27(2)) an interesting decision was handed down by the Court of Cassation whereby copyright protection under existing legislation is extended to analytical law notes.

In decision No. 3544 of 14 December 1959 (*Il Foro Italiano*, 1960, I, 54), the Supreme Court of Cassation, while quashing — for reasons which we need not enter into here — a decision of the Rome Court of Appeal (19 April 1958), none the less accepted the latter's findings concerning the definition of "original work subject to copyright", which it applied to law notes analysing the *ratio decidendae* of court decisions.

In this particular case, a complaint of violation of an agreement between two publishers of law journals to refrain from competition was brought by one of the two firms against the other.

In the part of the decision which is relevant for our purposes, the Supreme Court, after noting the "considerable importance in both theory and practice" of determining whether it is unlawful to use analytical law notes published by another journal, had the following to say on the subject: "The notes contain the principles of law embodied in the decision and state, in concise form, the reasons which led to the particular settlement of the question in dispute. Sometimes the *ratio decidendae* may be extracted directly from the working of the decision itself, if the principles underlying the decision are explicitly stated in it, but usually it is derived from the context of the judgement. In such cases interpretation is not always easy, and requires special knowledge, as well as critical and analytical powers on the part of the writer. His work cannot be considered merely a summary or an extract from the decision, because the

[1] Act amending the Code of Criminal Procedure of 1930 and containing the new text of this very article 185.

term 'summary' would only apply when the individual passages or the different parts of the decision are given in condensed form, and by 'extract' is clearly meant the contents of the decision as stated in the operative part. Analytical notes are different from either, although they contain elements common to both. Their purpose is not merely to summarize but to bring to light the principle underlying the decision, so that it may serve as a criterion for subsequent rulings on identical questions. In view of their content, the form they take and the purpose they serve, analytical law notes must therefore be considered original works subject to copyright in that, while they reproduce the principle underlying the decision, they state it in concrete form and in an entirely original way."

The same legal protection extends, in the view of the Supreme Court, to the publisher of the journal to whom the individual authors of analytical notes transfer all their rights in the copyrighted work, thereby authorizing him to perform any action designed to prevent the infringement of those rights. The Supreme Court also points out that this type of action is designed not only to prevent infringement of the rights of the individual authors of analytical notes, but also to protect the publisher himself. A publication of this kind, in effect, "likewise provides an original solution to the problem of information and reference, which is of great value to specialists and to the lay public. It is a systematic operation which involves the collating of a considerable number of decisions and the compilation of analytical notes, which are arranged in a particular order and incorporated into the text with the necessary cross references to facilitate research. Thus the publisher cannot be denied the same safeguards that are given to the authors of the notes, because he also is producing an original work in so far as it entails the selection, coordination and arrangement of the complex matters dealt with in the publication."

In conclusion, the Supreme Court states that not even the acknowledgement of sources can exempt the publisher of a law journal from liability for reproducing — without the consent of the publisher of the periodical representing the source — analytical law notes contributed to a specialized publication compiled by others: "the acknowledgement of the source does not alter the fact that an incontestably unlawful action is committed where extensive use is made of analytical notes for one's own economic ends, thereby infringing rights exercised previously by others."

4. Lastly, a brief mention may be made of two decisions with a particular bearing on the need for reconciling two principles of fundamental interest to society and to the individual — namely, the principle of freedom of opinion and expression, as laid down in article 19 of the Universal Declaration and embodied in article 21, first and second paragraphs, of the Italian constitution, and the principle of safeguarding society from any disturbance of public order, which is recognized both by the Universal Declaration in article 29 (2), and by the aforesaid article 21 (succeeding paragraphs) of the constitution.

In a decision of 16 April 1959 (*Il Foro Italiano*, 1959, II, 238) the court of Orvieto defined as "tendentious within the meaning of article 656 of the penal code a report which, even though fundamentally true, is worded in a factious manner so as to appear distorted, and is liable to have a deleterious effect on public order and the peace", and stated that "the act of publishing in a wall newssheet a statement to the effect that atomic missiles are not defensive weapons but suicidal weapons and that the installation of missile bases in the national territory was making the Italian people the victims of criminal war plans comes within the right of fair criticism for which provision is made in article 21 of the constitution and accordingly does not constitute an offence".

Thus the judgement explained that the author of the publication, after reporting the decision taken by the Government, had described the new weapons as "not defensive but suicidal, in view of their inherent capacity to bring upon our country atomic reprisals from nations with which Italy might be at war in the event of a conflict. But, basically, none of this goes beyond the right of fair criticism to which everyone is entitled under article 21 of the constitution (Cf. Cass. 27 January 1953, Giannella. *Foro it.*, Rep. 1953, loc. cit., No. 2). Nor should it be forgotten, in the case under consideration, that the decision taken by the Italian Government gave rise, among various sections of public opinion and even in highly authoritative circles, to varied and conflicting opinions as to the consequences it might have and the possible advantages to be derived from it; and these opinions are all part of the extremely topical and disturbing problem of the use of atomic weapons in the event of a general conflict." Therefore, the judgement went on, the comment on the report, "while reflecting the political views pertaining to a group opposed to the Government now in power, does not in itself contain anything which would make the true report tendentious in character".

On the other hand, a "tendentious" character, within the meaning of article 656 of the Penal Code, was attributed by the Rome Court of Appeal, in a decision of 6 February 1959 (*Foro Italiano* 1959, II, 135), to a press report "albeit true", describing violent repressive acts by the police against demonstrating peasants, resulting in deaths and injuries, in a particular region of Italy, on the grounds that "no attempt was made to report other circumstances relating to the incident — namely, that the demonstrators attempted to take over public offices by force, that the movement had assumed very serious proportions, and that there were victims among the police as well".

The judgement goes on to explain that there is no doubt "that the incident was reported in a one-sided

manner calculated to stir up the population of Rieti, fostering hatred and contempt towards the representatives of established order, and to incite troublemakers to engage in public demonstrations of sympathy for the reported victims of the unfortunate incident. The act in question is therefore punishable in that it constitutes a threat to public order." "The right to describe, report and comment," the judgement states further, "is incontestable, but like every other subjective right, this right too is limited by the law of the land, including the Penal Code, which forbids a citizen to encroach upon another's right to personal integrity, dignity, honour and freedom, and particularly to act in a manner detrimental to social order, even by way of mere disturbance of public order."

IVORY COAST

CONSTITUTION OF 26 MARCH 1959[1]

PREAMBLE

By an act of self-determination, the people of the Ivory Coast adopted, on 28 September 1958, the constitution proposed by the Government of the French Republic whereby the Community was established. By a decision of their Assembly, they have chosen to become a State member of the Community.

They freely affirm their desire to remain in the Community and to further its development, in order that it may fully conform to the common ideal of liberty, equality, fraternity and solidarity, and they solemnly condemn all manifestations of racism.

They proclaim their adherence to the principles of democracy and of human rights, as set out in the declaration of 1789 and the Universal Declaration of 1948 and as guaranteed by the constitution of the Community.

TITLE I

THE STATE AND SOVEREIGNTY

Art. 1. The State of the Ivory Coast is a republic and a member of the Community.

The citizens of the State shall *ipso facto* be citizens of the Community.

. . .

Art. 3. The Republic of the Ivory Coast shall be one, indivisible, secular, democratic and social.

Its principle shall be government of the people, by the people and for the people.

Art. 4. Sovereignty shall be vested in the people.

No section of the people or any individual may assume the exercise of sovereignty.

Art. 5. The people shall exercise their sovereignty through their representatives and by way of referendum. The conditions in which a referendum shall be resorted to shall be determined by law.

The vote shall be universal, equal and secret.

All citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote.

Art. 6. The republic shall ensure equality before the law for all, without distinction as to origin, race or religion. It shall respect all creeds.

Any particularist propaganda of a racial or ethnic nature and any manifestation of racial discrimination shall be punished by law.

Art. 7. The political parties and groups shall assist in the exercise of the franchise. They may be formed and engage in their activities freely, on condition that they respect democratic principles and the principles of the Community and the republic.

. . .

TITLE III

THE LEGISLATIVE ASSEMBLY

Art. 22. The Parliament shall be composed of a single assembly, known as the Legislative Assembly.

. . .

Art. 24. The deputies to the Legislative Assembly shall be elected by direct universal suffrage.

. . .

Art. 31. A compulsory mandate shall be null and void.

. . .

TITLE V

THE JUDICIAL AUTHORITY

. . .

Art. 54. The Superior Council of the Judiciary shall guarantee the independence of magistrates of the bench. Its functioning shall be determined by law.

The statute of the judiciary shall be determined by law.

Art. 55. Magistrates of the bench shall be appointed by the Prime Minister on the proposal of the Superior Council of the judiciary. The said magistrates shall remain in office for life.

. . .

Art. 57. No person may be arbitrarily arrested. The judicial authority, as the guardian of personal freedom, shall ensure respect for this principle as prescribed by law.

. . .

TITLE X

AMENDMENT

Art. 68. . . .

The republican form of the Government shall not be subject to amendment.

TITLE XI

GENERAL AND MISCELLANEOUS PROVISIONS

Art. 69. The provisions necessary for the application of this constitution shall be the subject of laws passed by the Assembly.

. . .

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République de Côte d'Ivoire* of 28 March 1959. Translation by the United Nations Secretariat.

JAPAN

NOTE[1]

I. LEGISLATION

1. *Act amending the Act concerning the State Subsidy for the Supply of Schoolbooks to Destitute Children (Act No. 44 of 26 March 1959)*

Under the Act concerning the State Subsidy for the Supply of Schoolbooks to Destitute Children, before amendment, the State had been subsidizing the cities, towns and villages for supplying schoolbooks to schoolchildren and students who found it difficult to go to school, so that compulsory education could without difficulty be given to them. By the amendment the old Act was changed so as to make the state subsidy cover not only the expenses for supplying schoolbooks, but also the expenses for school excursions of destitute children in the sixth-year grade of the primary school and students in the third-year grade of the middle school.

2. *Act amending the Child Welfare Act (Act No. 53 of 28 March 1959)*

The Child Welfare Act provides that, as a step towards and a guarantee of child welfare, health examinations of physically handicapped children are to be carried out, consultations held for such children, and the necessary guidance given in matters of medical treatment and nurture; and, as a further step, the medical treatment necessary for such children to acquire strength is to be given to them at the Government's expense, or, in place of such treatment, expenses for such treatment are to be supplied to them. By the amendment, new provisions have been set up so that children suffering from tuberculosis in bones or joints may be given medical treatment at the Government's expense by hospitalizing them in order that the governor of the To, Do, Fu or prefecture may help them to learn their lessons while medical care is being given.

3. *Minimum Wage Act (Act No. 137 of 15 April 1959)*[2]

The purpose of this Act is to improve the working conditions of low-wage workers by guaranteeing the minimum level of their wages, thus contributing to the stabilization of their living, the qualitative betterment of labour power and fair competition among enterprises. The details are as follows.

1. The method has been adopted not to decide the amount of minimum wages by the same standard for all industries and for all areas in the country, but to decide it according to the labour conditions of the category of industry, kind of work or area in question.

2. The minimum wage is to be determined in the light of the worker's cost of living, the wages of similar workers and the ability of ordinary enterprises to pay wages, and when the minimum wage is determined, the employer must pay the minimum wage or a wage higher than it.

3. Four formulas for determining minimum wages are provided for — determination of the wages based on the agreement of enterprises, regional minimum wages based on such agreement, regional minimum wages based on the agreement of labour, and minimum wages based on investigation and examination by the Minimum-wage Deliberative Council. This system aims at a smooth and effective enforcement of the Act by respecting as far as possible the autonomy of the parties concerned.

4. Minimum wages may be determined for domestic labour also.

5. Minimum-wage deliberative councils, formed by representatives of labour, management and the public interest are to be set up on the national and local levels, and are to be organs advisory to the administrative organs concerned with the determination of minimum wages.

II. LEGAL AID

As from the fiscal year 1958 the Government started subsidizing the Legal Aid Association, an incorporated foundation which was established in 1952 through the efforts of the Japan Federation of Bar Associations. This action was taken to promote and fortify the Association's work of legal aid to the destitute in civil cases. When the Association began to be subsidized by the State it established branches in each To, Do, Fu or prefecture throughout the country, and while it had aided in only forty or fifty cases in a year hitherto, in Tokyo and at four other places, it is now carrying out very substantial legal aid work throughout the country.

In cases where aid is decided on, the Legal Aid Association advances the necessary expenses and employs lawyers and has them act in the lawsuits.

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[1] Note 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*.

[2] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 – Jap.1.

LIBYA

HUMAN RIGHTS IN 1957-1959[1]

I. LEGISLATION

In Libya, several laws and regulations concerning the Libyan citizen as an individual in a society having both rights and duties were enacted between 1957 and 1959. The State made great efforts to introduce additional legislation affecting the essence and personality of the individual similar to legislation enacted in this field by the developed countries to regulate the life of their nationals and the protection of their rights. These laws and regulations were consistent with the logic of evolution and with the provisions of the Libyan constitution.

A. *1957*

1. The following laws were adopted in 1957.

(i) One of the most important laws enacted in 1957 was the *Labour Act*, which regulated the life of the majority of the population.[2] The importance of this Act will be appreciated more fully if we bear in mind that before it there existed in Libya various provincial laws and regulations governing the relationship between employer and worker. Under these laws the worker was deprived of many of the benefits enjoyed by workers in other countries. The new Act superseded all other provincial laws, and Libyan workers throughout the kingdom became subject to one law.

We in Libya consider this Act a victory for the country's working class and an acknowledgement of its contribution to our economic life. It recognized the worker's rights to daily and annual leave and his right to compensation and overtime pay. It granted him the right to join trade unions, which consequently became entitled to devote their activities to his interests. It also recognized the worker's right to strike, subject to prior legal notice being given. Article 15 of the Act also provided for the establishment of an Advisory Wage Council to fix minimum wages commensurate with the daily cost of living.

(ii) *Social Insurance Act No. 53 of 1957.* — Under this Act[2] the National Social Insurance Board was established to protect workers in respect of illness, industrial accidents, birth, death, invalidity and old age. Insurance under this Act is compulsory for all persons employed for wages under a written or oral contract.

The Act was first applied in Tripolitania and then in Cyrenaica. The Government will endeavour to extend the benefits of insurance to all Libyan workers.

2. The following regulations were made in 1957:

(i) *Secondary Education Regulation.* — This regulation standardized secondary education in the country and divided it into two stages: preparatory and secondary. It fixed the duration of the preparatory stage at two years.

(ii) *Regulation concerning travelling and other scholarships and fellowships.* — This regulation defined the meaning of the travelling scholarship, its purpose and its forms. It was to be an educational mission for the purpose of obtaining a certificate or a degree, gaining training or experience or learning a trade or a craft. The regulation provided for the establishment of a High Commission for Travelling Scholarships, under the chairmanship of the Minister of Education, competent to study matters concerning such scholarships generally, and relevant policy.

(iii) *Regulation concerning the physical examination of employees.* — This regulation indicates the procedures to be followed for examining employees injured during the performance or as a result of their functions and assessing the extent of the injury suffered.

(iv) *Regulation concerning technical education.* — This regulation aims at bringing up young people physically, mentally and psychologically fit for the era in which they live. It also aims at preparing skilled artisans and technicians in the various fields of productive activity, so as to afford them the opportunity for suitable work in society. In further seeks to explore the personal aptitudes of the individual, with a view to developing him and directing him to the fields best suited to his abilities.

B. *1958*

1. The following laws were enacted during this year.

(i) *Public Health Act.* — Under this Act the Ministry of Health was entrusted with the co-ordination of public-health activities and the preparation of general long-term health programmes; the Council of Ministers was authorized to issue regulations governing the control of epidemics, the elimination and prevention of contagious diseases, the provision,

[1] Note kindly furnished by the Ministry of Foreign Affairs of the United Kingdom of Libya. Translation by the United Nations Secretariat.

[2] See also *Yearbook on Human Rights for 1957*, p. 178.

collection, preservation, and conveyance of drinking-water supplies, the prescribing of sanitary conditions for buildings, the maintenance of cleanliness in houses and public roads, the supervision of school health, and the forbidding of insanitary and disorderly premises.

(ii) *Sharia Court Procedure Act.* — This Act defined the competence of the court of first instance to rule on matters relating to alimony, children's maintenance allowances of all kinds, maintenance of relatives, dowry and trousseau.

The Court of Appeal, however, is competent to hear cases submitted by a wife, a parent or a foster parent, in cases concerning foster care, transfer of or payment for foster care, nursing, dowry, divorce, etc.

2. The following regulations were made in 1958.

(i) *Regulation concerning medical care.* — Under this regulation, the National Social Insurance Board provides medical care for insured persons in cases of illness not resulting from injuries incurred during the performance of unpaid work. Women are cared for during pregnancy, both before and after delivery, and receive all forms of medical care. The Board provides the insured with artificial limbs, hearing aids and spectacles.

(ii) *Regulation concerning persons entitled to pensions and benefits.* — This regulation defines the persons entitled to pensions in the event of the death of a civil servant. It includes widows, sons and unmarried daughters, divorced wives and parents. A person entitled to a pension forfeits his rights if he is deprived of his Libyan nationality or is convicted of embezzlement or forgery.

(iii) *Regulation concerning the provision and furnishing of housing for civil servants.* — This regulation indicated that the Government would make every effort to help civil servants to obtain housing within their means; at the same time, the Government has no obligation to do so as civil servants are not considered to have an established right to housing.

The Civil Service Department undertakes the allocation of housing and furniture to civil servants, giving priority to married persons with children.

Under this regulation, civil servants may not change, modify or alter the condition of the housing and furniture they utilize.

C. *1959*

1. During this year new laws were enacted covering both civilians and members of the armed forces. The most important of these are:

(i) *Mental Diseases Act.* — This law prohibited the detention or admission to a mental institution of any individual except at the request of a medical practitioner or a relative of the person concerned. Police officers, however, may, within their spheres of competence, order the detention of any person suspected of suffering from a mental disorder likely to endanger life or property. Any person so detained must be taken before the director of health of the province, who will immediately refer him to a medical commission for a decision in his case.

The Act also laid down conditions to be met in mental institutions, including the requirement that one or more qualified medical practitioners must be responsible for administration and the treatment of patients; that rooms in the asylum should be large and hygienic; and that the institution should be divided into wards for male and female patients.

(ii) *Armed Forces Retirement Act.* — Under this Act every officer reaching the legal age of retirement is entitled to receive an annual retirement pension calculated at the rate of one-fiftieth of his average annual pay during the last three years immediately preceding retirement, multiplied by the number of years of service, if he has completed fifteen years of service. If he is placed on retirement and has not completed fifteen years of service, he is entitled to a gratuity equivalent to one month's pay for each year of service.

The Act also indicates the amount of the gratuity payable to an officer who is placed on retirement for physical unfitness resulting from an accident which caused total or partial disability.

(iii) *Act amending the previous Electoral Act.* — This Act amended certain articles of the Electoral Act of 1951. Article 4 of this amending Act defined the qualifications for membership in the House of Representatives, including the condition that the candidate must be a Libyan, have completed his thirtieth year and be able to read and write.

The Act divided the provinces into electoral districts and constituencies and regulated the procedure for objecting to candidates, ruling on challenges, the withdrawal of candidature, and unopposed elections.

It also defined more clearly the qualifications for membership in the Senate which are almost the same as those for membership in the House of Representatives, except that a senator must be over forty years of age.

(iv) *Tribal Lands Disputes Act.* — This Act referred tribal land disputes to a committee to be established by the executive council of the province in which the dispute arises, with competence to settle disputes concerning ownership of and real rights to tribal lands and wells not registered in the land registry.

(v) *Act to protect women's right of succession.* Under this Act payment of the share due to a woman in an inheritance according to Sharia law may not be refused. Any person who has appropriated a woman's right in an inheritance must, if she claims her right, appear before the court within three months in order that it may settle the dispute. Failure to do so is punishable with imprisonment.

2. *Invalidity Assessment Regulation.* Under this regulation the National Insurance Board assesses the amount

of sickness benefit payable to insured persons entitled to it. The Director of the Board indicates the procedures for certifying the degree of sickness and determining the extent of loss of earning capacity, with a view to assessing the amount of benefit. An insured person who is dissatisfied with a decision of the Board assessing or refusing sickness benefit or arising out of a review of an invalidity pension, even though partial, may oppose that decision in writing.

The regulation prohibits the Board from discontinuing payment of an invalidity pension after the pensioner reaches the age of sixty.

II. INTERNATIONAL AGREEMENTS[1]

Libya acceded to the International Convention for the Suppression of the Traffic in Women and Children on 17 February 1959.

[1] See also *Yearbook on Human Rights for 1957*, pp. 305-6.

LIECHTENSTEIN

NOTE[1]

During 1959 the Principality of Liechtenstein enacted two social welfare acts, one dealing with youth (Youth Welfare Act) and the other with the care of idle and dissolute persons. Under the Youth Welfare Act young persons may in certain cases be placed under protective care until they have completed their eighteenth year, while the other statute provides for the placing under the supervision of the Welfare Service of persons over the age of sixteen. The placing of a person under the supervision of the Welfare Service or his committal to a reformatory is a re-training measure which, while it temporarily curtails the person's freedom of action, does so in his own interest and in the interests of his family and of the community.

[1] Information kindly furnished by Mr. Joseph Büchel, Deputy Head of Government, Principality of Liechtenstein, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

LUXEMBOURG

NOTE[1]

I. LEGISLATION

The following legislation affecting human rights was promulgated and published during 1959.

1. The Act of 28 April 1959 establishing the Office for the Placement and Vocational Rehabilitation of Handicapped Workers (*Mémorial du Grand-Duché de Luxembourg*, 1959, No. 21, p. 357).

This Act provides for a series of measures designed to assist in the vocational reclassification of the victims of industrial accidents, disabled war veterans and physically handicapped persons.

2. The Act of 13 July 1959 amending the regulations governing adoption (*Mémorial*, 1959, No. 32, p. 805).

This Act provides for the replacement of the outmoded provisions of articles 343-370 (title VIII) of the Civil Code by modern legislation designed to encourage the adoption of children.

3. The Act of 10 August 1959 to provide for family allowances for employed persons and to establish a general family allowance scheme (*Mémorial*, 1959, No. 37, p. 943).[2]

This legislation supersedes the provisions of the Act of 20 October 1947 in so far as it relates to family allowances for employed persons and sets up a general allowance scheme designed to cover birth grants and maintenance allowances.

II. INTERNATIONAL AGREEMENT

The second Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, signed at Paris on 15 December 1956 and approved by the Act of 29 December 1958 (*Mémorial*, 1959, No. 2, pp. 11-12).

The purpose of this protocol is to specify and define the privileges and immunities enjoyed by the members of the European Commission of Human Rights under article 59 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.

[1] Note received through the courtesy of Mr. Ferdinand Wirtgen, Registrar-General and Director of State Lands, Luxembourg, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] The French text of the Act and an English translation have been published by the International Labour Office in *Legislative Series 1959 — Lux. 1.*

MADAGASCAR

CONSTITUTION OF 29 APRIL 1959[1]

PREAMBLE

Affirming their belief in God and in the eminent dignity of the human person,

Resolved to guarantee fundamental human rights,

Wishing to further the economic, social and cultural advancement of the country and of each of its inhabitants,

Inspired by the United Nations Universal Declaration of Human Rights,

THE MALAGASY PEOPLE SOLEMNLY PROCLAIM THAT:

All men have equal rights and duties without distinction as to origin, race or religion, and the Malagasy State shall endeavour to give each of its nationals an equal chance to achieve the full development of his capacities and personality.

Freedom and security shall be guaranteed to each person, subject only to the condition that he does not perform any action which might harm the State or constitute a threat to the freedom and security of others.

No person may be subjected to arbitrary interference in his private life, family, home or correspondence, or to attacks on his honour and reputation. Every person shall be entitled to the protection of the law against such interference or attacks.

No person may be convicted of an offence except by virtue of a law which came into force before the offence was committed. A sentence may be passed only by a judge. No person may be arbitrarily detained. All severity and constraint which are not necessary in order to arrest a person, or keep him in detention, and all moral pressure and physical brutality shall be prohibited.

Every person shall have the right to circulate and reside freely in the territory of the State, subject to the regulations concerning public order and public health.

Freedom of expression, assembly and association and trade-union rights shall be guaranteed in the conditions prescribed by law.

The family constitutes the natural basis of human society. The State shall protect it and encourage its cohesion.

Parents have the right and duty to raise their children and give them the best moral, physical and intellectual training.

Every child has the right to education and instruction. These shall be provided by his parents and the teachers chosen by them.

The State shall organize a system of public education. It shall recognize the right to private education and shall guarantee the freedom to teach, subject to respect for the conditions of health, morality and proficiency prescribed by law.

The State and the territorial communities may, in the general interest and within the limit of their budgetary commitments, assist any social welfare or private educational organizations.

Freedom of thought and conscience and the practice of religion shall be guaranteed to all, subject only to respect for morality and public order. The State shall protect the free practice of religion.

Property is an inviolable right for all Malagasy citizens, nationals of other states of the Community and aliens; no person may be deprived of it, except where this is required in the public interest as established in due legal form and except in return for just and prior compensation. The State shall recognize duly established ancestral property rights.

The State shall guarantee the freedom of capital and investments used for programmes drawn up or approved by the State, in accordance with international agreements.

Every person shall endeavour to protect, safeguard, improve and develop, in the interests of all, the soil, subsoil, forests and natural resources of Madagascar.

All exploitation of man by man is and shall continue to be prohibited.

Work is a right and a duty for all. An essential factor of man's dignity and of the country's prosperity, it is a sacred obligation for all who are not prevented from working by age or physical disability.

The right to strike is recognized when it is exercised for the defence of the rights and interests of the workers and within the framework of the laws that govern it.

The State shall endeavour to ensure protection of health and material security for all, and in particular for children, mothers and aged workers.

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République malgache* of 29 April 1959. Translation by the United Nations Secretariat.

Individual rights shall be exercised in the conditions determined by the laws or regulations made for their application. They shall be subject only to the restrictions necessary to ensure respect for the rights of others and to satisfy the legitimate requirements of morality and public order and the perpetuity of the State.

To ensure the separation of powers, the law shall guarantee the independence of the judicial authority and the fixity of tenure of magistrates of the bench.

No person may abuse the rights recognized by the constitution or by law to attack the republican regime or democracy or to violate the present constitution or that of the Community.

TITLE I

GENERAL PROVISIONS

. . .

Art. 2. The Malagasy Republic is one, indivisible, democratic and social. It affirms its neutrality with regard to the different religions. The State and the churches shall be independent in their respective spheres of activity. They may not interfere in the sphere of activity which does not concern them.

The principle of the republic shall be government of the people, by the people and for the people.

. . .

Art. 3. National sovereignty shall be vested in the people.

No section of the people nor any individual may assume the exercise of sovereignty.

The authorities entrusted with the guidance of the State shall derive their powers from the people through elections held on a basis of universal suffrage, direct or indirect.

The vote shall be equal and secret. The conditions for the exercise thereof shall be determined by law.

Art. 4. The institutions of the republic shall be:

The President of the Republic, who shall be the Head of Government;

The National Assembly;

The Senate;

The Superior Council of the Institutions.

The National Assembly and the Senate shall constitute the Parliament.

. . .

Art. 6. The political parties and groups shall assist in the exercise of the franchise. They may be formed and engage in their activities freely within the framework of the law. They must respect democratic principles and the integrity of the State.

. . .

TITLE III

THE NATIONAL ASSEMBLY

Art. 19. The members of the National Assembly shall be elected for a term of five years by direct universal suffrage. . . .

Art. 23. A compulsory mandate shall be null and void.

. . .

TITLE V

LEGISLATIVE FUNCTIONS AND THE RELATIONSHIP BETWEEN THE GOVERNMENT AND THE PARLIAMENT

. . .

Art. 34. . . .

The President of the Republic may, on the concurring proposals of the National Assembly and the Senate as separately adopted by an absolute majority of the members of those bodies, submit to a referendum any bill concerning the organization of the public powers, the application of the principles contained in the preamble of the constitution, or the operation of the institutions.

If the decision in the referendum is for the adoption of the bill, the President of the Republic shall promulgate the relevant Act within the period specified in article 13.

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TITLE VIII

AMENDMENT

Art. 66. . . .

The republican form of the State shall not be subject to amendment.

. . .

ORGANIC LAW No. 3 REGULATING THE EXERCISE OF THE FRANCHISE of 6 June 1959[1]

TITLE I. — ENJOYMENT AND ESTABLISHMENT OF THE FRANCHISE

CHAPTER I. — CONDITIONS REQUIRED TO BE A VOTER

Art. 1. All Malagasy citizens and all citizens of the Community, without distinction as to sex, who have attained the age of twenty-one years and are in full possession of their civil and political rights shall be entitled to vote.

Persons in military service (land, sea and air forces) shall be entitled to vote under the same conditions as other citizens.

The electoral status of women who have acquired Community nationality by marriage is laid down in the ordinance of 19 October 1945 of the Nationality Code, as given effect by decree of 24 February 1953.

The electoral status of naturalized aliens is laid

[1] Text published in the *Journal officiel de la République malgache*, 75th year, new series, No. 49, of 13 June 1959. Translation by the United Nations Secretariat.

down in articles 81, 82 and 83 of the aforesaid ordinance.

Art. 2. The following persons shall be denied the right to vote and consequently shall not be registered on the electoral roll referred to in article 3:

1. Persons convicted of a serious offence (*crime*);

2. Persons sentenced to imprisonment or to a fine of more than 50,000 francs CFA, whether or not the sentence has been suspended, for any less serious offence (*délit*) other than:

(*a*) A less serious offence (*délit*) committed through negligence, except where the offender has fled;

(*b*) An offence — other than an offence under the Companies Act of 24 July 1867 — which is classified as a less serious offence (*délit*) but is punishable without proof of bad faith and is subject only to the penalty of a fine;

3. Persons for whom a warrant of arrest has been issued but not executed;

4. Undischarged bankrupts;

5. Persons under disability and confined lunatics;

6. Persons whom the courts have deprived of the right to vote under the laws authorizing such deprivation.

CHAPTER II. — ELECTORAL ROLLS

. . .

Section III. — Verification of Entries on the Electoral Rolls

Art. 25. No person may be registered on more than one electoral roll.

. . .

CHAPTER III. — PRE-ELECTORAL OPERATIONS

. . .

Section II. — Posters

Art. 37. Throughout the electoral period, special sites shall be reserved in each commune by the municipal authorities for the affixing of election posters.

At each such site an identical area shall be allocated to each candidate or list of candidates.

The maximum number of such sites, other than those established alongside the polling offices, shall be fixed by decree on the basis of the population and size of the commune.

The affixing of posters relating to the election, including stamped posters, outside that site or on the area reserved for the other candidates shall be prohibited.

Art. 38. The sites shall be allocated in the order of receipt of the requests, which must be submitted not later than the eighth day before the date of the first ballot or, in the case of a new candidature submitted between the two ballots, on the Wednesday preceding the second ballot.

If the mayor refuses or neglects to comply with the provisions of articles 37 and 38, first paragraph, the chief district officer, if requested to do so, shall ensure that they are applied forthwith.

Otherwise the candidates affected may, without incurring penalties, put up their posters, subject, however, to the limit on the number of posters authorized by the commune and to compliance with the provisions of law relating to posters in general.

. . .

Art. 40. No new posters, other than posters restricted solely to the announcement of electoral meetings, may be put up after the Thursday preceding the balloting.

Art. 41. White posters and posters consisting of a combination of the three colours of the Community (blue, white and red) or of the Malagasy State (white, red and green) shall be prohibited.

. . .

CHAPTER IV. — ELECTORAL OPERATIONS

. . .

Section IV. — The Poll

Art. 69. Votes shall be cast in person.

They may not be cast by proxy or by correspondence.

Art. 70. Voting shall be secret.

. . .

Art. 73. Any voter suffering from infirmities which clearly make it impossible for him to put his ballot-slip into the envelope and to put the envelope into the ballot-box shall be permitted the assistance of a voter chosen by himself.

. . .

ORGANIC LAW No. 5 CONCERNING THE NUMBER AND ELECTION OF MEMBERS TO, AND THE ORGANIZATION AND FUNCTIONING OF, THE NATIONAL ASSEMBLY

of 9 June 1959[1]

Art. 1. The members of the National Assembly shall be elected by universal and direct suffrage. They shall be known as deputies.

TITLE I. — ELECTION OF DEPUTIES

CHAPTER I. — CONDITIONS OF ELIGIBILITY

Section I. — General Conditions

Art. 2. No person may stand for election to the National Assembly or be elected thereto unless:

1. He is registered on the electoral roll of an electoral district in the territory of the Malagasy Republic;
2. He has attained the age of twenty-five years at the time when his candidature is filed;
3. He has complied with the laws on military recruitment;
4. He has complied with the fiscal legislation in force in the territory of the Malagasy Republic and, in particular, with his tax obligations for the preceding year;
5. He is able to speak one of the two official languages of the Malagasy Republic.

Art. 3. A person shall not be registered as a candidate if he is barred, either absolutely or relatively, by virtue of section II or III from standing for election.

. . .

Section II. — Absolute Ineligibility

Art. 4. A person who does not enjoy the right to vote may not be a deputy; however, the mere impossibility of exercising this right shall not prevent him from standing for election.

Art. 5. A naturalized alien may not stand for election until a period of ten years has elapsed from the date of the naturalization decree.

The preceding paragraph shall not, however, apply to:

1. A naturalized alien who has completed the period of active service in the armed forces of the Community that is required for persons in his age-group;
2. A naturalized alien who has served for five years in the armed forces of the Community, or who in time of war has voluntarily enlisted in the armed forces of the Community or of an allied Power;
3. A naturalized alien who has served in the armed forces of the Community in time of war and has been given combatant status in accordance with the regulations in force.

Art. 6. A woman who has acquired Community nationality by marriage may not stand for election until a period of five years has elapsed from the date on which such acquisition of Community nationality can no longer be disputed.

Art. 7. A convicted person may not stand for election if his conviction permanently bars his registration on an electoral roll.

A person whose conviction temporarily bars his registration on an electoral roll may not stand for election within a period twice as long as that during which he may not be registered.

The following persons may not stand for election:

1. Persons deprived by a court of their right to stand for election pursuant to laws authorizing such deprivation;
2. Persons committed to a trustee.

Art. 8. If a person is convicted under articles 87 to 92 of organic law No. 3 of 6 June 1959 concerning the general conditions governing the exercise of the franchise,[2] or under article 21, second paragraph, of the present organic law, he shall by that fact be barred from standing for election for a period of five years from the date of the conviction. If the convicted person was a deputy who was removed from office, the aforementioned five-year period shall begin to run from the date of such removal.

Art. 9. The following persons shall also be barred from standing for election while they are in office and for a period of three years thereafter:

1. The representative of the Community, governors, the directors and heads of the departments and agencies of the central Government and their deputies whether or not they are responsible to the Community, and the directors and members of the staff of the representative of the Community;
2. Inspectors in the service of Overseas France;
3. The Treasurer-General and the directors and representatives of the Controller's office;
4. Inspectors of administrative affairs and inspectors of the departments and agencies of the central government;
5. Directors and directors-general of public credit establishments and semi-public credit associations.

[1] Text published in the *Journal officiel de la République malgache*, 75th year, new series, No. 49, of 13 June 1959. Translation by the United Nations Secretariat.

[2] Articles 87 to 92 of organic law No. 3 relate to fraud, in so far as registration on the electoral roll, the exercise of the franchise and the regulation of campaigning are concerned, and to obstacles to the freedom to vote and the honesty of the vote.

Section III. — Relative Ineligibility

Art. 10. The following persons shall be barred from standing for election in any electoral district in which they are now, or have within the past year been in office:

1. Heads of administrative districts, to the level of *chef de canton*, and their deputies;
2. The directors and heads of departments and agencies at the provincial level placed under the authority of a specially delegated Secretary of State;
3. Judges of courts of appeal and of tribunals;
4. Members of administrative courts;
5. Members of the armed forces (land, sea and air);
6. School inspectors;
7. Inspectors of youth and sports activities;
8. Disbursement officers of the Treasury and special agents;
9. Public works engineers;
10. Inspectors, conservation agents and engineers of the Forestry Commission, agricultural services engineers, rural engineers, veterinary inspectors, and labour and social welfare inspectors;
11. Medical and health-services inspectors;
12. Chiefs of police, inspectors, policemen and military and civilian security officers.

. . .

CHAPTER II. — INCOMPATIBILITY OF OFFICES

Art. 12. No person may hold the offices of deputy and senator of Madagascar concurrently. Any deputy elected to the Senate must opt for one of the two offices with which he is concurrently invested, and shall do so within eight days after the confirmation of his election or the expiry of the period within which his election may be contested.

If he fails to opt within the aforementioned time-limit, he shall be deemed to have been dismissed from the office which he first occupied.

In no circumstances may he take part in the work of both assemblies.

Art. 13. A deputy may not hold a non-elective public office.

Consequently, any person holding a non-elective public office who is elected to the National Assembly shall be superseded in that office and be given a status — for example, secondment — provided for in such circumstances by the regulations governing that office within thirty days after assuming his parliamentary functions or, in the case of a disputed election, after the decision of the Higher Institutional Council, unless he resigns his office as deputy before the expiration of the said time-limit.

. . .

Art. 21. No deputy may cause or allow his name, followed by a reference to his office, to appear in any advertising matter relating to a financial, industrial or commercial undertaking.

The founders, directors and managers of commercial, industrial and financial companies or establishments who cause or allow the name of a deputy, accompanied by a reference to his office, to appear in any advertising matter published in the interest of the undertaking which they direct or propose to establish shall be liable to imprisonment for a term of one to six months or to a fine of 200,000 to 1 million francs CFA, or to both such penalties. If the offence is repeated, the aforementioned penalties may be increased to imprisonment for a term of one year and to a fine of 2 million francs CFA.

. . .

CHAPTER III. — VOTING PREPARATIONS

Section III. — Electoral period

. . .

Art. 31. The electoral period shall begin twenty-one days before the opening of the polls and shall end at midnight of the day before the election.

It shall comprise the period between the calling of the election and the holding of it.

Art. 32. During this period, the conditions governing campaigning, the affixing of posters and the holding of electoral meetings shall be determined by article 36 and articles 37 to 41, inclusive, of the organic law regulating the exercise of the franchise.

. . .

ORGANIC LAW No. 6 CONCERNING THE COMPOSITION OF, THE RULES FOR THE ELECTION AND APPOINTMENT OF MEMBERS TO, AND THE FUNCTIONING OF, THE SENATE

of 9 June 1959[1]

TITLE I. — QUALIFICATIONS FOR ELECTION OR APPOINTMENT AS A SENATOR

Causes of ineligibility

Incompatibility of offices

Art. 1. No person may be elected or appointed as a senator unless:

1. He is a Malagasy citizen or a citizen of the Community;

2. He has attained the age of thirty-five years on the date on which his candidature is filed or he is nominated;

3. He has complied with the laws on military recruitment;

4. He has complied with the fiscal legislation in force in the territory of the Malagasy Republic and, in particular, with his tax obligations for the preceding year;

5. He is able to speak one of the two official languages of the Malagasy Republic.[2]

Art. 2. The causes of ineligibility shall be the same as those for the National Assembly as set out in articles 4 to 10 of organic law No. 5 relating to the National Assembly.

. . .

Art. 6. The grounds for incompatibility of offices and the procedures for dealing with the difficulties arising therefrom shall be the same as those set out in articles 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of organic law No. 5 relating to the National Assembly, the provisions of which shall apply to senators, whether elected or appointed.

TITLE II. — COMPOSITION AND FORMATION OF THE SENATE

CHAPTER I. — COMPOSITION OF THE SENATE

Art. 7. The Senate shall have fifty-five members.

Thirty-six members shall be elected, such election to be on the basis of six members for each province;

Twelve members shall be appointed by the Government from among nominees put forward by the most representative groups in the economic, social and cultural sectors, four members being appointed for each sector;

Six members shall be appointed by the Government on the basis of their particular qualifications. Two of these members shall be chosen from among specialists in economics.

CHAPTER II. — ELECTION OF SENATORS

Section I. — Electoral System

. . .

Art. 9. Save as otherwise specifically provided in the present organic law, the provisions of title I, chapters III and IV, of organic law No. 3 regulating the exercise of the franchise shall apply to senatorial elections.

. . .

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[1] Text published in the *Journal officiel de la République malgache*, 75th year, new series, No. 49, of 13 June 1959. Translation by the United Nations Secretariat.

[2] In accordance with article 2 of the constitution of the Malagasy Republic, the official languages of the republic are Malagasy and French.

MAURITANIA

CONSTITUTION OF 22 MARCH 1959[1]

PREAMBLE

Trusting in the omnipotence of God, the Mauritanian people proclaim their resolve to guarantee the integrity of their territory and promote its free political, economic and social advancement.

They reaffirm their devotion to their religion and traditions, to human rights and to the principles of democracy, as set out in the Declaration of 1789, as further developed in the preamble to the constitution of 1946 and as confirmed in the constitution of 5 October 1958, and to the institution of the Community, which they have freely joined and in which they intend to develop their personality and sovereignty.

TITLE I

SOVEREIGNTY

Art. 1. Mauritania is a republican, indivisible, democratic and social State.

It shall be called the Islamic Republic of Mauritania.

All citizens shall be equal before the law.

Art. 2. The religion of the Mauritanian people shall be the Moslem religion.

The republic shall guarantee to every person freedom of conscience and the right to practise his religion, subject to the requirements of morality and public order.

Art. 3. The national language of Mauritania shall be Arabic.

The official language shall be French.

. . .

Art. 7. National sovereignty shall be vested in the Mauritanian people, who shall exercise it through their representatives and by way of referendum.

No section of the people or any individual may assume the exercise of sovereignty.

Art. 8. Suffrage may be direct or indirect in the conditions established by law. The vote shall in all cases be universal, equal and secret.

All citizens of the republic of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote, and the same shall apply to citizens of the other States of the Community fulfilling the same conditions if they have resided in Mauritania for the period prescribed by law.

Art. 9. The political parties and groups shall assist in the exercise of the franchise. They may be formed and engage in their activities freely, on condition that they respect democratic principles and do not by their aims or their activity jeopardize the national sovereignty or unity of the republic.

The conditions for the application of this article shall be established by law.

TITLE III

THE NATIONAL ASSEMBLY

Art. 17. Legislative power shall be vested in the National Assembly.

Art. 18. The National Assembly shall be elected for a term of five years.

. . .

All citizens of the republic who are not less than twenty-five years of age and are in full possession of their civil and political rights may stand for election, and the same shall apply to citizens of the other States of the Community fulfilling the same conditions if they have resided in Mauritania for the period prescribed by law.

. . .

Art. 20. A compulsory mandate shall be null and void.

. . .

TITLE VI

JUSTICE

Art. 43. The judicial authority shall be independent of the executive power and the legislative power. Magistrates of the bench shall remain in office for life.

. . .

TITLE VIII

AMENDMENT OF THE CONSTITUTION

48. . . .

No amendment procedure may be initiated if the relevant proposal jeopardizes the integrity of the territory or the republican form of the Government.

. . .

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République islamique de Mauritanie*. Translation by the United Nations Secretariat.

MEXICO

HUMAN RIGHTS IN MEXICO DURING 1959[1]

I. INTRODUCTION

In 1959, no changes were made in the constitution in connexion with the rights proclaimed in the Universal Declaration of Human Rights. 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.

In the course of the year covered by this report, texts relating to human rights, which in every instance would give them greater scope and would provide better guarantees of their application, were included in acts, decrees and international conventions and in judgements pronounced by the Supreme Court of Justice of Mexico.

It should be noted 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, are also closely linked with the principles of the Universal Declaration of Human Rights. It is thus clear 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 merely to ensuring that the national interest and the common good shall be paramount.

It may safely be said, therefore, that, thanks to the favourable climate of opinion throughout the country, and to the part played by the State as mediator, labour-management disputes have been settled without injury to the interests of the nation or disturbance of public order.

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

II. LEGISLATION

The legislative provisions which came into force in 1959 that are concerned with human rights and contribute to their progressive development are as follows.

1. Decree establishing the National Commission for Free Textbooks

It is a well-known fact that article 3 of the political constitution of the United Mexican States provides that all education imparted by the State — federation, states or municipalities — is to be free. The Commission has been established as a corollary to this provision in the constitution, so as to enable it to be carried out more effectively: it will be responsible for selecting and publishing textbooks for all the public schools in the country and for distributing them free of charge to all pupils without discrimination.

2. Decree approving the Supplementary Convention on the Abolition of the Slave Trade, and Institutions and Practices Similar to Slavery, signed at Geneva on 7 December 1956[2]

The Mexican Government, being based on democratic principles, has approved this convention and the Supplementary Convention on the Abolition of Slavery, in view of the fact that slavery is prohibited in Mexican territory by a constitutional provision. This prohibition safeguarding human freedom and dignity has been in force in Mexico since 1810.

Decree approving pension regulations for workers in the sugar industry

As already noted, the Mexican State is constantly concerned with the improvement of labour management relations. The pension regulations for workers in the sugar industry are a further example of the way in which a joint approach by labour management under the auspices of the State helps to improve their relations with one another.

The regulations in question lay down as essential requirements that a worker in the sugar industry must have worked for thirty-five years and must be over sixty years of age in order to secure a pension.

[2] See *Yearbook on Human Rights for 1956*, pp. 289-91.

4. DECREES APPROVING CONVENTIONS NUMBERS 105, 106, 107 AND 110 OF THE INTERNATIONAL LABOUR ORGANISATION

As a member of the International Labour Organisation, Mexico signs and approves the conventions prepared by the Organisation to improve working relations between labour and management.

Accordingly, Mexico has approved the Convention concerning the Abolition of Forced Labour (No. 105), adopted at Geneva on 25 June 1957.[1]

As is well known, the Mexican constitution provides that there shall be no forced labour, and that all labour relations shall be protected by a contract drawn up in accordance with the relevant statutes, in which the voluntary consent of the parties is made one of the essential conditions of the existence of the contract.

The Convention concerning Weekly Rest in Commerce and Offices (No. 106), adopted at Geneva on 26 June 1957, has also been approved.

In Mexico the constitution establishes a maximum work-week of forty-eight hours, it being essential that every worker should enjoy one day of rest for each six days of labour; this provision covers work in commerce and in public and private offices.

Mexico has also approved the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-tribal Populations in Independent Countries (No. 107), adopted at Geneva on 26 July 1957.

In Mexico there is no discrimination on the grounds of the race, colour or the social or economic circumstances of its inhabitants, since all persons are equal before the law and possess the same political rights. Nevertheless, in order to further the assimilation of some sectors of the populations of indigenous origin, the Mexican State some years ago established institutions devoted exclusively to the protection of such groups and to their advancement in the economic, social, educational and public health fields. The objective was to facilitate their assimilation with the rest of the people without harming their traditions, culture, language and customs.

Lastly, Mexico has approved the Convention concerning Conditions of Employment of Plantation Workers (No. 110), adopted at Geneva on 4 June 1958.

5. DECREE MAKING A COLLECTIVE WORK CONTRACT COMPULSORY FOR A TWO-YEAR PERIOD IN THE KNITWEAR BRANCH OF THE TEXTILE INDUSTRY

This contract includes the following important provisions relating to employees' rights:

Article 66 makes the provisions of the Social Insurance Act compulsory for both parties.

Article 67 provides for the setting up of a Joint Social Insurance Fund, in those places where the state-authorized compulsory insurance scheme has not yet been established, the objective of which shall be to furnish medical assistance and other forms of aid to employees.

Article 70 directs that pregnant women shall not perform work requiring strenuous physical exertion during the three months preceding the confinement. Furthermore, they shall have eight days of rest, with full wages, prior to the confinement and thirty days of leave, with full wages, after the confinement.

Article 71 requires the employer to maintain a proper room in which mothers may conveniently nurse their children.

Article 72 provides that mothers shall be given two half-hour rest periods each day in which to nurse their infants.

Article 74 lays down that, in the event of the death of an employee, the employer shall pay to his relatives a sum equal to the deceased employee's wages for 105 days, in addition to other indemnities or pensions provided by him or by the Mexican Social Insurance Institute.

6. DECREE MAKING A COLLECTIVE WORK CONTRACT COMPULSORY IN CERTAIN BRANCHES OF THE TEXTILE INDUSTRY (TAPES, RIBBONS, ELASTICS, EMBROIDERED RIBBONS, LACE AND SIMILAR ARTICLES)

The main provisions relating to employees' rights in this contract are the following.

Article 56 states that both parties agree to apply the compulsory insurance scheme laid down by the Social Insurance Act.

Article 57 provides for the setting up of a joint commission in those places where the state-controlled compulsory insurance scheme has not yet been established, the purpose of which is to provide employees with benefits similar to those available under the Social Insurance Act.

Article 60 directs that pregnant women shall not undertake work requiring strenuous physical exertion during the three months preceding the confinement. They must be given eight days of rest prior to the confinement and thirty days leave following the confinement, with full wages. In addition, they are to have two half-hour periods daily in order to nurse their infants. Also, to defray confinement and nursing expenses, they must be paid, in addition to wages, a pecuniary benefit equal to 50 per cent of their wages during the six months immediately following the date of confinement.

Article 63 lays down that, in the event of the death of an employee, the employer shall pay, in addition to the pensions or indemnities provided by

[1] See *Yearbook on Human Rights for 1957*, pp. 303-4.

him or by the Mexican Social Insurance Institute, a sum equal to the deceased employee's wages for ninety days.

Article 64 provides that, in addition, the employer shall pay a contribution of three pesos per employee for the promotion of the athletic activities of its employees.

7. Act establishing the Insurance and Social Welfare Institute for employees of the states

This Act, which was published in the federal *Diario Oficial* on 30 December 1959, stipulates, in connexion with the rights of state employees, that the State is under an obligation to provide its employees with the following benefits.

Art. 30

(1) Insurance against sickness not due to an occupational disease, and maternity;

(2) Insurance against industrial accidents and occupational diseases;

(3) Rehabilitation and re-training services in cases of invalidity;

(4) Services raising the standards of living of the public servant and his family;

(5) Schemes for improving the technical and cultural training of the employee and his family, and for encouraging their social activities;

(6) Loans for the purchase of houses or land on which houses are to be built, intended to be used as a family residence by the employee;

(7) The renting of low-cost dwellings belonging to the Institute;

(8) Mortgage loans;

(9) Short-term cash loans;

(10) Pension payments;

(11) Insurance against old age;

(12) Insurance against sickness;

(13) Insurance against death of the employee;

(14) Lump-sum cash indemnity to an employee who has no pension 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 1959

1. *Duty to pay alimony to a married woman*

When for reasons beyond her control a married woman must live apart from her husband, the husband is obliged to pay her alimony during the period of separation (decision of competence No. 9/59, between the judges of the seventh civil court for the Federal District of Mexico and the judges of the civil court for Comitán, Chiapas).

2. *Voluntary statement of the accused*

Basing itself on article 20, paragraph 2, of the constitution, the Supreme Court of Justice again declared that an accused person cannot be compelled to testify against himself, not even under protest, and that consequently an accused person cannot commit the offence of perjury in statements made by him in the course of judicial proceedings, even when it is proved during the course of the trial that he lied. (*Amparo directo* No. 3057/58.)

3. *Positive retroactivity of laws*

The injunction of article 14 of the constitution that "No law shall be given retroactive effect to the prejudice of any person", when applied in reverse, means that laws may be given retroactive effect if the accused is benefited thereby. (*Amparo directo* No. 465/58.)

4. *Hearing of interested parties compulsory*

Notice given by the competent authority is not a substitute for a hearing in which the interested parties may state their case with respect to any order issued by the authorities, since the denial of a hearing is a violation of the provisions of article 14 of the constitution to the prejudice of those parties. (*Toca* No. 262/59; *Toca* No. 5501/58 and *Toca* No. 226/59.)

5. *Individual damages in relation to a collective contract*

An employee has the right to bring suit against his employer for damages he personally had suffered, even when he is performing his services under a collective contract and the other employees are not similarly damaged. (*Amparo directo* No. 15/57.)

MONACO

NOTE[1]

The noteworthy constitutional and legislative developments of 1959 which affect human, political, civil, economic and social rights are the following:

A. POLITICAL RIGHTS

1. *Partial and Temporary Suspension of the Constitutional Regime (28 January 1959)*

As a result of disagreements between Prince Rainier III and the elected assemblies on general policy, the provisions of the constitution of 5 January 1911 concerning the exercise of legislative power (chapter V of the constitution) and municipal administration (chapter VI) were suspended by unilateral decision of the Prince (sovereign ordinance of 28 January 1959, published in the *Journal de Monaco* No. 5287, of 2 February 1959, p. 119).

The National Council, the deliberative assembly, was replaced by the Council of State, a body composed of members appointed by the Prince, in an advisory capacity and for the duration of the suspension. The Communal Council was replaced by a special delegation composed of persons appointed by the sovereign.

Although the constitution of 1911, a charter granted by the sovereign, did not reserve to him the right either of abrogation or of suspension, it did not establish any remedy against such measures on grounds of unconstitutionality.

Thus, since 28 January 1959 and until the constitutional regime is restored, the legislative power, which under the constitution was to be exercised jointly by the Prince and the National Council, has been exercised by the Prince alone. The legislative measures taken by him are in the form of legislative ordinances, as distinct from ordinary ordinances, which relate to the executive function.

In a public message on 2 February 1959, Prince Rainier III announced certain forthcoming liberal measures: the granting to women of the right to vote and to be elected in the national elections, the establishment of an administrative tribunal and other administrative reforms.

2. *Temporary Suspension of the Right of Assembly (28 January 1959)*

The above-mentioned sovereign ordinance of 28 January 1959 suspends "the guarantees granted by article 12 of the said (constitutional) ordinance concerning the right of assembly".

Article 12 of the charter of 5 January 1911 is worded as follows:

"Monegasques have the right to assemble peaceably and without arms without previous authorization, provided that they comply with the laws regulating the exercise of this right. This provision shall not apply to meetings in the open air, which shall continue to be subject to the police laws."

Under the Monegasque constitution, the right of assembly is the only individual freedom reserved to nationals. The other rights (freedom of the individual, security, inviolability of the home, right to property, freedom of religion, freedom of opinion, right of petition) are extended to all inhabitants.

It should be noted that under article 14 of the charter a supreme court was established "for deciding appeals involving infringements of the rights and liberties laid down in this chapter".

It has been suggested that the act of suspending, even by a general measure, one of the constitutionally guaranteed freedoms, might fall within the jurisdiction and right of sanction of that supreme court. In fact, no appeal has been brought before it.

B. CIVIL RIGHTS

3. *Amendment of articles 227 and 232 of the Civil Code, for the Purpose of extending the Possibilities of Legitimation of Natural and Adulterine Children* (legislative ordinance No. 659, of 23 March 1959, published in the *Journal de Monaco* No. 5296, of 6 April 1959)

The new regulations are as follows:

"Article 227. Children born out of wedlock, other than adulterine children, shall be legitimated by the subsequent marriage of their father and mother if the latter have legally acknowledged them before the marriage or do so at the time of its celebration.

"In the latter case, and in the case referred to in the following paragraph, the civil registrar officiating at the marriage shall record the acknowledgement and legitimation in a separate instrument.

"The following shall also be legitimated by the subsequent marriage of their father and mother where the latter acknowledge them at the time of the celebration of the marriage:

[1] Note received through the courtesy of Dr. Louis Aureglia, National Councillor, Monte Carlo, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

"1. The adulterine children of the wife if they have been repudiated by the husband or his heirs;

"2. The adulterine children of the wife if they are deemed to have been conceived at a time when the mother had a separate domicile pursuant to a decision taken under the sovereign ordinance of 3 July 1907, authorizing the separate domicile of the spouses, provided that the proceedings ended in divorce or physical separation or were interrupted by the decease of the other spouse; however, the acknowledgement and the legitimation may be voided if the child has the status of a legitimate child;

"3. The adulterine children of the husband.

"Where a child referred to in this article has been acknowledged by its father and mother, or by one of them, after their marriage, such acknowledgement shall have the effect of legitimation only by virtue of a judgement given in a public hearing, after inquiry and debate in the Chamber Council, which judgement must show that since the celebration of the marriage the child has had the status of a child of both parties.

"Such legitimation shall be entered in the margin of the birth certificate of the legitimated child; the entry shall be made at the instance of the civil registrar, if he knows of the existence of the child, or of any interested party."

"Article 232. The acknowledgement of a natural child by the father or the mother shall be effected by a legal instrument, where it has not been effected in the birth certificate or where it does not result from the provisions of article 231, paragraph 1.

"Subject to the provisions of article 227, adulterine or incestuous children may not be acknowledged by the father, save, in the latter case, where the marriage of the father and the mother has been authorized under article 131."

4. *Restriction of the Right to opt for the Acquisition of Monegasque Nationality* (legislative ordinance No. 672, of 2 October 1959, repealing article 3 of Act No. 572, of 18 November 1952, as amended by Act No. 582, of 28 December 1953; published in the *Journal de Monaco* No. 5323 of 12 October 1959)

The Acts of November 1952 and December 1953, which were analysed in the *Yearbook on Human Rights* in 1952 and 1954, granted the right to opt for Monegasque nationality to: (1) any person born in Monaco, if one of his parents was of Monegasque origin; (2) any person born in Monaco of a parent who is a Monegasque national or was born in the principality, if one of the ascendants of the latter in the second degree and in the same line is himself a Monegasque national or was himself born in the principality.

The legislative ordinance of 2 October 1959 simply abolished the second option.

C. SOCIAL RIGHTS

5. *Extension of the Benefits payable under the Family Allowances System in respect of Accident or Illness* (legislative ordinance No. 653, of 18 February 1959, amending article 8 of Act No. 595, of 15 July 1954, published in the *Journal de Monaco* No. 5291, of 2 March 1959, p. 243)

"In the event of accident or illness, family allowances shall be continued during the period of temporary disablement.

"They shall also be continued, so long as the children fulfil the appropriate qualifications, in the event of industrial accident or occupational disease causing either death or the award of a pension corresponding to a disablement of 85 per cent or more."

6. *Assistance to Monegasque families* (legislative ordinance No. 673, of 2 October 1959, published in the *Journal de Monaco* No. 5323, of 12 October 1959)

This legislative ordinance introduces a "marriage loan" and "maternity benefits", and lays down appropriate regulations.

The marriage loan is granted to married couples over eighteen and under thirty-two years of age, of satisfactory health and having assets smaller than a sum fixed by ordinance. Reductions are granted on the birth of each child up to the fourth.

Maternity benefits are granted beginning with the second child, provided that the first child is still living. They are paid to the mother.

These benefits are restricted to Monegasque nationals.

7. *Extension to Retired Persons of the Family Allowances payable to Workers* (legislative ordinance No. 675, of 2 December 1959, published in the *Journal de Monaco* No. 5333, of 21 December 1959, p. 1042)

"Persons directly or indirectly entitled to a retirement pension, either under Act No. 455, of 27 June 1947 (retirement of wage-earners), or under a private retirement scheme, shall have the right:

"(1) To family allowances under the conditions laid down for wage-earners by Act No. 595 of 15 July 1954;

"(2) And, if they are habitually resident in Monaco or in the adjacent French *département*, to the allowances in kind provided for by legislative ordinance of 27 September 1944 in respect of maternity, illness or accident, under the conditions laid down by legislative ordinance No. 92, of 7 November 1949, with the exception of allowances pertaining to treatment at thermal springs; allowances pertaining to residence or treatment in a clinic or in any private establishment."

8. *Reduction of Hours of Work of Wage-earners* (legislative ordinance No. 677, of 2 December 1959, published in the *Journal de Monaco* No. 5333, of 21 December 1959, p. 1045)

"Article 1. The hours of work of wage-earners employed in industrial, commercial, craft or agricultural establishments, or as officers of justice, or in the professions, or in public or private hospital establishments, civil corporations, trade unions, or associations, whatever their form or aims, shall be forty hours per week irrespective of age or sex.

"Article 2. By hours of work are meant hours of actual work, excluding dressing time, lunch breaks, and off-periods peculiar to certain trades or industries, as determined by ministerial order; however, such breaks and periods may be remunerated in accordance with custom or by virtue of collective bargaining agreements."

The legislative ordinance provides for departures from the rule in exceptional cases, with a 25 per cent increase in the hourly wage up to forty-eight hours and 50 per cent thereafter.

MOROCCO

NOTE[1]

1. Dahir No. 1-58-261, of 1 Shaban 1378 (10 February 1959), constituting the Code of Criminal Procedure, published in the *Official Gazette* of 5 March 1959, page 379. This dahir deals with matters covered by articles 10, 11 and 12 of the Universal Declaration of Human Rights (the right of everyone charged with a penal offence to be given the guarantees necessary for his defence and to be presumed innocent until proved guilty; the right of everyone to the inviolability of his home).

The main provisions of this code, which ensures respect for the individual and his most sacred rights, can be outlined by very briefly analysing the provisions governing procedure, guarantees of personal freedom, freedom of defence and children's courts.

One essential principle underlies the Code.

Every person must be presumed innocent. It is the responsibility of the representative of society to prove the guilt of the accused. The latter may not be convicted without such proof.

Throughout the investigation preceding the trial the accused is given facilities for defending himself. A very modern attitude to expert investigation allows him to challenge the findings and have them verified.

The judges, whose only orders are the dictates of their conscience, are entirely independent, as is the *Ministère public*. The latter requires the application of the law, and its representative is free to make any comments it considers necessary in the interests of justice when addressing the court.

The sole purpose of his statement must be to establish the truth and see that justice is done.

The accused and his counsel may always reply to the charges which are contested before the court in the presence of both parties.

The new Code strictly defines the circumstances in which persons may be arrested or placed in preventive custody.

Committal to custody (*garde à vue*), a form of arrest by the judicial police before the accused is brought before the examining magistrate, may not exceed a brief period laid down by strict regulations; this period is usually forty-eight hours, but may be extended to a maximum of six days in the case of persons caught in the act of committing serious offences against the security of the State.

Detention pending investigation and trial, which may be ordered by the examining magistrate, is also limited to a maximum period of ten days or two months according to the penalties incurred. This period of detention may be extended only by a special order of the examining magistrate upon the advice of the prosecutor and subject to appeal.

The new code also lays down strict rules governing search and entry of private dwellings and the seizure of material evidence.

It stipulates that searches must be made in the presence of the accused or other witnesses and generally only in the daytime.

Respect for the home and private property is guaranteed to the fullest extent compatible with the needs of investigations.

The rights of the accused are safeguarded and his defence guaranteed at all stages of criminal proceedings.

On his first appearance before the examining magistrate the accused is informed of his right to remain silent and to choose his counsel.

Immediately following his first appearance before the examining magistrate, the accused, if in custody, may communicate freely with his counsel.

One day before each interrogation of the accused by the examining magistrate, the documents relating to the proceeding must be made available to the defence counsel to enable him to employ all means of defence during the hearing.

All decisions of the examining magistrate must be notified to the accused, who may appeal against the rejection of a request for provisional release.

At the hearing the accused may always be assisted by counsel. The law even makes legal assistance mandatory in certain cases where the penalties incurred are heavy, or if the accused is prevented through infirmity or inexperience from undertaking his own defence.

An entire chapter of the Code lays down special procedures for juvenile offenders.

Children's courts have been set up throughout the kingdom and are presided over by specially trained magistrates with power to order rehabilitation measures, which nearly always take the place of ordinary

[1] Information kindly furnished by the Minister for Foreign Affairs of Morocco. Translation by the United Nations Secretariat.

penalties, re-education being more important than punishment in the case of young offenders.

2. Dahir No. 1-58-295, of 21 Shawwal 1378 (30 April 1959), concerning the prevention and treatment of mental illness and the protection of the mentally sick, published on page 804 of the *Official Gazette* of 15 May 1959. This dahir, which refers implicitly to article 1 of the Universal Declaration, provides every possible guarantee against the wrongful issue of a detention order on the pretext of insanity.

3. Dahir No. 1-59-102, of 10 Zu'lkadah 1378 (18 May 1959), on the organization of the Bar and the practice of the legal profession, published on page 872 of the *Official Gazette* of 29 May 1959. This dahir deals with subjects covered by articles 11 and 23 of the Universal Declaration (the right of everyone to the guarantees necessary for his defence and to free choice of employment and just and favourable conditions of work).

4. Dahir No. 1-59-49, of 24 Zu'lkadah 1378 (1 June 1959), promulgating the regulations governing private education, published on page 987 of the *Official Gazette* of 12 June 1959. This dahir embodies the principle, stated in article 26 of the Universal Declaration, that parents have a prior right to choose the kind of education that shall be given to their children.

5. Dahir No. 1-59-161, of 27 Safar 1379 (1 September 1959), concerning the election of communal councils, published on page 1477 of the *Official Gazette* of 4 September 1959. This dahir deals with matters covered by article 21 of the Universal Declaration (the right of everyone to take part in the government of his country).

6. Dahir No. 1-59-220, of 25 Rabia II 1379 (28 October 1959), concerning the medical profession, and implementing decree No. 2-59-474 of 25 Rabia II 1379 (28 October 1959), published on page 1868 of the *Official Gazette* of 6 November 1959. This legislation deals with matters covered by article 23 of the Universal Declaration (the right of everyone to free choice of employment and to just and favourable conditions of work).

7. Dahir No. 1-59-249, of 30 Rabia I 1379 (30 October 1959), for the prevention and punishment of family desertion, published on page 1749 of the *Official Gazette* of 16 October 1959. This dahir deals with matters covered by article 25 of the Universal Declaration; it states that the refusal of a spouse, in disregard of a judicial decision, to provide for the maintenance of the other spouse within the stipulated time constitutes an offence.

8. Dahir No. 1-59-148, of 30 Jumada II 1379 (31 December 1959), establishing a system of social security, published on page 170 of the *Official Gazette* of 22 January 1960.[1] This dahir is concerned with the principle, stated in article 22 of the Universal Declaration, that everyone has the right to social security.

[1] See International Labour Office: *Legislative Series*, 1959, Mor. 2.

DAHIR No. 1-59-173 OF 10 ZU'LKADAH 1378 (18 MAY 1959) CONCERNING THE OPERATION OF CERTAIN RADIO BROADCASTING ESTABLISHMENTS[1]

as amended and supplemented by dahir No. 1-59-227 of 6 Zu'lhijja 1378 (13 June 1959)[2]

Art. 1. All radio broadcasting establishments, other than those of the Moroccan National Broadcasting System, situated anywhere within the territory on the date of publication of this dahir, shall cease all broadcasting operations by 31 December 1959 at the latest.

Art. 2. Until the expiration of that period, all broadcasts by the establishments specified in article 1 above shall be subject to supervision by the director of the Moroccan National Broadcasting System or by any person designated by him for the purpose.

. . .

[1] Published in the *Bulletin officiel* No. 2430, of 22 May 1959.

[2] Published in the *Bulletin officiel* No. 2434, of 19 June 1959. Translation by the United Nations Secretariat.

Decree No. 2-59-0506, of 6 Zu'lhijjah 1378 (13 June 1959), on the implementation of dahir No. 1-59-173 of 10 Zu'lkadah 1378 (18 May 1959) concerning the operation of certain radio broadcasting establishments, provides:

"Art. 1: The establishments referred to in the dahir of 10 Zu'lkadah 1378 (18 May 1959) shall submit the programmes of their broadcasts to the director of the Moroccan National Broadcasting System or to the person designated by him for approval eight days before the proposed date of transmission.

"Art. 2: News bulletins and commentaries shall be subject to prior examination by a person designated for the purpose by the Moroccan National Broadcasting System who may prohibit their transmission.

"Art. 3: Broadcasting establishments shall comply generally with all instructions issued to them by the director of the Moroccan National Broadcasting System. They shall, in addition, provide him with any information concerning their broadcasts that he may require."

NEPAL

THE CONSTITUTION OF THE KINGDOM OF NEPAL

promulgated on 12 February 1959[1]

PREAMBLE

WHEREAS his late Majesty King Tribhuvan Bir Bikram Shah Deva, Father of the Nation and revered descendant of the illustrious King Prithvi Narayan Shah, adherent of Aryan culture and Hindu religion having led a great revolution for the rights and welfare of his subjects, earned immortal fame in the history of the world and was firmly resolved to establish real democracy in Nepal by giving fundamental rights to the people;

AND WHEREAS We also being firmly resolved to help our subjects to attain all-round progress and achieve the fullest development of their personality; to ensure to them political, social and economic justice; and cement the unity of the nation by bringing about political stability through the establishment of an efficient monarchical form of government responsive to the wishes of the people;

AND WHEREAS for the said purpose it is desirable to enact and promulgate a Constitution for the Sovereign Kingdom of Nepal, I, King Mahendra Bir Bikram Shah Deva in the exercise of the sovereign powers of the Kingdom of Nepal and prerogatives vesting in Us in accordance with the traditions and custom of our country and which devolved on Us from Our august and respected forefathers, do hereby enact and promulgate this fundamental law entitled "The Constitution of the Kingdom of Nepal."

PART I

PRELIMINARY

1. (1) This constitution is the fundamental law for Nepal, and all laws inconsistent with it shall, to the extent of the inconsistency, and subject to the provisions of this constitution, be void.

. . .

PART II

APPOINTED DAY

2. Article 73 and article 75 of this constitution shall come into operation at once; and the other provisions of this constitution shall come into operation on a day to be fixed by His Majesty by proclamation, and such day is hereinafter referred to as "the appointed day".[2]

PART III

FUNDAMENTAL RIGHTS

3. (1) No person shall be deprived of his life or personal liberty save in accordance with the law.

(2) Traffic in human beings, slavery and forced labour are forbidden, but provision may be made by law for compulsory service for public purposes.

(3) No person shall be punished for an act which was not punishable by law when the act was done; nor shall any person be subjected to a punishment greater than that prescribed by law for an offence when the offence was committed.

(4) No person shall be prosecuted and punished more than once for the same offence.

(5) No person accused of any offence shall be compelled to be a witness against himself.

(6) No person who is arrested shall be detained in custody without being informed, as soon as is practicable, of the grounds of such arrest; nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Explanation. For the purposes of this clause, a legal practitioner includes any person who, under the law for the time being in force, is authorized to represent any other person in court.

(7) Every person who is arrested and detained in custody shall be produced before the nearest judicial authority, within a period of twenty-four hours from such arrest, excluding the time necessary for the journey from the place of arrest to the court of the judicial authority, and no such person shall be detained in custody beyond the said period except on the order of a judicial authority.

(8) Nothing in clause (6) or clause (7) shall apply to a person who (*a*) is an enemy alien; or (*b*) is arrested or detained under any law providing for preventive detention.

(9) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless (*a*) an advisory board consisting of persons who are or have been or are qualified

[1] Official English translation published by His Majesty's Government of Nepal, Ministry of Law Miss Parliamentary Affairs, 1959, and kindly furnished by Miss Bhinda S. Malla, Ministry of Foreign Affairs, Kathmandu.

[2] 30 June 1959 was proclaimed as the appointed day under article 2.

to be appointed as judges of the Supreme Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention; or (*b*) such person is detained in accordance with provisions of any law made in accordance with clause (12);

Provided that nothing in sub-clause (*a*) shall authorize the detention of any person beyond the maximum period prescribed by law providing for preventive detention.

(10) When a person is detained in pursuance of an order made under any law for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford the earliest opportunity of making representation against the order.

(11) Nothing in clause (10) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest and security of the country to disclose.

(12) The following matters may be prescribed by law:

(*a*) The circumstances under which, and class or classes of cases in which, a person may be detained for a period longer than three months without obtaining the opinion of an advisory board; and

(*b*) The maximum period for which any person may in any class or classes of cases be detained; and

(*c*) The functions and the procedure to be followed by an advisory board constituted under sub-clause (*a*) of clause (9).

4. (1) All citizens are entitled to equal protection of the laws.

(2) In the application of general laws there shall be no discrimination against any citizen on grounds of religion, sex, race, caste or tribe.

(3) In respect of appointments to the service of the Crown there shall be no discrimination against any citizen on grounds only of religion, race, caste or tribe, and in respect of appointments to the service of the Crown which are open to both sexes, there shall be no discrimination on grounds of sex.

(4) No person shall disseminate hatred, contempt or create enmity between people belonging to different areas, or between different classes of people, castes and tribes of the kingdom of Nepal.

5. Every citizen, having regard to the current traditions, may practise and profess his own religion as handed down from ancient times.

Provided that no person shall be entitled to convert another person to his religion.

6. (1) No person shall be deprived of his property save in accordance with the law.

(2) Every citizen is entitled to acquire, hold and dispose of property.

7. Every citizen is entitled to —

(*a*) Freedom of speech and expression;

(*b*) Freedom of assembly without arms;

(*c*) Freedom to form associations or unions;

(*d*) Freedom to move to or reside in any part of Nepal.

8. (1) Nothing in this part shall affect the validity of (*a*) any law made before the appointed day, which, with or without modification or adaption, is certified by His Majesty to be necessary for any purpose specified in clause (2); or (*b*) any law made after the appointed day which is expressed to have been made for the public good.

(2) A law shall be deemed to be made for the public good within the meaning of sub-clause (*b*) of clause (1) if it is expressed in the preamble thereto to be made for the maintenance of law and order within Nepal; maintenance of security of Nepal; good relations between Nepal and other countries; good relations among different classes or sections of the people, or between the people of different areas, or generally good manners, health, comfort or convenience or decency or morality and economic welfare of the citizens of Nepal; or to prevent internal disturbance or any attempt to subvert this constitution or any law in force for the time being or any other like attempt or for the prevention of contempt of court or house of parliament.

(3) Nothing in this part shall apply to a person serving in any of the armed forces of the Crown, and any law may restrict or modify the application of any provision of this part in so far as it applies to any person serving in any police force.

9. (1) The right to file a petition in the Supreme Court for appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) Where any petition is filed under clause (1), the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of the rights.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), law may empower any other court subordinate to the Supreme Court to exercise within the local limits of its jurisdiction all or any of the powers to issue such directions or orders or writs as is prescribed in clause (2).[1]

[1] In accordance with sec. 6 of the Administration of Justice Act, a high court has been established at each of three different places, and sec. 9 of the Act provides that either the arrested person or detenu himself or any person on his behalf may move the high court for the issuing of the writ of *habeas corpus*. (Information kindly furnished by Miss Bhinda S. Malla, Ministry of Foreign Affairs, Kathmandu.)

PART IV

THE EXECUTIVE GOVERNMENT

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PART V.

PARLIAMENT

CHAPTER I. — Constitution of Parliament

18. There shall be a parliament which shall consist of His Majesty and two houses, to be known respectively as the senate [maha sabha] and the House of Representatives [pratinidhi sabha].

19. (1) The senate shall consist of thirty-six senators [maha sabhasad], of whom eighteen (hereinafter referred to as "elected senators") shall be elected by the House of Representatives and eighteen (hereinafter referred to as "nominated senators") nominated by His Majesty according to article 21.

22. (1) The House of Representatives shall consist of the members elected by the electors of the several electoral districts constituted in accordance with this article.

(2) Each electoral district shall elect one member by secret ballot; and, until Act otherwise provides, there shall be 109 electoral districts.

(3) The electoral districts shall be delimited by a delimitation commission appointed by His Majesty in his discretion, in such manner that each shall contain as nearly as may be practicable an equal number of electors, account, however, being taken of boundaries of administrative districts, the density or sparsity of population, transport facilities, physical features, and the community or diversity of the inhabitants.

(4) Subject to the provisions of any law relating to the periods of residence, qualifying dates, or other matters incidental to the preparation of electoral rolls, and disqualification on grounds of insanity, or crime or corrupt or illegal practice, every citizen of Nepal who has attained the age of twenty-one years shall be entitled to one vote in one electoral district.

. . .

23. (1) A senator shall not be qualified for election to the House of Representatives or for sitting or voting as a member of that house.

(2) A person shall not be qualified for appointment or election to or sitting or voting in either House of Parliament if he

(*a*) Is not a citizen of Nepal; or

(*b*) Is, in case of the Senate, less than thirty years of age and in the case of the House of Representatives, less than twenty-five years of age; or

(*c*) Is a servant of the Crown other than a minister of the Crown, an assistant minister, speaker, deputy speaker, president, deputy president of the Senate, or a person appointed by His Majesty for the purposes of clause (1) of article 17;[1] or

(*d*) is a member of the Public Service Commission or the Election Commission; or

(*e*) Is disqualified by any provision of any Act.

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CHAPTER IV. — Conduct of Business

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38. . . .

(4) No person shall be liable to any proceedings in any court in respect of the publication by or under the authority of either house of Parliament of any report, paper, vote or proceedings.

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CHAPTER VII. — Legislative Powers

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54. Without prejudice to any other remedy, a person who alleges that all or any of the provisions of an Act or any other law are void for inconsistency with this constitution may move the Supreme Court: (*a*) to declare the said law to be invalid, to the extent of its inconsistency; and (*b*) to grant such incidental and supplementary relief as the Supreme Court may deem appropriate.

55. (1) If His Majesty in his discretion is satisfied that a grave emergency exists whereby the security or economic life of Nepal, or any part thereof, is threatened by war or external aggression, or by internal disturbance, he may by proclamation in his discretion: . . . (*b*) assume to himself all or any of the powers vested in or exercisable by Parliament or any other governmental body or authority; and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the object of the proclamation, including provisions for suspending in whole or in part the operation of any provision of this constitution:

Provided that nothing in this clause shall authorize His Majesty to assume to himself any of the powers vested in or exercisable by the Supreme Court or to suspend, either in whole or in part, the provisions of part VI of this constitution.

(2) Any such proclamation may be revoked or varied by a subsequent proclamation.

(3) A proclamation under this article, other than a proclamation revoking a previous proclamation, shall cease to operate at the expiration of twelve months, but may be renewed by a further proclamation, and so forth until His Majesty is satisfied that grave emergency no longer exists.

(4) Any law made by His Majesty under powers assumed by him under this article shall, unless sooner repealed or re-enacted by Act, cease to operate at the expiration of six months after a proclamation under this article has ceased to operate.

(5) In exercising his powers under this article, His Majesty shall so far as may be practicable act after consultation with the Council of State.

[1] That is to say, a person appointed to exercise the functions of a minister of the Crown during the temporary suspension of cabinet government.

56. (1) If His Majesty in his discretion is satisfied, after consulting the Council of State, that the system of parliamentary government contemplated by this constitution has broken down and that the powers conferred by article 17[1] are in the circumstances inadequate, he may by proclamation in his discretion suspend any provision of parts III, IV and V of this constitution and make such temporary provision for the governance of the Kingdom of Nepal as in his discretion he may deem necessary:

Provided that:

. . .

(*c*) Nothing in this article shall empower His Majesty permanently to amend this constitution, except in the manner and form provided by article 53.[2]

(2) Any proclamation made under clause (1) may be revoked or varied by a subsequent proclamation.

(3) A proclamation made under this article, other than a proclamation revoking a previous proclamation, shall cease to operate at the expiration of a period of twelve months, but may be renewed by a further proclamation and so forth until His Majesty in his discretion is satisfied that the system of parliamentary government contemplated by this constitution can be fully restored.

Provided that a proclamation under this article shall not be renewed unless His Majesty in his discretion is satisfied that:

(*a*) The breakdown is of such a nature that it is impracticable to hold a general election; or

(*b*) A general election has recently been held, but the system of parliamentary government cannot function in the manner contemplated by this constitution.

(4) Any law not being a law amending this constitution made in accordance with a proclamation issued under this article shall, unless sooner repealed or re-enacted by Act, cease to operate at the expiration of six months after a proclamation under this article has ceased to operate; and a law amending this constitution shall cease to operate when a proclamation made under this article has ceased to operate.

PART VI

THE JUDICIARY

57. (1) The Chief Justice of Nepal shall be appointed by His Majesty in his discretion, after consulting the Prime Minister and such other judges of the Supreme Court as he may deem necessary.

(2) The other judges of the Supreme Court shall be appointed by His Majesty in his discretion, after consulting the Chief Justice of Nepal and such other judges of the Supreme Court as he may deem necessary.

(3) Subject to the provisions of clause (4), the Chief Justice or other judges of the Supreme Court shall hold office until he or they shall complete the tenure of his office.

(4) The chief justice or other judges of the Supreme Court:

(*a*) May resign his office by notice to His Majesty;

(*b*) May be removed from office by His Majesty in his discretion if any commission appointed by His Majesty on reference to it by His Majesty report that the judge is unable to perform his duties because of misbehaviour or incapacity. But such chief justice or the judge charged with misbehaviour or incapacity shall not be denied the right of defending himself before the commission.

(5) A commission appointed under sub-clause (*b*) of clause (4) shall have the power to summon witnesses, take evidence and punish for contempt of itself.

(6) The remuneration, tenure of office and other conditions of service of the chief justice or other judges shall be determined by Act, or until so determined by order of His Majesty, and such remuneration and tenure of office shall not be varied to his disadvantage during his period of office and the remunaration shall be charged on the Consolidated Fund.

(7) Clauses (1) and (6) shall apply to an acting chief justice, and clauses (2) and (6) to a permanent or additional judge of the Supreme Court.

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PART IX

GENERAL PROVISIONS

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CHAPTER III. — Interpretations, Repeals etc.

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74. The Interim Government of Nepal Act[3] is hereby repealed.

PART X

TRANSITIONAL PROVISIONS

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76. (1) All laws other than the Interim Government of Nepal Act in force in Nepal or any part thereof immediately before the appointed day or as modified or adapted according to clause (2) shall remain in operation until amended or repealed by Act.

Provided that laws inconsistent with this constitution which are not certified under sub-clause (*a*) of clause (1) of article 8 shall, in so far as they are so inconsistent, cease to have effect after three years from the appointed day.

[1] Article 17 concerns the temporary suspension of cabinet government.

[2] Article 53 makes provisions concerning the amendment of the constitution by a bill passed by both houses of Parliament and assented to by His Majesty.

[3] See *Yearbook on Human Rights for 1953*, pp. 197-8.

(2) For the purpose of bringing the provisions of any law in force in Nepal or any part thereof into accord with the provisions of this constitution, His Majesty, within a period of three years after the appointed day, by order, may make such adaptations and modifications in such law as he may deem necessary or expedient, and any order so issued shall have effect from such date, whether before or after the issue of the order, but not earlier than the appointed day, as may be specified in the order.

NETHERLANDS

NOTE[1]

I. LEGISLATION

1. *Right to a Nationality*

Attention may be drawn to the royal decree of 22 July 1959, concerning a general permission to enter the civil service of a number of immigration countries (*Acts, Orders and Decrees* 1959, No. 262). The preamble to this decree reads: "that measures shall be taken to prevent Netherlanders and Netherlands nationals (non-Netherlanders) from losing their Netherlands nationality by entering the civil service of countries to which they have emigrated on a large scale before they have acquired another nationality". This decree prevents an unnecessary increase in the number of stateless persons, in conformity with the general tenor of article 15 of the Universal Declaration of Human Rights, the purpose of which is to protect persons from being arbitrarily deprived of their nationality.

2. *Freedom of Thought*

The Act of 23 September 1959, amending the Funeral Act, supplements the existing regulations to some extent and makes it possible for the wish expressed by a person that his mortal remains be cremated to be complied with more easily (*Acts, Orders and Decrees* 1959, No. 342).

Cremation may now, for example, take place in the absence of the written statement required by law if the cantonal court within whose juristiction the person in question has died lays down by order — when so requested — that, on the basis of investigations instituted, it is satisfied that the deceased expressed a wish to be cremated and that there are no reasons for assuming that he later changed his mind. No appeal against this order is possible. This and other amendments promote the right of freedom of thought and its practical application, in so far as cremation is to be regarded as expressing the beliefs held by the deceased or by the circles among which he moved.

3. *Industrial Safety*

Mention may be made of the Act of 19 February 1959 (*Statutebook* No. 56), supplementing the Safety Act, 1934, and the Stevedoring Act by provisions concerning preventive health care in industry (the so-called Act on Services for Industrial Hygiene), and the royal decree of 13 January 1959, amending the Agricultural Safety Decree regarding the prevention of accidents with farm tractors.

4. *Social Security*

During 1959 the Survivors, Act[2] became operative: all residents of fifteen years of age and over are covered. This Act provides for a widow's pension or a temporary allowance for widows, as well as an orphan's pension for full orphans.

Generally speaking, all those widows under sixty-five years are entitled to a pension who at the time of the death of their husbands could not be considered to be able to obtain an income through their own labour.

Like the old-age pensions in virtue of the General Old Age Act, the aforementioned allowances are kept at a stable value by being coupled with the wage index.

II. JUDICIAL DECISION

Freedom of Expression

The Supreme Court of the Netherlands has recently given a judgement on the sale of pocket books by a tobacconist who was not in possession of the licence required by the Business Licensing Order for the Book-selling Trade. The Supreme Court considered among other things that the bookselling trade promotes the freedom of expression guaranteed by article 7 of the Netherlands constitution and that the regulation to the effect that a licence shall be required for this trade would hamper the bookseller's task of promoting this freedom of expression. The court was therefore of the opinion that the order had no binding force. This judgement is of great importance in connexion with the protection of the practical application and elaboration of the right to freedom of opinion and expression granted by article 19 of the Universal Declaration, including the freedom to seek, receive and impart information and ideas through any media.

Attention should be drawn to the fact that the Solicitor-General in the Supreme Court was of the opinion that the Order was at variance with the European Convention on Human Rights; this convention entered into force with respect to the Netherlands on 31 August 1954.

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

[2] Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Neth. 3.

In accordance with article 66 of the constitution, legal regulations in force within the Kingdom are not to apply if this application would be incompatible with agreements entered into before or after the enactment of the regulations. The Supreme Court did not adopt the Solicitor-General's line of argument but based its judgement on article 7 of the constitution.

III. ADMINISTRATIVE ORDER

Freedom of Information

In September 1959, the Secretary of State for Education, Arts and Sciences, in accordance with the power granted to the Minister of Education, Arts and Sciences by article 32 of the Television Decree, annulled a decision of the board of the Nederlandse Televisie Stichting (Netherlands Television Foundation) which conferred the exclusive right to take photographs inside the television studios to the Netherlands News Agency (Algemeen Nederlands Persbureau). The decision was rescinded as contrary to the public interest in view of the importance of the public's being able to receive all shades of information about a mass communication medium as influential as television, the costs of which are defrayed from public funds.

NEW ZEALAND

NOTE[1]

I. LEGISLATION

1. *British Nationality and New Zealand Citizenship Amendment Act 1959, No. 38*

A New Zealand citizen by registration or naturalization is now in virtually the same position, with regard to deprivation of citizenship, as any other citizen. The only exception is that the Minister of Internal Affairs may deprive such a citizen of his citizenship if satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representation, or the concealment of any material fact. (Prior to this amendment the Minister could also make an order on grounds of disloyalty, disaffection, etc.)

2. *Courts Martial Appeals Amendment Act 1959, No. 59*

A person convicted by a court martial and sentenced to detention for ninety days or more may appeal as of right. (Previously leave of the court was required.)

3. *New Zealand Army Amendment Act and RNZAF Amendment Act 1959, Nos. 26/27*

These Acts make detailed provisions relating to petitions against and review of the findings and sentences and the remission, postponements and reconsiderations of sentences imposed by service authorities.

4. *Post Office Act 1959, No. 30*

This is a consolidating and amending Act, which, *inter alia*, sets out in detail the rights relating to the mail service, the telegraph service and the telephone service. In particular, under the Act it is an offence to steal postal articles or telegrams, receive stolen postal articles, unlawfully open mail or telegrams, wrongfully delay postal articles or telegrams, wrongfully divulge contents of mail or telegrams, wrongfully detain, destroy or secrete mail or telegrams and divulge (in the case of an officer) information overheard in the course of his official duties.

5. *Volunteers' Employment Protection Act 1959, No. 42*

This Act provides that any worker who volunteers for, or performs or undergoes, any voluntary service or training in any New Zealand armed force, for any period up to three months in any one year shall be deemed to have been on leave of absence for that period.

At the end of the period of leave of absence the employer is to resume the worker's employment on terms and conditions no less favourable than those which would have been applicable to him had he not undergone the service. If employment would not normally have continued over the period of absence this provision shall not apply.

Further, an employer shall not dismiss such a worker solely or mainly on account only of the period of absence. A breach of this obligation is an offence and entitles the worker to compensation.

Where the rate of the remuneration of any worker is computed by reference to the length of time served by him in any occupation, the period of service in the armed forces is deemed to be time served in this occupation.

There are a number of other provisions relating to computation of holidays, apprenticeships and miscellaneous other matters.

II. REGULATIONS

1. *The Agricultural Workers (Farms and Stations) Extension Order 1952, amendment No. 4 (1959/205). The Agricultural Workers (Orchardists) Extension Order 1958, amendment No. 1 (1959/212)*

These orders prescribe the increased wages payable to workers on farms, stations and orchards.

2. *Family Benefits (Home Ownership) Regulations 1959 (1959/37)*

These regulations provide the machinery whereby those in receipt of children's benefits (15/- per week for each child) may apply for the capitalization of the benefit up to a maximum lump-sum payment of £500 for each child. The framework within which the scheme is to operate was fixed in the Family Benefits (Home Ownership) Act 1958.

3. *Government Railways (Staff) Regulations, 1953, amendment No. 12 (1959/189)*

These regulations prescribe increased salaries for the staff of the railways and make new provision with respect to recreation leave.

4. *Minimum Wage Order 1959 (1959/162)*

The order increases the minimum wage rates payable to adult workers.

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

5. *Police Regulations 1959, amendments Nos. 1 and 2 (1959/9, 138, 208)*

The regulations revise the salary scales of the police force.

6. *The Public Service Salary Order 1959 (No. 2) (1959/177)*

The order prescribes the new salaries payable to officers of the professional and clerical divisions of the public service.

III. JUDICIAL DECISIONS

1. *Avers* v. *The Queen (1959) N.Z.L.R. 1191*, in which it was decided that there is no right of appeal from a finding of guilt, or a sentence, of a children's court. (This is contrary to what had been accepted as the legal position. Legislation to confer a right of appeal has since been passed.)

2. In re a *Medical Practitioner (1959) N.Z.L.R. 301 (S.C.): 784 (C.A.)*, in which a medical practitioner who was acquitted in the Supreme Court on a charge of indecent assault brought an action against members of an investigation committee appointed to decide whether a complaint as to the conduct in respect of which the charge was brought should be brought before the Medical Council with a view to disciplinary action.

The Supreme Court held that the practitioner was entitled to a declaration that the issue whether he had committed the indecent assault alleged was *res judicate* in proceedings before the Medical Council by reason of his acquittal in the criminal proceedings.

The Court of Appeal rescinded the declaration and held that the plea of *autrefois acquit* was not available in proceedings before the Medical Council and that the principle of *res judicata* did not apply because there was no identity of parties and no identity of issues.

Leave to appeal to the Privy Council was given.

3. *Reade* v. *Smith (1959) N.Z.L.R. 996*, in which the court, when examining regulations made under the Education Act and relating to the transfer of a pupil from one school to another, held that the Governor-General had no power to make the regulations. In the course of the judgement it was stated:

"In a time in which the individual citizen is every day confronted with some new legislation by regulations, it is imperatively necessary for the courts to retain and to exercise the salutary jurisdiction which enables them to protect the liberty of the subject by insisting on the test proposed . . ." (which, in the case before the court, meant "inquiring whether the purposes of the regulation could reasonably as a matter of law have been considered by the Governor-General to be necessary in order to secure the due administration of the Act;")

4. *Watchtower Bible Society* v. *Mt. Roskill Borough Council (1959) N.Z.L.R. 1236.* The defendant council held certain lands as a recreational reserve on which stood the Mount Roskill memorial hall. This hall had been partly financed by a government subsidy given upon a representation that the hall was to be a war memorial commemorating those who had lost their lives in the Second World War. It was a condition of the subsidy that the Council was to ensure that the hall be available for "the use of all sections of the community". The Society contested the Council's refusal to allow it use of the hall for a public Bible lecture. The court declared that the society was entitled to have access to the hall at such reasonable times and upon such reasonable conditions as the Council imposed.

IV. INTERNATIONAL INSTRUMENTS

1. *Minimum Age (Trimmers and Stokers) Convention 1921 adopted by the International Labour Conference at Geneva on 11 November 1921 (No. 15), as modified by the Final Articles Revision Convention 1946*

New Zealand instrument of ratification deposited on 26 November 1959. This instrument declared that the convention is inapplicable to the Cook Islands (including Niue) and the Tokelau Islands. In force for New Zealand on 26 November 1959.

2. *Labour Inspection Convention 1947, adopted by the International Labour Conference at Geneva on 11 July 1947 (No. 81)*

New Zealand instrument of ratification deposited on 30 November 1959. This instrument declared that all mining and transport undertakings should be exempt from the application of the convention, that part II of the convention is not accepted, that the convention is inapplicable to the Tokelau Islands, and that the decision in regard to the application of the Convention to the Cook Islands (including Niue) is reserved. In force for New Zealand on 30 November 1960.

3. *Geneva Conventions of 12 August 1949*

The four conventions were signed on behalf of New Zealand on 11 February 1950. The ratifications of New Zealand were deposited on 2 May 1959, subject to a reservation in respect of article 68, paragraph 2, of the convention relative to the protection of civilian persons in time of war. The conventions entered into force for New Zealand on 2 November 1959.

4. *State Treaty for the Re-establishment of an Independent and Democratic Austria, done at Vienna on 15 May 1955*

New Zealand instrument of accession deposited on 26 September 1959. In force for New Zealand on 26 September 1959.

NIGER

CONSTITUTION OF 12 MARCH 1959[1]

PREAMBLE

. . .

The people of Niger solemnly reaffirm their adherence to the principles of democracy and of human rights and freedoms, as set out in the historic declaration of 1789 and guaranteed by the constitution of the Community.

They intend, with full respect for tradition, to ensure the equality of men and women, to make education and culture available to all citizens, and to guarantee to all citizens trade-union rights, the right to work and the right to social welfare.

. . .

TITLE I

SOVEREIGNTY

Art. 1. The State of Niger is an indivisible, secular, democratic and social republic.

The Republic of Niger is a member of the Community.

It shall ensure the equality of all citizens before the law and shall respect all creeds.

. . .

Art. 3. National sovereignty shall be vested in the people, who shall exercise it either through their representatives or by way of referendum.

No section of the people nor any individual may assume the exercise of national sovereignty.

The vote shall be universal, equal and secret.

All citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote in the conditions determined by law.

Art. 4. The political parties and groups shall assist in the exercise of the franchise. They may be formed and engage in their activities freely, on condition that they respect the principles of democracy, of the Community and of the republic.

. . .

TITLE III

THE LEGISLATIVE ASSEMBLY

. . .

Art. 17. Deputies to the Legislative Assembly shall be elected for a term of five years by direct universal suffrage in each district.

. . .

Art. 25. A compulsory mandate shall be null and void.

. . .

TITLE V

THE JUDICIAL AUTHORITY

Art. 45. The Republic of Niger shall ensure and guarantee the independence of the judiciary, which is the guardian of personal freedom and is entrusted with the application, in its particular sphere of action, of the laws of the republic and of the Community.

Supervision over justice shall be exercised by the Community.

Magistrates of the bench shall remain in office for life.

. . .

TITLE XII

AMENDMENT

. . .

Art. 62. . . .

The republican form of the Government shall not be subject to amendment.

. . .

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République du Niger* of 15 March 1959. Translation by the United Nations Secretariat.

NORWAY

NOTE[1]

A. CONSTITUTIONAL PROVISIONS AND LAWS

1. *Constitutional provisions.* An amendment of the constitutional law has been adopted in 1959 which has significance for human rights. Article 53 (*c*) of the Constitutional Act made a provision concerning loss of the right to vote by a Norwegian subject who acquired citizenship in a foreign state (without losing Norwegian citizenship), but the loss of suffrage in the case of a woman who acquired citizenship in a foreign state by marriage with a foreign subject became operative only when she moved out of the kingdom. By the Amendment of the Constitutional Act of 23 April 1959, article 53 (*c*) of the Constitutional Act was abrogated. In so far as it relates to women's citizenship and right to vote, the abrogation of the constitutional provision is a consequence of the fact that, according to the Act of 8 December 1950 relating to Norwegian citizenship a woman does not — as she did according to the older Act on this subject — immediately lose her Norwegian citizenship by marriage with a foreign subject.

2. By the Act of 10 April 1959 (No. 1) relating to primary schools, identical provisions are laid down for primary schools in towns and rural districts, as far as this is practicable. The new statute aims at a co-ordinated regulation of the basic school system. The statute contains fundamental provisions concerning the aim of schools, their organization, obligatory school attendance, the teaching staff, administration of schools, and the general principles for apportioning the expenses of schools. In a separate chapter the Act contains certain provisions relating to the Ministry's approval of the schools' textbooks and the object of their teaching. In this chapter there is also a special provision concerning ecclesiastical supervision of the Christian teaching in schools. Obligatory school attendance is extended, in that the municipal boards have received power to decide that a nine-year unit school shall be established in a municipality. According to the older statutes obligatory school attendance was, as a rule, restricted to the seven-year primary school.

3. The Act of 28 May 1959 relating to insurance against unemployment[2] replaces the older provisions of the Act relating to unemployment of 24 June 1938 (No. 8). The new statute involves no fundamental changes as compared with the previous law.

4. By the Act of 27 June 1959 (No. 3) amending the Act relating to pension insurance for state employees, of 30 June 1950, the minimum weekly working period which an employee must work in order to be covered by the Act is reduced from 24 to 22 hours. Likewise the minimum service period an employee must have in order to obtain a pension at the retirement age is reduced from 100 to 36 months, while at the same time the number of working hours which after 1 March 1959 are to be reckoned as a pension-giving month is reduced from 200 to 187½ hours. It is provided, further, that 36 months are to be the minimum time an employee must have worked in order to be entitled to an invalidity pension in case of incapacity. According to the new provisions the annual pension is to be reckoned at the rate of kr. 16 per pension-giving service month, whereas under the older statute it was reckoned at the rate of kr. 7.50.

5. By the Act of 18 December 1959 (No. 7), amending the Act relating to maintenance insurance for children, of 26 April 1957, the annual maintenance insurance for each child is increased from kr. 600 to kr. 900.

6. Amendments have also been adopted respecting some other insurance statutes, but these amendments have less interest in point of principle.

7. By the Act of 19 June 1959 (No. 1), amending the Act relating to the police, of 13 March 1936, policemen, and officials having police authority, are forbidden to indulge collectively in complete or partial work stoppage. In the event of a service dispute between the State and an organization of civil servants entitled to negotiate, arbitration is to be undertaken. If the arbitration does not lead to agreement, notification thereof is to be sent within three days to the Rikslønnsnemda (State Wages Board), which is then to decide upon the dispute, with binding effect on both parties.

B. JUDICIAL DECISIONS

1. *Supreme Court judgement, 26 September 1959*

A welder at a shipbuilding yard was dismissed from his employment because he had undertaken extra work in his leisure time for another employer. The dismissal was made conditional on his continuing to

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

[2] Translations of this Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — No. 1.

perform the extra work. The court found that the dismissal was not cogently based, and the welder was adjudged compensation. The decision was based on the view that a worker is entitled to perform extra work in his leisure time, provided that the work does not involve such a strain on his working powers that it is detrimental to his ordinary work. The claim that the dismissal was adequately based on disloyal conduct on the part of the worker was rejected.

The Supreme Court judgement is printed in *Norsk Retstidende* 1959, page 900.

2. *Supreme Court judgement, 5 November 1959*

The ship *San Dimitris*, which formally belonged to a Panamanian company, but in reality to a Greek company, and which had an exclusively Greek crew, called at Oslo in October 1954 with a cargo of coal from the U.S.A. for a Norwegian importer. Unloading was commenced immediately after the ship's arrival, and likewise repair work was commenced by employees from a Norwegian workshop. As a representative of the Norwegian Seaman's Union was refused access, however, and was thus unable to examine the conditions on board, and as at the same time no reply was given to his questions, the unloading work on board was stopped, and so shortly afterwards was the repair work. The background for the refusal to work was a desire to force the ship's owners and crew to join the International Transport Federation. The boycott on the part of the Norwegian Seaman's Union and the Norwegian Transport Workers' Union was, however, adjudged to be unlawful under the Boycott Act of 5 December 1947, article 2(*d*) and article 2(*c*). The owners were awarded compensation.

The Supreme Court judgement is printed in *Norsk Retstidende* 1959, page 1080.

C. INTERNATIONAL AGREEMENTS[1]

Besides agreements concluded under the United Nations, the specialized agencies or the Council of Europe, Norway has in the course of 1959 entered into the following international agreements which have significance for human rights:

1. Agreement of 8 September 1959 between Norway, Denmark, Finland, Iceland and Sweden concerning the rules for reckoning premiums and work periods in the case of persons insured against unemployment who move about between the respective countries. The Agreement enters into force on 1 January 1961.
2. Agreement of 23 November 1957 respecting refugee seamen. Signed in pursuance of a royal decree of 15 November 1957. Ratification decided on by a royal decree of 8 May 1959. The agreement will enter into force after deposit of the eighth instrument of ratification.

[1] See also p. 374.

PAKISTAN

NOTE[1]

Introduction

Pakistan is an old country, but a new State. As a land, Pakistan has its own time-honoured traditions which are undergoing a steady process of transition. With new experiments and a progressive outlook the year 1959 saw new traditions of social behaviour and true concepts of human rights emerging through the various phases of national life. Measures adopted for the safeguard of human rights are summarized below.

1. *Land Reforms*

Positive steps have been taken to improve the agrarian economy of the country with a view to making the distribution of income from land more equitable and to enabling the working people to enjoy the right to just and favourable conditions of work and to protection against unemployment. In this respect the promulgation of Martial Law No. 64 was a link in the chain of measures to create an economically viable, socially free and politically stable and progressive society.[2]

2. *Basic Democracies*

To afford an opportunity to the common people to participate in the conduct of the administration and to look after their own community affairs, the Government adopted a unique system of basic democracies, the main purpose of which was to restore democracy of a type which the people could understand and operate. The system is based on the principle that fundamentally the exercise of democratic rights springs from the lowest rung of society. It envisages the function of union councils at five different levels — namely, village councils, county councils, district councils, divisional councils and provincial advisory councils. Country-wide elections to the union councils were held in December 1959 on the basis of adult franchise.[3]

3. *Right of Education*

To curb commercialization of education and to put it within easy reach of the common man of the country, the Government promulgated an ordinance in January 1959 making it obligatory for all private schools to be registered so as to bring them into line with government schools, which provide better education without charging exorbitant tuition fees.

4. *Labour Rights*

In February 1959, the Government announced its new labour policy based on I.L.O. conventions and recommendations ratified or approved by Pakistan, which laid down that employers should provide their workers with basic minimum amenities, calculated to meet as far as possible their requirements in matters of health, education, recreation, housing, wages, etc., so that the personality of the workers could find full expression in terms of their rights as free citizens of Pakistan.

The Industrial Disputes Act, 1947, was replaced by the Industrial Ordinance promulgated in 1959. The main feature of this ordinance is the provision for the setting up of industrial courts in the country. Under the Industrial Disputes Act, 1947, the conciliation officer was required to submit a failure report to the Government if he could not bring about a settlement of a dispute, and the Government, in its turn, might refer the dispute to an *ad hoc* industrial tribunal for adjudication. Under the Industrial Disputes Ordinance, 1959, however, in the event of failure of conciliation efforts to bring about a settlement of a dispute, the conciliation officer is required to issue a certificate to this effect to the parties to the dispute, who are free thereafter to approach the industrial court directly, for adjudication of the dispute.[4]

5. *Treatment of Offenders*

The Good Conduct Prisoners' Probational Release Act, which is a provincial Act, and is operative at present throughout the province of West Pakistan,

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

[2] Martial Law No. 64, which applied to West Pakistan and entered into force on 7 February 1959, provided that, with certain exceptions, no one might own or possess more than 500 acres of irrigated land or 1,000 acres of unirrigated land. Excess land was to vest in the government, subject to compensation, and was to be offered for sale, in the first instance to tenants in cultivating possession of it and, after them, to persons considered suitable by the West Pakistan Land Commission set up under the Act.

The text of the law and a French translation have been published by the Food and Agriculture Organization of the United Nations in *Food and Agriculture Legislation* 1959, vol. VIII, No. 1.

[3] Extracts from the Basic Democracies Order, 1959, appear below.

[4] The text of the ordinance and a translation into French have been published by the International Labour Office as *Legislative Series* 1959 — Pak. 1.

recognizes the fundamental principle that there are always in jails convicts who are not tainted with criminal characteristics and who, therefore, should not be deprived of normal life in the community or allowed to remain in jail to be contaminated by hardened criminals. Accordingly, under the Act, such convicts are placed on probation after they have served a part of their sentence and given a good account of their work and conduct in prison. They are allowed to live within the community almost as free and independent persons, except for over-all official supervision and social or moral guidance from time to time for the remaining period of their sentence. During this period, endeavours are also made to keep them fully engaged in some congenial occupation, preferably in their pre-conviction profession. They are also permitted to live a normal family life, which not only helps to create normal conditions of life so conducive to their reformation and rehabilitation, but also goes a long way towards inculcating in them the sense of self-respect and responsibility both for themselves and the members of their family. Furthermore, such convicted persons during the period of probation are not allowed to live in the same environment as led them to commit the offence. On the other hand a new and healthier environment is provided with a view to enabling them to start a new life therein.

Thus, the provisions of the Good Conduct Prisoners' Probational Release Act mark a distinct development not only in the matter of prevention of crime and treatment of offenders, but also in the restoration of fundamental human rights for this unfortunate section of the people.

THE BASIC DEMOCRACIES ORDER, 1959
(President's Order No. 18 of 1959)[1]

PART I. — INTRODUCTORY

1. *Short title, extent and commencement.* (1) This order may be called the Basic Democracies Order, 1959.

(2) It extends to the whole of Pakistan.

(3) This article and article 3 shall come into force at once, and the remaining provisions of the order shall come into force in such areas and on such dates as the Government may, by notification in the official gazette, appoint in this behalf.

. . .

3. *Definitions.* (1) In this order, unless there is anything repugnant in the subject or context,

. . .

(2) "Appointed member" means a member who is neither an elected member nor an official member;

. . .

(15) "Elected member" means a member who has been chosen by the electors under the provisions of this order;

. . .

(29) "Official member" means a member who is an official;

. . .

(38) "Representative member" means a member representing a local council;

. . .

PART II. — LOCAL AREAS AND LOCAL COUNCILS

Chapter II. — CONSTITUTION OF LOCAL COUNCILS

. . .

9. *Local councils to be constituted.* (1) The local councils to be constituted under this order shall be the following, that is to say,

(i) A union council for a union in rural areas; and a town committee for a town or a union committee for a union in urban areas;

(ii) A thana council for a thana in East Pakistan; and a tahsil council for a tahsil in West Pakistan;

(iii) A district council for a district; and

(iv) A divisional council for a division.

. . .

Chapter III. — COMPOSITION OF LOCAL COUNCILS

11. *Union councils.* (1) A union council shall, subject to the other provisions of this article, consist of such number of elected and appointed members as may be fixed by the Commissioner.

. . .

(3) The total number of appointed members of a union council shall not be more than one-half of the total number of its elected members.

. . .

12. *Town and union committees.* (1) A town committee or a union committee shall, subject to the other provisions of this article, consist of such number of elected and appointed members as may be fixed (*a*) in the case of the union committees within the jurisdiction of the municipal bodies or cantonment boards at Karachi, Dacca and Lahore, by the Government; and (*b*) in all other cases, by the Commissioner.

. . .

(3) The total number of appointed members of a committee under this article shall not be more than one-half of the total number of its elected members.

. . .

13. *Thana councils.* (1) A thana council shall, subject to the other provisions of this article, consist of representative members, and such number of official and

[1] Published in *The Gazette of Pakistan Extraordinary* of 27 October 1959.

appointed members as may be fixed by the Commissioner.

. . .

(3) The total number of official and appointed members of a thana council shall not be more than the total number of its representative members.

. . .

14. *Tahsil councils.* (1) A tahsil council shall, subject to the other provisions of this article, consist of representative members, and such number of official and appointed members as may be fixed by the Commissioner.

. . .

(3) The total number of official and appointed members of a tahsil council shall not be more than the total number of its representative members.

. . .

15. *District councils.* (1) A district council shall, subject to the other provisions of this article, consist of such number of official and appointed members as may be fixed by the Commissioner.

. . .

16. *Divisional councils.* (1) A divisional council shall, subject to the other provisions of this article, consist of such number of official and appointed members as may be fixed by the Government.

. . .

Chapter IV. — Elections and Appointments to Local Councils

A. — Elections

. . .

18. *Electoral Rolls.* (1) For each ward there shall be maintained, in the prescribed manner, a register in which shall be entered the names of persons who possess the qualifications and are not subject to any of the disqualifications specified in part I of the second schedule.

. . .

19. *Electors.* Every person whose name is entered in the electoral roll, and no person whose name is not so entered, shall be entitled to cast a vote at an election to the union council or the town or union committee concerned.

20. *Elected members.* (1) For each ward there shall be chosen, in the prescribed manner, by the electors whose names appear for the time being on the electoral roll for that ward, such number of members as is fixed under clause (2), from amongst such electors in the union or town in which the ward lies as possess the qualifications and are not subject to any of the disqualifications specified in part II of the second schedule.

. . .

B. — Appointments

21. *Appointment of members.* . . .

(2) In the matter of appointment of members, regard shall be had to the ability of persons to render service to the people, and due consideration shall be given to the representation of minorities and women, of organizations concerned with the agricultural, industrial or community development, and of other special interests of importance to the local area.

. . .

The Second Schedule

QUALIFICATIONS AND DISQUALIFICATIONS OF ELECTORS AND MEMBERS

Part I. — *Qualifications and Disqualifications of Electors*

(*See* article 18 (1))

1. *Qualifications of electors.* A person shall be entitled to be an elector if

(*a*) He is a citizen of Pakistan;

(*b*) He is not less than twenty-one years of age on the first day of January in the year in which the preparation or revision of the electoral roll commences;

(*c*) He has been resident in the town or union for a period of not less than six months immediately preceding the first day of January in the year in which the preparation or revision of the electoral roll commences; and

(*d*) He is not subject to any disqualification for being an elector.

Explanation. A person shall be deemed to be a resident in a town or union if he ordinarily resides, or owns or possesses a dwelling house therein:

Provided that any person who holds a public office, or is in the service of government, shall, during any period for which he holds such office or is employed in such service, be deemed to be a resident in the town or union in which he would have been resident if he had not held such office or had not been so employed.

2. *Disqualifications of electors.* A person shall be disqualified for being an elector (*a*) if he is of unsound mind and stands so declared by a competent court; (*b*) if he has been convicted of an offence or a corrupt or illegal practice relating to elections, or has been found guilty of any such offence or practice in any proceedings for questioning the validity or regularity of an election, unless five years or such period as the Government may, by notification in the official gazette, specify in this behalf, has elapsed from the date of the order, or from the date of the expiration of the sentence, if any.

Part II. — *Qualifications and Disqualifications of Candidates and Members*

(*See* articles 20 (1) and 25 (2))

1. *Qualifications of candidates.* A person who is not less than twenty-five years of age on the first day of January preceding the election shall be qualified to be elected as a member of a union council or a town

or union committee if his name appears for the time being on the electoral roll for the town or union concerned, and he does not suffer from a disqualification mentioned in part I.

2. *Disqualifications of candidates.* A person shall be disqualified for being a member or a candidate for the membership of a local council

(*a*) If he has ceased to be a citizen of Pakistan, or has voluntarily acquired the citizenship of a foreign State, or has made a declaration of allegiance or adherence to a foreign State;

(*b*) If he is an undischarged insolvent;

(*c*) If he has been ordered to execute a bond under section 110 of the Code of Criminal Procedure, 1898 (*Act V of 1898*), or has been, on conviction for an offence involving moral turpitude, sentenced to imprisonment for a term of not less than six months; unless five years, or such less period as the Government may, by notification in the official gazette, specify in this behalf, has elapsed from the date of the expiration of the period of the bond or sentence, as the case may be;

(*d*) If he is a whole-time salaried official in the service of government, or of a public statutory corporation, a local council, or a local body or other local authority;

(*e*) If he is under contract for work to be done for or goods to be supplied to the union council or the town or union committee concerned, or has otherwise any pecuniary interest in its affairs;

(*f*) If he is for the time being disqualified for membership of an elective body under the Elective Bodies (Disqualification) Order, 1959 (*President's Order No. 13 of 1959*), or under any other law for the time being in force.

. . .

PANAMA

ACT No. 25 APPROVING THE ELECTORAL CODE

of 30 January 1958[1]

PART I

SOLE CHAPTER

Sole art. The following Electoral Code is approved.

PART II

SUFFRAGE

Chapter I — General

Art. 1. All citizens possessing full rights of citizenship have the right and duty to vote, and the obligation to take the necessary steps for the exercise of this right, in conformity with the present Act.

Art. 2. The vote is personal, free and equal for all citizens and shall be cast in a direct, secret and unconditional manner. Any restrictions or reservations contained in a vote shall be considered invalid, but shall not affect the validity of the vote.

. . .

Art. 4. Any citizen who, without valid legal excuse, fails to fulfil the duty to vote in any or all popular elections decreed by law shall be debarred from public office or, if he holds such office, shall lose it. In addition, he shall be unable to conclude contracts with the national government, with the municipalities, or with any of the autonomous or semi-autonomous state agencies, either directly or through an intermediary. He may restore his position only by voting in a subsequent election.

Art. 5. Any of the following may be considered a valid legal excuse for failure to take part in a popular election, if it is duly proved before the electoral court:

(*a*) Absence from the country;

(*b*) Physical impairment;

(*c*) The serious illness of any member of the family;

(*d*) In the case of elections to municipal offices, accidental absence from the district; and

(*e*) A duly established case of *force majeure.*

Art. 6. The right to vote may not be exercised by:

(1) Persons deprived, by final sentence, of the rights of citizenship or the right to vote;

(2) Persons serving a sentence involving loss of liberty;

(3) Persons standing trial, under a court order instituting legal proceedings, for offences on account of which no release from custody is allowed; and

(4) Persons under a judicial disability.

Art. 7. The following shall be prohibited:

(*a*) All official support, direct or indirect, to candidates for popularly elected positions, even though the means employed for such ends may be hidden;

(*b*) Propaganda and party activities in public offices;

(*c*) The exaction of quotas or contributions from public employees for political purposes, even on the pretext that they are voluntary;

(*d*) Any act which may prevent or complicate a citizen's obtaining, retaining or personally presenting his identity card.

. . .

Chapter II. — The Right to Vote and to be elected

Art. 9. Citizens who possess full rights of citizenship have obtained a personal identity card and are included in the electoral rolls and electoral register, and, in the case of elections for membership of a town council, aliens to whom the provisions of article 192 of the national constitution apply and who fulfil the same qualifications, shall be entitled to vote.

Art. 10. Any citizen possessing full rights of citizenship and the qualifications required in each of the following cases is eligible for popularly elected positions:

(*a*) In the case of President or Vice-President of the Republic, if he is a Panamanian by birth and will be at least thirty-five years of age on the date on which he is to take office;

(*b*) In the case of deputy to the National Assembly, if he will have completed his twenty-fifth year of age on the date on which he is to take office;

(*c*) In the case of member of a town council, if he resides in the district concerned and, if an alien, meets the requirements of article 192 of the constitution.

Art. 11. The following are not eligible:

(*a*) As President and Vice-President of the republic, any citizen to whom the circumstances stated in article 151, paragraph 2, and articles 153 and 154 of the constitution apply;

(*b*) As Deputy or alternate deputy to the National Assembly, any person who has exercised, within the

[1] Published in *Gaceta Oficial* No. 13485, of 8 March 1958. Translation by the United Nations Secretariat.

constituency for which he is nominated, any office of authority and jurisdiction during the six months preceding the date of the election;

(*c*) As member or deputy member of a town council, any person who has exercised, within the district concerned, any office of authority and jurisdiction during the six months preceding the date of the election.

PART III

POLITICAL PARTIES

Chapter I. — General

Art. 12. Any association of citizens possessing political rights which has been formed in accordance with this code for the purpose of exercising popular suffrage in the ways provided for by the constitution and the laws, and of contributing by means of public discussion to the solution of national problems, shall constitute a political party.

Art. 13. Any citizen possessing full political rights is legally entitled, and is free, to form or to join a political party.

Art. 14. The formation, legal recognition and functioning of any political party which in any way, directly or indirectly, is calculated to destroy the democratic form of government or makes its membership dependent upon considerations of sex, race or religion, or of any party styled with the title of any individual or with the name of any person living or dead, are prohibited. The Electoral Court shall refuse to register or grant legal recognition to any political party exhibiting such defects.

Art. 15. Any political party existing and legally recognized at the time of enforcement of this Act shall, for the purposes of its legal status, be governed by the law in force at the time of its foundation, and shall cease to exist only if it is voluntarily dissolved or merges with another party, or if, in any election, the number of votes cast by its supporters falls below the figure stipulated by this Act for the registration of parties.

Chapter II. — The Internal Activities of Parties

. . .

Art. 18. Any national party may nominate candidates for all popularly elected positions, and municipal parties may propose candidates for membership of a town council.

. . .

Chapter III. — Establishment and Recognition of Parties

Art. 25. Any group of individuals in full possession of their political rights may initiate the formation of a political party, and shall bring such action to the knowledge of the Electoral Court by means of an application signed by at least five of the founding members. The application shall contain the names of the founders, the number of registered members and the name of the party, its emblem, a statement of its principles and purposes, its provisional articles of association, its draft programme and a list of the members of its provisional executive committee.

Art. 26. On the date on which it receives the application, the Electoral Court shall make public notification of its contents so that any citizens or organizations who believe they have grounds for objecting to the formation of the political party may, within not more than eight days, appear in person to make their objections known. The notification shall be affixed for three days to a bulletin board near the door of the office of the court and shall be published for three consecutive days in a newspaper of the capital city and, if possible, in a newspaper of the town in which the headquarters of the party will be located, or a newspaper of the capital of the province concerned.

Art. 27. The Electoral Court shall, within five days after the period of time indicated in the preceding article, take a decision on any objections which have been raised, and grant or withhold the authorization requested.

If the court finds the objections justified because of an identity of name, emblem, symbol, slogan or seal or a similarity capable of causing confusion with some other registered party, it shall hand down a judgement stating its reasons and transmit a copy thereof to the applicants by the most expeditious means, giving them a period of three days in which to remedy the deficiency.

When on a single date, or at an interval of not more than forty-eight (48) hours, more than one application for the formation of the same party with the same name, emblem, symbol, slogan or seal is received, the Electoral Court shall invite the petitioners to an oral hearing for the submission of evidence, which shall be held not earlier than three and not later than five days after receipt of the applications. The court shall freely evaluate the evidence; shall take into consideration the past history and political activities of the groups applying; and shall decide the case by a judgement stating its reasons. The petitioners whose application is rejected may request the registration of another party with a different name, emblem, symbol, slogan or seal.

Art. 28. Once the objections have been overcome and the deficiencies, if any, remedied, and if it is found that all legal requirements have been complied with, the court shall hand down a judgement, containing a statement of its reasons, in which it shall grant the authorization to begin registration and shall recognize the members of the organizing committee or group as representatives and responsible leaders of the party. The judgement shall serve as the basis for provisional registration of the party by the court.

Art. 29. Within a period of not more than six months from the date of the provisional registration, the organizing committee or group shall establish the party apparatus and convene a constituent con-

gress, convention or assembly at the national or municipal level, depending on the party's sphere of action. Such congress or convention shall decide upon the final name, emblem, principles, purposes, articles of association, programme and other details of the party organization and shall duly elect its principal officers.

Art. 30. After the closure of the convention, the party shall, through its authorized representative, request the Electoral Court to authorize it to proceed to the registration of members. Such request shall be accompanied by a copy of the final act of the convention, signed by all the officers of the party, and by copies of the party's statement of beliefs, programme and articles of association, authenticated by the secretary of the party's directorate or executive committee.

Art. 31. The Electoral Court shall consider the application within the eight days following its receipt and, if it finds that the procedure has been in conformity with the law, shall state, in a judgement, that the registration period for the party is open and shall instruct the registrars throughout the country to give to the party the protection of and the facilities afforded by the law for that purpose.

If the court finds irregularities in the form of the application, it shall grant a period of up to fifteen days for their amendment. If it considers that the beliefs, programme and articles of association of the party are not in conformity with the precepts of the constitution and the law, it shall declare registration to be contrary to law.

Art. 32. Registration shall take place in all districts of the national territory in the case of a national party and in one district alone in the case of a municipal party.

In the case of a national party, the registered membership of the party must amount to not less than 2½ per cent of the total population of the republic as shown by the official population census immediately preceding registration.

In the case of a municipal party, the registered membership must amount to 2½ per cent of the population of the district concerned as shown by the official population census immediately preceding registration. For the purposes of this paragraph, in no event may this percentage amount to less than 100 members.

Art. 33. The political parties must have not less than five members registered in each and every district within their sphere of action, and must have a complete organization in each and every such district.

. . .

Art. 37. During the period set aside for registration in a party and up to three days after such period is closed in any district, any citizen or representative of a party may challenge any membership if:

(*a*) The person registered does not exist or false identification data have been given;

(*b*) The individual in question has joined some other party during the current electoral campaign; or

(*c*) The person concerned did not possess rights of citizenship.

The registrar shall make a written record of the objection and shall set aside a period of three days in which to make the necessary investigation and settle the case, after hearing the parties. If the objection is sustained, he shall annul the registration by means of a note inserted in the space provided for observations in both sections of the page. If the objection is overruled, the person raising the objection may appeal to the Electoral Court.

In no case shall the process of adherence to the party be suspended by these proceedings.

Art. 38. The Electoral Court may, at any time up to thirty days after a party's registrations have become final, investigate and rule on objections. For that purpose, it may empower officials controlled by it to make investigations with a view to ascertaining the truth or validity of the charges. It may also hear testimony and gather evidence, by the most rapid and effective means available.

Art. 39. On the date on which the legal representative of a party requests the closure, in a district, of the registration concerned, the registrar in charge of such registration shall proceed to cancel the spaces left blank in the book in use and shall sign, together with the former, the required legal act. When the time limit for the objections referred to in article 37 has expired, the registrar shall have up to three additional days in which to rule on them. If no objections are made or, if made, after they have been ruled upon, the registrar, having recorded his decision in the appropriate place, shall remove the detachable part of the pages used and shall give them to the representative of the party concerned in exchange for a receipt. Thereafter, the registrar shall transmit the volumes to the Electoral Court by registered mail with a note mentioning the appeals pending.

Art. 40. Within thirty days following the closure of registration, the officers of a party shall assemble all the registrations obtained in the republic, the province or the district, as the case may be, and transmit them to the Electoral Court together with a letter stating the number of members obtained and requesting that the party be declared legally constituted and that its definitive registration be ordered.

Art. 41. Upon receipt of the request referred to in the preceding article, the Electoral Court shall consider the relevant documentation and, if it finds that all the pertinent legal requirements have been met, shall proceed to adopt a judgement recognizing the party's legal existence and ordering its registration in final form in the appropriate register, not later than five days after the date on which the said documentation was received.

Art. 42. Every citizen is free to join the party of his choice, but may do so only once during any one electoral period. In order to join such party, he must present himself in person to the municipal registrar of the district in which he resides, submit his personal identity card and supply the details requisite for his joining the party.

. . .

Chapter IV. — Coalition and Merger of Parties

Art. 46. Parties may form temporary alliances without altering their internal structure, or may unite by dissolving it. The relevant decision shall be taken at a special session of the highest executive organ of each party, on the basis of resolutions adopted by an absolute majority of the members and stating the reasons, purpose and conditions of the alliance or merger.

In the first case, the resolution shall provide for the establishment of a committee or executive board which will be responsible for the management and joint representation of the allied parties, without prejudice to the operation of the particular organs of each party.

In the second case, the resolution shall provide for the dissolution of each party involved in the merger.

A certified true copy of the said resolutions shall be communicated to the Electoral Court, which, if it considers that the requirements of the constitution and the laws have been met, will recognize their legal validity and order that the proper entries be made in the register of parties.

Art. 47. Municipal parties may ally themselves, or merge, only with other municipal parties in their respective electoral districts, as well as with national parties.

Chapter V. — Extinction and Dissolution of Parties

Art. 48. Any political party which in any election obtains a number of votes smaller than the total number of members required for recognition shall cease to exist.

The Electoral Court shall make the appropriate declaration within the thirty days following the closure of the electoral period.

A party which has legally ceased to exist may request provisional re-registration at the beginning of the next registration period, and, if it can be proved that there has been no interruption in its activities, it shall receive preference over any other party which may request registration under the same name.

Art. 49. Any dissolution of a political party must be pronounced by an absolute majority of its highest organ, by means of a resolution stating the reasons for such action. A copy of the official record of the meeting at which the decision is taken, countersigned by all the participants, shall be sent to the Electoral Court. Upon receipt of this document, the court shall declare that the said party has ceased to exist and shall cancel its registration.

Chapter VI. — Public Functions and Propaganda

Art. 50. Political parties may hold meetings in the open air or under a roof, as well as parades and demonstrations, and may engage in other propaganda activities, in accordance with the law. The notification to the proper authority shall be signed by the person who is the legal representative of the party in the district.

Art. 51. Any legally registered party may make use of public places and roads for its lawful activities.

Art. 52. The national, provincial and municipal leaders of parties may not be arrested during functions at which statements slandering or showing disrespect for public officials have been made. In such cases, the representative of the public authorities shall merely summon the person uttering such statements to appear before the competent official on the following day, during office hours, to answer charges.

Art. 53. The public authorities or officials whose duties are concerned with the activities of political parties and with freedom of assembly and expression shall consult the Electoral Court beforehand regarding the regulations or measures which it is proposed to adopt in that connexion.

. . .

Art. 55. It is forbidden, in government offices, to engage in any form of political propaganda, to hang on the walls or place on the furniture pictures of candidates or the insignia and flags of any political party, to sign or circulate written matter in support of or in protest against any party or candidate, or to solicit or collect money or securities for the support of any party or candidate. Public officials who violate any of these provisions shall be liable to dismissal from office.

Chapter VII. — Candidatures

Art. 56. Only legally constituted political parties may nominate candidates for popularly elected positions.

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Art. 61. The same person may not be nominated by two or more political parties without their express agreement, to be reached in accordance with the provisions of article 46.

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PART VII

VOTING PROCEDURE

. . .

Chapter II. — Provisions to safeguard Public Order during the Voting

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Art. 162. There shall, on election days, be no concentration of police forces, presence of armed

groups, obvious bearing of arms or massing of persons within the polling stations or in the immediate vicinity thereof within a distance of 100 metres.

. . .

Art. 165. During polling hours, no voter may be arrested, detained or required to appear before any public authority or official for the performance of any act in civil, criminal or police matters, without previously being given an opportunity to vote.

. . .

Art. 168. There shall be no restriction of the right of citizens to circulate, on election days, by land, sea or air within their respective districts. Voters may meet at specified locations to receive instructions and nourishment and to hear speeches and lectures, without any restriction being placed upon their freedom to move about at will within the district in which they are located, provided that such meetings do not paralyse or impede circulation and that the meetings of the various political parties are not held in close proximity to each other.

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Chapter V. — Voting

. . .

Art. 183. Voting shall be by secret ballot. . . .

PART XII

MISCELLANEOUS PROVISIONS

. . .

Art. 291. Parties which are in legal existence at the time of enforcement of this Act shall retain their legal status as such without complying with the registration procedures laid down in part III, chapter III of the present code.

. . .

PERU

ACT OF 25 FEBRUARY 1959 INSTITUTING THE OFFENCE OF ABANDONMENT OF THE FAMILY[1]

Art. 1. Any person who, having the obligation to provide for the maintenance of a minor child of less than eighteen years of age who is under his paternal power or guardianship or in some other dependent status, or of an invalid or needy elder relative, or of an indigent spouse who has not been legally separated through his fault, wilfully evades the fulfilment of such obligation, shall be liable to imprisonment for not less than one month or more than two years or to a fine of 600 to 10,000 soles, without prejudice to the right to require him to fulfil obligation to provide maintenance.

A penalty of severe imprisonment [penitenciaria] or imprisonment for not more than six years shall be incurred if, as a direct consequence of the desertion of the family there should occur any serious injury or the death of the person so deserted.

Fines collected in this way shall be used for the establishment and maintenance of homes for minor children, the funds being deposited in a special "Homes for Minor Children" account to be opened in the Deposit and Trust Bank [Caja de Depósitos y Consignaciones].

Art. 2. The penalty of imprisonment for not less than one month or more than one year, or of a fine of 600 to 5,000 soles, shall be imposed on anyone who, without just cause, fails to fulfil his obligation to maintain a woman who has become pregnant by him in manifest cohabitation.

Art. 3. Anyone who, from a desire to evade his maintenance obligations, abandons a minor child in a foundlings' home or other such establishment or hands him over to some other person to be exploited, shall be liable to imprisonment for not less than one month or more than one year.

Art. 4. The right to prefer charges in respect to the commission of any of the offences mentioned in the foregoing articles shall be vested in the persons referred to in the second paragraph of article 75 of the Code of Criminal Procedure and in the directors of establishments mentioned in article 3 or in the person having custody of the minor.

Art. 5. Charges may be preferred in the cases provided for in article 1 on the basis of a court decision specifying provisional maintenance or of a judgement in the relevant case, where the person concerned has not complied after being admonished to do so, or pretends, with the connivance of a third party, that he has made some other maintenance arrangement, or gives up or leaves his work with malicious intent.

In such cases the local judge in the place where the civil action is brought shall have jurisdiction.

Art. 6. In those cases mentioned in the foregoing article and provided that the case concerns the non-fulfilment of the obligation to provide maintenance, legal proceedings shall be suspended by the voluntary relinquishment of the claim by the injured party if he is not under a disability, or the penalty shall be remitted if the person accused pays the allotments owing and guarantees that payments will be made in future in a manner satisfactory to the judge.

In respect of offences for desertion of the family, provisional freedom on bail shall be granted provided that the person having the obligation pays the provisional allotment or the arrears accrued in the case of a court judgement.

This privilege, together with those prescribed in the Code of Criminal Procedure, shall be withdrawn if the person concerned again fails to comply with his obligation to provide maintenance. If the said person complies with his maintenance obligations, he shall remain under conditional sentence.

[1] Text kindly furnished by the Minister of External Relations of Peru. Translation by the United Nations Secretariat.

PHILIPPINES

THE ANTI-SUBVERSION ACT

Republic Act No. 1700, approved on 20 June 1957[1]

Sec. 2. The Congress hereby declares the Communist Party of the Philippines to be an organized conspiracy to overthrow the Government of the Republic of the Philippines for the purpose of establishing in the Philippines a totalitarian regime and place the Government under the control and domination of an alien power. The said party and any other organization having the same purpose and their successors are hereby declared illegal and outlawed.

Sec. 3. As used in this Act, the term "Communist Party of the Philippines" shall mean and include the organizations now known as the Communist Party of the Philippines and its military arm, the Hukbong Mapagpalaya ng Bayan, formerly known as HUK-BALAHAPS, and any successors of such organizations.

Sec. 4. After the approval of this Act, whoever knowingly, wilfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines and/or its successor or of any subversive association as defined in section two hereof shall be punished by the penalty of *arresto mayor* and shall be disqualified permanently from holding any public office, appointive and elective, and from exercising the right to vote; in case of a second conviction, the principal penalty shall be *prisión correccional*, and in all subsequent convictions the penalty of *prisión mayor* shall be imposed; and any alien convicted under this Act shall be deported immediately after he shall have served the sentence imposed upon him: *Provided*, that if such member is an officer or a ranking leader of the Communist Party of the Philippines or of any subversive association as defined in section two hereof, or if such member takes up arms against the Government, he shall be punished by *prisión mayor* to death with all the accessory penalties provided therefor in the Revised Penal Code: *And provided, finally*, that one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means, for the purpose of placing such government or political subdivision under the control and domination of any alien power, shall be punished by *prisión correccional* to *prisión mayor* with all the accessory penalties provided therefor in the same Code.

. . .

Sec. 9. Nothing in this Act shall be interpreted as a restriction to freedom of thought, of assembly and of association for purposes not contrary to law as guaranteed by the constitution.

Sec. 10. This Act shall take effect upon its approval.

[1] Text published in *Official Gazette*, Vol. 53, No. 16, of 31 August 1957.

POLAND

NOTE[1]

The rights and liberties of citizens guaranteed under the constitution of the Polish People's Republic, of 22 July 1952, are currently implemented by appropriate enactments. Among such enactments issued in 1959, which concerned the Universal Declaration of Human Rights, were the following:

1. *Rights of Women*

An order issued by the Council of Ministers on 18 February 1959 amending the Order of 28 February 1951, concerning work forbidden to women (*Official Journal of the Polish People's Republic* No. 18, item 109, of 2 March 1959). Item 2 of the new order lists "All underground work in any mine" as forbidden to women; it also enumerates other kinds of hard work in agriculture and forestry prohibited to women.

2. *Health Care*

An Act on combating tuberculosis was passed by the Seym on 22 April 1959 (*Official Journal* No. 27, item 170, of 2 March 1959).

The more important provisions of this Act are contained in the following articles:

Art. 1. The social work centres of the health service render their services free of charge to the population as regards the prophylaxis, diagnosis and treatment of tuberculosis, and as regards the vocational rehabilitation of persons recovered from and/or disabled by tuberculosis.

Art. 2. Upon request by an organ of the health service any person living within the Polish borders is in duty bound

1. To submit to preventive inoculation against tuberculosis;

2. To submit to medical examination aimed at detecting and treating tuberculosis;

3. To give any information that might help in diagnosing tuberculosis, finding the source of infection, or preventing the spreading of the disease.

Art. 13. Persons affected with tuberculosis who have no profession or cannot find employment in the profession for which they were trained, or in which they used to perform, are assured training for another profession or for a special kind of work suitable to their state of health, by the competent employment, social and health organs of the Praesidia of the voivodship national councils (national councils in cities with special status), (1) in special training centres attached to "closed" anti-tuberculosis establishments, in cases where patients have to undergo protracted treatment in such an establishment; (2) in special training centres for the disabled, in all other cases.

Art. 14. 1. An insured person unable to work as a result of tuberculosis is entitled to a sickness benefit in case of illness or maternity, for a period of thirty-nine weeks. This period may be extended to fifty-two weeks when the treatment promises to restore the patient's capacity for work.

2. An insured person undergoing treatment in a "closed" anti-tuberculosis establishment is entitled to the following:

(1) An allowance, on account of his insurance, equal to the full amount of his sickness benefit, if he has a dependant to support;

(2) An insurance allowance equal to 30 per cent of his basic sickness benefit, if he has no dependant to support.

Art. 15. 1. An insured person transferred to a more suitable kind of work (art. 10, para. 3), or working shorter hours, is entitled to a health care allowance, payable out of his insurance account for sickness and maternity. This, however, does not apply to persons receiving disability benefits under the regulations governing insurance benefits and old-age pensions.

2. The health care allowance amounts to the difference between the average daily earnings received during the last three calendar months of employment in the preceding job and the average daily earnings after transfer to the more suitable work or to an employment with reduced working time.

3. *State Scholarships for Students*

An order of the Council of Ministers of 16 January 1959, concerning state scholarships to students of higher schools (*Official Journal* No. 6, item 35, of 29 January 1959), is an enactment broadening the former legislation on this subject.

The more important provisions of the order are the following:

Para. 2. Scholarships include both stipends and allowances granted by the State out of special funds, provided for in the budget, and stipends granted by

[1] Note kindly furnished by the Permanent Representative of the Polish People's Republic to the United Nations.

national councils, enterprises, institutions, organizations and banks out of their respective funds.

Para. 4. To be eligible for a scholarship, a student must: (1) show good progress in his studies; (2) be in a financial situation that justifies the awarding of a scholarship; (3) have the right moral and civic record.

Para. 5. 1. Scholarships awarded to students of higher schools out of the funds reserved in the state budget sections for the higher schools include the following:

(1) Ordinary cash stipends (full or partial),

(2) Cash stipends for scientific purposes,

(3) Allowances for living quarters,

(4) Allowances for board,

(5) Cash grants for students in their first term, first year of studies,

(6) Emergency grants,

(7) Loans.

2. The stipends, allowances and grants listed in items 1-6 of para. 15.1 need not be refunded.

4. *Social Insurance*

In conformity with the provisions of the constitution and legal decisions concerning social insurance, the Minister of Labour and Social Welfare issued, on 24 November 1959, an order regarding the procedure to be followed in establishing the right to insurance benefits and the principles on which payments are to be made, in accordance with the stipulations of the rules governing general retirement pensions to workers and their families, and benefits to war invalids and military persons and their families (*Official Journal* No. 65, item 393, of 7 December 1959).

This order is an executive act to carry out the decisions concerning the establishing of the rignt to insurance benefits and the principles on which payments are to be made, contained in the decree regarding general retirement pensions for workers and their families, and also for a number of other categories of people (for example, cottage workers), of 25 June 1954, as well as the decisions contained in the decree regarding insurance benefits due to war invalids and military persons and their families, of 14 August 1954.

PORTUGAL

ACT No. 2100, PROMULGATING AMENDMENTS TO THE POLITICAL CONSTITUTION OF THE PORTUGUESE REPUBLIC

of 29 August 1959[1]

Art. 1. Article 12 shall be amended to read as follows:

"*Art. 12.* The State shall secure the establishment and protection of the family, as the source of the preservation and development of the Portuguese people, the primary basis of education, discipline and social harmony and the foundation of the political and administrative order, through its participation and representation in the parish and municipality."

. . .

Art. 4. Article 23 shall be amended to read as follows:

"*Art. 23.* The press exercises a function of a public nature and hence it may not refuse, in matters of national interest, to publish official notices sent to it by the Government. A special act shall define the rights and duties of press enterprises and of journalists, in such a way as to safeguard the independence and dignity of both."

Art. 5. The following shall be inserted in place of paragraph 4 of article 31, the present paragraph 4 becoming paragraph 5:

"*Paragraph 4.* To prevent excessive earnings by capital, ensuring that the latter is not diverted from its humane and Christian purpose;

"*Paragraph 5.* To promote the settlement of the national territories, protect emigrants and regulate emigration."

. . .

Art. 7. The following shall be substituted for article 72 and its subsidiary paragraphs:

"*Art. 72.* The Head of State is the President of the Republic elected by the nation through an electoral college consisting of the serving members of the National Assembly and of the Corporative Chamber, the municipal representatives of each district or of each overseas province not divided into districts, and the representatives of the legislative councils and councils of government of the provinces administered by a governor-general or by a governor respectively. . ."

. . .

Art. 9. Paragraph 1 of article 73 shall be deleted and the following paragraph shall be substituted for paragraph 2:

"*Sole paragraph.* If the person elected is a member of the National Assembly or the Corporative Chamber, he shall resign his seat."

. . .

Art. 16. Article 85 as a whole shall be replaced by the following:

"*Art. 85.* The National Assembly is composed of 130 deputies, elected by the direct vote of the citizen electors, and its term of office shall run for a period of four years, which period may not be extended, save in the case of events which make it impossible to hold an election."

. . .

Art. 29. Article 134 shall be replaced by the following:

"*Art. 134.* The law shall define the general system of government in the territories known generically as provinces; their political and administrative organization shall be appropriate to their geographical location and stage of social development. The said organization shall be directed towards their integration into the general administrative system of the other national territories."

. . .

[1] Published in *Diário do Governo*, part I, No. 198, of 29 August 1959. Translated by the United Nations Secretariat. Extracts from the Political Constitution of 19 March 1933, as amended up to 11 June 1951, appear in the *Yearbook on Human Rights for 1951*, pages 296-303.

ACT No. 2098 PROMULGATING THE GROUNDS FOR THE ATTRIBUTION AND ACQUISITION OF PORTUGUESE NATIONALITY

of 29 July 1959[1]

CHAPTER I

ATTRIBUTION OF PORTUGUESE NATIONALITY BY BIRTH

Section I. — Attribution by Operation of the Law

Art. I. 1. The following persons are Portuguese nationals if they were born in Portuguese territory:

(*a*) The child of a Portuguese father;

(*b*) The child of a Portuguese mother, if the father is stateless, of unknown nationality or unknown;

(*c*) The child of a father who is stateless, of unknown nationality or unknown;

(*d*) The child of an alien father, unless the latter is in Portuguese territory in the service of the State of which he is a national;

(*e*) The child of an alien mother, if the father is stateless, of unknown nationality or unknown, unless the mother is in Portuguese territory in the service of the State of which she is a national.

2. A newborn child found in Portuguese territory shall be presumed in the absence of proof to the contrary to have been born in Portugal.

Art. II. A child born in foreign territory of a Portuguese father or mother who is in the foreign territory in the service of the Portuguese State shall likewise be a Portuguese national.

Art. III. For the purposes of the provisions of articles I and II, persons who are outside the territory of the State of which they are nationals in consequence of an official mission performed on behalf of that State shall be considered to be in the service of that State.

Section II. — Attribution by Option, declared or presumed

Art. IV. A child born abroad to a Portuguese father shall be considered a Portuguese national if he fulfils any of the following conditions:

(*a*) That, having attained the age of majority or being *sui juris*, he makes a declaration in his own name or, if not *sui juris*, through his lawful representative, to the effect that he wishes to be a Portuguese national;

(*b*) That his birth is registered in the Portuguese civil register by a declaration in his own name, if he has attained the age of majority or is *sui juris*, or through his lawful representative, if he is not *sui juris*.

(*c*) That he voluntarily establishes his domicile in Portuguese territory and makes a declaration to that effect before the competent authority.

Art. V. A child born abroad to a Portuguese mother shall likewise be considered a Portuguese national if he fulfils any of the requirements set out in the preceding article, provided that his father is stateless, of unknown nationality or unknown.

Section III. — Filiation in Matters affecting Nationality

Art. VI. For the purposes of the attribution of Portuguese nationality filiation shall be taken into account only if it is established in conformity with Portuguese law.

Art. VII. If filiation is legitimate, only the nationality of the father shall have effect for the purpose of establishing the nationality of the child, unless the father is stateless or of unknown nationality.

Art. VIII. The nationality of legitimated persons shall be governed by the provisions applicable to legitimate children.

Art. IX. 1. If an illegitimate child is simultaneously acknowledged, voluntarily or in consequence of the order of a court, by both parents, only the father's acknowledgement shall have effect for the purpose of establishing the nationality of the child acknowledged, unless the father is stateless or of unknown nationality.

2. If an illegitimate child is successively acknowledged, voluntarily or in consequence of the order of a court, by both parents, only the first acknowledgement shall have effect for the purpose of establishing the nationality of the child acknowledged, unless the acknowledging parent is stateless or of unknown nationality.

3. Acknowledgement shall not have effect for the purpose of establishing the nationality of the child acknowledged unless it is effected during the child's minority.

CHAPTER II

AQUISITION OF NATIONALITY

Section I. — Acquisition of Nationality by Marriage

Art. X. An alien woman who marries a Portuguese national acquires Portuguese nationality unless she states before the celebration of the marriage that she does not wish to acquire Portuguese nationality and establishes that she does not lose her former nationality.

Art. XI. The invalidation or annulment of a marriage shall not affect nationality acquired in accordance with the preceding article if the woman entered into the marriage in good faith and maintains her established domicile in Portugal.

[1] Published in *Diário do Governo*, Part I, No. 172, of 29 July 1959. Translation by the United Nations Secretariat.

Section II. — Acquisition of Nationality by Naturalization

Art. XII. The Government may grant Portuguese nationality by naturalization to an alien who fulfils all of the following conditions:

(*a*) That he has attained or is deemed to have attained the age of majority both under Portuguese law and under the national law of his State of origin;

(*b*) That he is capable of earning his livelihood through work or possesses other means of subsistence;

(*c*) That he is of good moral and civil conduct;

(*d*) That he has complied with the military service laws of his country of origin, unless he is stateless or of unknown nationality;

(*e*) That he has a knowledge of the Portuguese language adequate to his circumstances;

(*f*) That he has resided in Portuguese territory for not less than three years.

Art. XIII. The requirements set out in sub-paragraphs (*e*) and (*f*) of the preceding article shall not apply in the case of a person of Portuguese descent who establishes his domicile in Portuguese territory and may be waived in the case of an alien married to a Portuguese woman or in the case of an alien who has rendered, or is likely to render, an outstanding service to the Portuguese State.

. . .

Art. XVII. 1. The Government may, if it deems it just and desirable to do so, grant Portuguese nationality to persons who belong to communities which claim Portuguese descent and express the desire to be integrated into the national social and political order.

2. In such circumstances nationality shall be granted in the manner set out in article XIV and the only conditions required to be fulfilled shall be such of the conditions set out in article XII as the Government may deem essential in each case.

CHAPTER III

LOSS AND RECOVERY OF NATIONALITY

Section I. — Loss of Nationality

Art. XVIII. The following persons shall lose Portuguese nationality:

(*a*) A Portuguese national who voluntarily acquires a foreign nationality;

(*b*) A Portuguese national who, without the permission of the Government, accepts a public office in or serves in the military forces of a foreign State if, not being also a national of that State, he fails to relinquish such office or to cease to perform such service within the time limit specified by the Government;

(*c*) A Portuguese woman who marries an alien, unless she does not thereby acquire the nationality of her husband or she declares before the celebration of the marriage that she wishes to retain Portuguese nationality;

(*d*) A Portuguese national who, having been born in Portuguese territory and being also a national of another State, makes a declaration in his own name, if he is *sui juris*, or through his lawful representative, if he is not *sui juris*, that he does not wish to be a Portuguese national;

(*e*) A person who has received Portuguese nationality in accordance with the provisions of chapter I, section II, while not *sui juris* or who has acquired such nationality by virtue of a declaration by his lawful representative, if, upon becoming *sui juris*, he declares that he does not wish to be a Portuguese national and establishes that he has another nationality.

Art. XIX. The Council of Ministers shall decide, after examining the special circumstances in each case, whether a person shall lose or retain his nationality:

(*a*) Where the foreign nationality was acquired by reason of naturalization directly or indirectly imposed on residents in the foreign State concerned;

(*b*) Where the facts to which sub-paragraph (*b*) of the preceding article refers become known only after the person in question has ceased to hold such public office or perform such military service or the Government does not set a time limit for withdrawal from such office or service.

Art. XX. The Government by decision of the Council of Ministers may decree that Portuguese nationality shall be lost:

(*a*) By a Portuguese national who is also deemed to be a national of another State and who, in particular after attaining the age of majority or becoming *sui juris*, in practice conducts himself exclusively as an alien;

(*b*) By a Portuguese national who has been convicted by final sentence of a court of law of a premeditated crime against the external security of the State or who unlawfully engages on behalf of a foreign Power or its agents in activities prejudicial to the interests of the Portuguese nation.

Art. XXI. In the case provided for in sub-paragraph (*a*) of the preceding article, the loss of nationality may be extended to the wife and minor children of the person having multiple nationality if all of them are deemed also to be nationals of the other State, provided that the children shall not be deprived of Portuguese nationality if the wife is not simultaneously so deprived.

Section II. — Recovery of Nationality

Art. XXII. The following persons shall recover Portuguese nationality:

(*a*) A person who, having been naturalized in a foreign country, establishes his domicile in Portuguese territory and declares that he wishes to recover Portuguese nationality;

(*b*) A person who, having lost his nationality by decision of the Government, obtains a special dispensation to recover it;

(*c*) A woman who has lost her nationality by reason of her marriage to an alien if, the marriage having been dissolved, invalidated or annulled, she establishes her domicile in Portugal and declares that she wishes to recover Portuguese nationality;

(*d*) A person who, having lost his nationality in consequence of a declaration made during his minority by his lawful representative, has his domicile in Portugal and declares, when he has attained the age of majority or has become *sui juris*, that he wishes to recover Portuguese nationality.

Art. XXIII. A special dispensation permitting the recovery of Portuguese nationality may be granted by the Council of Ministers and application therefor may be made by the person concerned through the Ministery of the Interior.

CHAPTER IV

EFFECTS OF THE ATTRIBUTION, ACQUISITION, LOSS AND RECOVERY OF NATIONALITY

. . .

Section II. — Effects of the Acquisition, Loss and Recovery of Nationality

. . .

Art. XXVIII. A person who acquires or recovers Portuguese nationality shall enjoy all the rights attaching to Portuguese nationality, subject to the restrictions mentioned in the following article or expressly provided for in special legislation.

Art. XXIX. 1. For the purposes of appointment to public office or the direction and supervision of corporations or other bodies under the control of the Portuguese State, the acquisition of Portuguese nationality shall be without effect until ten years from the date of such acquisition or the expiry of such other period as may be established by special legislation.

2. If a person acquires Portuguese nationality while he is a minor the period of disability shall be five years from the date on which he attains the age of majority or becomes *sui juris*.

Art. XXX. The disability to which the preceding article refers shall be for a period of three years in the case of a person who recovers Portuguese nationality and shall not apply if the loss of Portuguese nationality occurred during the minority of the person concerned as the result of a declaration by his lawful representative.

Art. XXXI. A woman married to a person who acquires Portuguese nationality may also acquire Portuguese nationality if she declares that she wishes to be a Portuguese national.

Art. XXXII. 1. The minor legitimate or illegitimate child of a man who acquires Portuguese nationality by naturalization may also acquire Portuguese nationality if he declares through the father or the mother, as the case may be, that he wishes to be a Portuguese national.

2. The same provision shall apply to the acquisition of Portuguese nationality by a woman's legitimate child if the child is stateless or of unknown nationality.

Art. XXXIII. The minor legitimate or illegitimate child of a father who loses Portuguese nationality or the minor illegitimate child of a mother who loses Portuguese nationality may renounce Portuguese nationality if he acquires the new nationality of the father or the mother, as the case may be, and declares through him or her that he does not wish to be a Portuguese national.

Art. XXXIV. The provisions of chapter I, section III, shall apply to filiation for the purposes of the preceding articles.

CHAPTER V

DENIAL OF THE ATTRIBUTION, ACQUISITION OR RECOVERY OF PORTUGUESE NATIONALITY

Art. XXXV. The attribution of Portuguese nationality to a person who fulfils the requirements of articles IV and V and who is also the national of another State may be denied by the Government on any of the following grounds:

(*a*) That he has engaged, on behalf of a foreign State, in activities prejudicial to the external security of the Portuguese State;

(*b*) That he has committed a crime which, under Portuguese law, is punishable by a major penalty;

(*c*) That he has held public office in or served in the military forces of a foreign State;

(*d*) That more than two generations of his immediate ascendants were born abroad and he cannot show that he has an adequate knowledge of the Portuguese language.

Art. XXXVI. In addition to the grounds set out in sub-paragraphs (*a*), (*b*) and (*c*) of the preceding article, the acquisition of Portuguese nationality may also be denied by the Government:

(*a*) In the case of acquisition by reason of marriage, if the woman was expelled from the country before the marriage was celebrated;

(*b*) In the case of the revocation of a declaration made on behalf of a minor by his lawful representative, if the person concerned has after attaining the age of majority expressly declared his intention to retain the foreign nationality.

Art. XXXVII. The Government may deny the recovery of Portuguese nationality on the grounds set out in article XXXV, sub-paragraphs (*a*), (*b*) and (*c*).

. . .

CHAPTER IX

CONFLICTS OF NATIONALITY LAWS

Art. LVII. If a person has two or more nationalities and one of these is Portuguese the latter shall in all cases prevail, except as provided in the following article.

Art. LVIII. A Portuguese national who is also regarded as a national of another State may not plead his status as a Portuguese national before the local authorities or claim Portuguese diplomatic or consular protection while in the territory of that State.

Art. LIX. In case of positive conflict between two or more foreign nationalities, the nationality of the State in whose territory the person having multiple nationality is domiciled shall prevail.

CHAPTER X

MISCELLANEOUS PROVISIONS

Art. LX. A Portuguese woman who waives the nationality of her alien husband shall not lose Portuguese nationality, provided that the law of the husband's country admits such a waiver and that the waiver is made within the prescribed time limit after the celebration of the marriage.

REPUBLIC OF KOREA

REGULATIONS ON THE DUTIES OF JUDICIAL POLICE OFFICERS put into effect on 31 December 1959 by Ministry of Justice order No. 24[1]

Art. 3 (Guiding principles). A judicial police officer shall always take into account the following in carrying out his duties:

. . .

3. A judicial police officer shall devote himself to fulfilling his duties in all conscience and with a view to obtaining the confidence of the people, inasmuch as his duties are to protect the human rights and to promote the freedoms of the people.

Art. 7 (Special care in investigation). A judicial police officer shall not divulge any secret in the course of the investigation, and shall not harm the person or the honour of suspects or third parties.

Art. 14 (Summons). When a judicial police officer wishes to summon any suspect or witness, he shall issue a subpoena.

The purport of the summons shall be clearly indicated in the subpoena mentioned in the preceding paragraph.

The judicial police officer shall listen without delay to the testimony by the suspect or witness, and shall not keep him waiting longer than is necessary.

When a foreigner is summoned for investigation, due care shall be taken to avoid any violation of customary international law or treaties.

Art. 16 (Testimony by witnesses). The hearing of testimony by witnesses shall be conducted strictly in accordance with the provisions of article 317 of the Criminal Procedure Act,[2] and no witness shall be compelled to give evidence.

Art. 20 (Execution of warrant). The warrant shall be executed promptly and accurately.

The execution of a warrant shall be done with fairness and kindness, and shall not harm the body or the honour of suspects or third parties.

Art. 21 (Confinement and health conditions). When a suspect is to be confined, his health conditions shall be carefully taken into account; and if his arrest is found to endanger his health, a report shall be made to the respective prosecutor.

Art. 24 (Special care to be taken in the case of emergency arrest). When a judicial police officer performs an emergency arrest pursuant to the provisions of article 206 of the Criminal Procedure Act,[3] he shall take the greatest care not to violate human rights, and shall make available the warrant of emergency arrest.

Art. 25 (Interview with suspects). When a request for an interview with a suspect, or for the delivery of or an inquiry concerning documents or goods, is made by the suspect's attorney or the person who is to be his attorney, the request shall be met with the utmost consideration.

If the request mentioned in the preceding paragraph is made by a person who is not an attorney, the provisions of the preceding paragraph shall be applied *mutatis mutandis* thereto, provided that there exists no cause for acting otherwise under article 91 of the Criminal Procedure Act.[4]

Art. 26 (Treatment of suspects under detention). Suspects under detention shall be afforded such reasonable facilities as subsistence allowances and sanitary and medical facilities.

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[1] Extracts kindly furnished by the Minister of Foreign Affairs of the Republic of Korea, who has indicated that the regulations "set out the standard operational procedure for judicial police officers in discharging their duties. With the enforcement of these new regulations, the human rights and individual freedoms of criminal offenders when under investigation by judicial police officers are to be protected to the greatest extent possible in order to promote social justice."

[2] Article 317 (Voluntary statements) of the Criminal Procedure Act, promulgated on 23 September 1954 by Act No. 341, reads as follows:

"(1) Oral statements given by an accused or a person other than the accused shall not be admitted as evidence unless the statements are made voluntarily.

"(2) A document which contains oral statements referred to in the preceding paragraph shall not be admitted as evidence unless it is proved that they were made voluntarily.

"(3) When a part of a protocol refers to evidence by inspection and part to an oral statement given by the accused or a person other than the accused, only the latter part thereof shall be governed by the preceding two paragraphs."

[3] Article 206 (Urgent arrest) reads:

"When there are sufficient grounds to suspect the commission of an offence punishable by the death penalty or penal servitude or imprisonment for an indeterminate period or for three years or more, and there exist the conditions stated in item 2 or 3 of paragraph 1 of article 70, and if, in addition, because of great urgency, a warrant of arrest cannot be obtained beforehand from a judge, then a public prosecutor or judicial police officer may, upon statement of reasons therefor, apprehend the suspect."

[4] Article 91 (Interview with person other than lawyer) reads:

"When there is reasonable ground to suspect that an accused under detention may escape or destroy evidence, a court may, upon request of a public prosecutor or *ex officio*, forbid him, by a ruling, to talk with persons other then those mentioned in article 34, or to documents or other things which he may receive from or deliver to such persons, and further forbid him to deliver, receive, or seize such things. However, he shall not be forbidden to receive clothing, food or medical supplies; nor shall they be seized."

Art. 29 (Release of offenders caught in flagrante delicto). When a judicial police officer arrests an offender *in flagrante delicto*, he shall commence interrogating the offender without delay, and shall release him immediately the necessity to hold him under detention ceases to exist.

Art. 36 (Duration of investigation). When a judicial police officer takes up the investigation of a criminal case upon complaint or accusation, he shall finalize the necessary investigation within two months of the raising of the matter.

Art. 38. (Juvenile delinquency). The investigation of juvenile delinquency shall be conducted as expeditiously as possible in accordance with the intention of the Juvenile Act, and information and pictures concerning juvenile cases shall not be made public through newspapers or such other communications media as publications and broadcasting.

Art. 39 (Investigation of juvenile delinquency). The investigation of juvenile delinquency shall be conducted with the utmost care on the part of the investigator and at a place inaccessible to all third parties.

Art. 40 (Juvenile delinquents and information on their environment). In the investigation of a juvenile delinquent, a record of relevant environmental information, including information on his psychological and physical conditions, character, experience and family, shall be prepared.

If the psychological and health conditions of the juvenile delinquent are not normal, the necessary opinion shall be immediately given by the doctor.

Art. 42 (Female suspects). When the suspect is female, the provisions set forth in article 38 and article 39 of these regulations shall be applied, *mutatis mutandis*.

REPUBLIC OF VIET-NAM

FAMILY LAW

Act No. 1/59 of 2 January 1959

SUMMARY[1]

The Act consists of 135 articles dealing with the following titles:

Title I. Marriage (betrothal, requisites to the contract to marry, celebration of marriage, legal consequences of marriages, matrimonial regime, separation *a toro*, violation of marital obligations);

Title II. Concubinage;

Title III. Filiation (legitimate issue, children born out of wedlock);

Title IV. Adoption.

This Act is designed to protect the family and ensure absolute equality of rights between the spouses. Noteworthy in this respect are the following points:

1. The prohibition of polygamy and concubinage;
2. The effects of marriage, whereby the wife, like the husband, enjoys full legal rights and even the choice of the conjugal home requires the agreement of both spouses;
3. The community of property of the spouses, chosen as the ordinary-law matrimonial regime, whereby both spouses enjoy absolutely identical rights (*inter alia*, the right to institute attachment proceedings in respect of the wages, remuneration, income and profits of the other spouse, and the right to receive from credit institutions, upon application, notice of the balance of the other spouse's account);
4. The civil and criminal penalties, conceived in a spirit of absolute equality regardless of the sex of the offending spouse, for adultery, desertion and excessively familiar association with a person of the opposite sex against the wishes of the other spouse;
5. The prohibition of the recognition of the issue of adulterous or incestuous unions and of the legitimation of children born out of wedlock, even if they have already been recognized, if their natural parents have not married;
6. The authority given to the President of the republic to grant a divorce in altogether exceptional cases, after consultation with the president of the Court of Cassation and with the president of the Court of Appeal in the place of residence of the spouses.

[1] The Act was published in the *Công-Báo Viêt-Nam Công-Hòa* (official gazette of the Republic of Viet-Nam), 5th year, No. 3, 10 January 1959. Summary kindly furnished by the Permanent Observer of the Republic of Viet-Nam to the United Nations. Translation by the United Nations Secretariat.

FEDERATION OF RHODESIA AND NYASALAND

LEGISLATION ADOPTED DURING 1959 IN SOUTHERN RHODESIA[1]

1. *General statement*

During 1959 three important measures were passed by the Southern Rhodesia Legislative Assembly — the Industrial Conciliation Act (No. 29 of 1959) which deals with trade unions, employers' organizations and the settlement of industrial disputes; the Workmen's Compensation Act (No. 52 of 1959), which provides for greatly increased benefits for workmen; and the Apprenticeship Act (No. 53 of 1959), which provides for improved conditions of apprenticeship. These measures were non-racial in character.

A state of emergency was declared early in the year, which resulted in the passing of measures dealing with unlawful organizations and preventive detention. These are temporary measures, however, which are due to expire at the end of five years and may be repealed at an earlier date.

2. *The Industrial Conciliation Act, 1959 (No. 29 of 1959)*[2]

This Act, entering into force on 1 January 1960, repeals the previous Industrial Conciliation Act, No. 21 of 1945, and the Native Labour Boards Act, No. 26 of 1947, as amended. The new instrument consolidates and expands the scope of the two previous Acts and removes certain restrictions. It allows for the formation of multi-racial trade unions and, *inter alia*, provides for the establishment of an industrial court (and prescribes the powers and functions of that court); for the appointment of industrial boards in industry (and prescribes the powers and duties of such boards); for the making of certain employment regulations; for the regulation and registration of trade unions and employers' organizations; for the prevention and settlement of disputes between employers and employees; for the regulation by agreement and arbitration of conditions of employment; and for the control of private registry offices.

All industrial agreements and employment regulations framed in terms of the Act, once approved by the Minister of Labour and published in the official gazette, have the force of law and are legally binding on the parties concerned. Any person who contravenes their terms is guilty of an offence and liable to a fine or imprisonment or both.

Industrial agreements for organized industries are based on free negotiations between representative organizations of workers and employers in the industries concerned, while employment regulations for unorganized industries stem from the recommendations of industrial boards set up by the Minister of Labour under the control of an independent chairman.

An industrial board is to carry out its investigations in terms of the Act and make recommendations in regard to the conditions of employment in the undertaking, industry, trade or occupation concerned, with the object of preventing disputes from arising or of settling disputes that have arisen, including recommendations for the making of employment regulations if in the opinion of the board such regulations are desirable.

[1] Information kindly furnished by the Ministry of External Affairs of the Federation of Rhodesia and Nyasaland.

[2] The text of this Act and a French translation have been published by the International Labour Office as *Legislative Series* 1959 — S.R. 1.

THE PREVENTIVE DETENTION (TEMPORARY PROVISIONS) ACT, 1959

No. 39 of 1959[1]

WHEREAS a state of emergency was declared in the colony[2] on the twenty-sixth day of February, 1959, to meet a public danger;

AND WHEREAS certain persons have been detained under emergency regulations by reason of their subversive activities, or their association with and support, directly or indirectly, of the subversive activities of certain organizations, all of which led to, created or constituted the public danger aforesaid;

AND WHEREAS the aforesaid public danger will continue to exist in the colony for a period, notwithstanding that the state of emergency may have ceased to exist, and it is necessary to provide for the detention of certain persons for a period in order to prevent the continuance or commencement of any further such activities;

. . .

[1] Published in *The Statute Law of Southern Rhodesia, 1959*, printed on the authority of the Government Printer.

[2] That is to say, Southern Rhodesia.

3. (1) With a view to preventing the continuance in the colony of any of the activities which led to the state of emergency and preventing any further outbreak in the colony of similar activities, and in view of the paramount necessity of preserving peace, order and constitutional government in the colony and in the federation, of securing the safety of the inhabitants of the colony, and of preventing the intimidation of the inhabitants of the colony, the Governor may exercise the powers conferred by this section.

(2) If it appears to the Governor that any person —

(*a*) Has heen concerned in any of the activities which, or has been associated with or has supported, directly or indirectly, any of the activities of any organization which led to the state of emergency; or

(*b*) Is concerned in any activities which in the opinion of the Governor are potentially dangerous to public safety or public order to such an extent that the continuance thereof might necessitate the declaration of a state of emergency under the Public Order Act, 1955;

the Governor may, with a view to preventing such person from acting in any such manner prejudicial to public safety or public order, authorize the making of an order (hereinafter called a detention order) with respect to such person directing that he be detained during the Governor's pleasure.

. . .

(4) The Governor may at any time authorize the revocation of a detention order.

. . .

4. (1) There shall be established a review tribunal (hereinafter called the tribunal) consisting of—

(*a*) A judge or retired judge of the High Court or a retired judge of the Federal Supreme Court, who shall be the president of the tribunal;

(*b*) A magistrate or retired magistrate of not less than ten years' standing;

(*c*) (i) A provincial native commissioner or a retired provincial native commissioner; or

(ii) A native commissioner or retired native commissioner of not less than ten years' standing;

all of whom shall be appointed by the Minister with the concurrence of the Chief Justice of the High Court.

. . .

(4) It shall be the duty of the tribunal with all convenient speed to inquire into the reasons for the detention of every person in respect of whom a detention order has been made under section three, and to make recommendations to the Governor as to the necessity or otherwise of the continuance of such detention.

(5) In making its recommendations to the Governor the tribunal shall have regard to the matters mentioned in subsections (1) and (2) of section three and to the conduct of the detained person since his detention.

. . .

(7) All questions or matters requiring to be decided by the tribunal shall be decided by a majority:

Provided that the president of the tribunal alone shall decide all questions of law and for the purposes of this proviso the question whether a matter is a question of fact or of law shall be deemed to be a question of law.

5. (1) The Minister shall furnish to the tribunal such information in regard to each detention order as will enable it fully to inquire into the case, and the tribunal shall, as soon as possible, conduct its inquiry.

(2) The Minister shall inform the detained person of the grounds on which the detention order was made and shall, if the president of the tribunal so directs, furnish the detained person with such particulars as are, in the opinion of the president, sufficient to enable him to present his case.

6. (1) The proceedings of the tribunal shall be conducted in private and shall not be published. The tribunal shall at all times have due regard to the requirements of public security, the protection of individuals and the safeguarding of sources of information, and the Minister may direct that on grounds of public policy the evidence of any particular witness may be given or received in the absence of the detained person and his representative, if any, or that the contents of any report placed before the tribunal shall not be divulged to the detained person or to any person other than the members of the tribunal.

. . .

(5) If at any inquiry the detained person appears and elects to give evidence, the representative of the Minister shall have the right to cross-examine him under oath.

(6) At the inquiry into his case the detained person may appear in person to present his case or may be represented by an advocate of the High Court, and in the case of a personal appearance, the president of the tribunal may, if the applicant appears to be unable to make himself understood or adequately to present his case, request an advocate of the High Court to appear *pro deo* for the detained person.

. . .

10. (1) The report and recommendations of the tribunal on any case shall be laid before the Governor, who may thereupon accept or reject the recommendations of the tribunal, and the decision of the Governor shall be final and not subject to appeal in any court.

(2) In any case where the Governor decides to reject the recommendations of the tribunal, the Minister shall report this fact to Parliament as soon as may be, and shall inform Parliament of the reasons why the Governor is unable to accept the recommen-

dations: such information shall be for the secret information of Parliament.

(3) The Minister shall inform the detained person of the decision of the Governor, and no further proceedings shall be brought before the tribunal in relation to such detained person.

11. (1) The Governor may at any time direct that in lieu of being detained in terms of this Act any person who is the subject of a detention order shall be placed under a restriction order.

(2) A restriction order shall be under the hand of the Minister and may prescribe that the person named therein shall live subject to all or any of the following restrictions.

(*a*) He shall live in such district or portion of a district as may be specified in the order and shall not depart therefrom for any purpose without the consent of such person as may be nominated in the order.

(*b*) He shall report at stated intervals to such authority as may be named in the order.

(*c*) He shall enter into such recognizances or give such bail to ensure his good behaviour as the Minister may determine.

. . .

(4) The Governor may at any time direct that a restriction order be varied or revoked, and the Minister shall vary or revoke the order accordingly.

12. In every case where a detention order or a restriction order has been made under the provisions of this Act, the Governor shall, at the end of a period of twelve months from the date of the making of such order, and thereafter at the end of every ensuing period of twelve months, review such order and shall consider, in the case of a detention order, whether such order may not be revoked or a restriction order issued in lieu thereof in terms of section eleven, and in the case of a restriction order whether such order may not be revoked or varied, having regard to all the circumstances of the case.

13. Save as is expressly provided in this Act, a detention order and a restriction order shall not be subject to any appeal, review or other proceeding in any court of law; nor shall any action, suit or other legal proceeding or remedy be available to any detained person in respect of his detention or restriction.

. . .

23. (1) No action, indictment or other legal proceeding whatever shall be brought or instituted in any court of law in the colony against —

(*a*) His Excellency the Governor;

(*b*) Any member of the Executive Council of the colony and any parliamentary secretary;

(*c*) Any member of the tribunal;

(*d*) Any person employed in the public service of the colony;

(*e*) Any member of the British South Africa Police;

(*f*) Any member of the prison service of the federation; or

(*g*) Any person acting under or by the direction or with the approval of any of the persons mentioned in paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*) of this subsection;

for, or on account of, or in respect of, any act or thing whatsoever, in good faith advised, commanded, ordered, directed or done under the provisions of this Act.

(2) Every such person as is described in subsection (1) of this section by whom any such act or thing has been in good faith advised, commanded, ordered, directed or done, in connexion with the matters in that subsection described, shall in respect thereof be freed, acquitted, discharged, released and indemnified against all persons whomsoever.

24. (1) Subject to the provisions of this section, this Act shall continue in force for the period of five years from the date of the coming into operation thereof and shall then expire.

(2) The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done.

. . .

THE UNLAWFUL ORGANIZATIONS ACT, 1959

No. 38 of 1959[1]

. . .

AND WHEREAS certain persons have contrived to upset the peace, order and tranquillity of the federation and of the colony[2] in particular;

AND WHEREAS in pursuance of such design and in order to carry the same into effect certain organizations have been formed of a new and dangerous nature inconsistent with peace, order and tranquillity and with government by civilized and responsible persons;

AND WHEREAS the members of such organizations have wickedly and maliciously embarked upon a campaign for usurping the functions of government and in furtherance thereof have resorted to various dishonest and seditious practices and have assembled meetings or gatherings of ignorant and unwary persons, whereat, in violent and threatening language, the speakers have wilfully misrepresented facts, sown

[1] Published in *The Statute Law of Southern Rhodesia, 1959*, printed on the authority of the Government Printer.

[2] That is to say, Southern Rhodesia.

seeds of discord and racial hostility, excited disaffection towards established authority, urged civil disobedience and passive resistance to the law of the colony, encouraged the application of boycotts calculated to injure various persons in the conduct of their lawful business or occupations, and have otherwise conducted themselves in a manner calculated to inspire fear in the minds of many of the inhabitants of the colony and to intimidate them into submission to the will and direction of the leaders and members of such organizations;

AND WHEREAS it is expedient and necessary that all such organizations and all organizations of a like nature should be utterly suppressed and prohibited as unlawful organizations, highly dangerous to the peace, order and tranquillity of the federation and of the colony in particular and to the constitution of the Government thereof as by law established;

. . .

2. In this Act, unless inconsistent with the context,

"Document" includes any book, pamphlet, record, list, placard, poster, drawing, photograph, picture or any sound recording or other contrivance for the reproduction of sound;

. . .

"Organization" means

(*a*) Any association of persons, whether incorporated or unincorporated and whether it has been established or registered under any statute;

(*b*) Any branch, group, section or committee of an association or any local, regional or subsidiary body forming part of such an association;

"Unlawful organization" means

(*a*) An organization named in part I of the schedule to this Act;

(*b*) Any organization which is declared to be an unlawful organization under section three of this Act.

3. (1) The Governor may by proclamation in the *Gazette* declare any organization to be an unlawful organization if it appears to the Governor

(*a*) That the activities of such organization or of any of the members of such organization

(i) Are likely to endanger public safety, to disturb or interfere with public order, or to prejudice the tranquillity or security of the colony; or

(ii) Are dangerous or prejudicial to peace, good order or constitutional government; or

(iii) Are likely to raise disaffection among the inhabitants of the colony or to promote feelings of ill-will or hostility between or within different races of the population in the colony; or

(*b*) That such organization is controlled by or affiliated to or participates in the activities or promotes the objects or propagates the opinions of any organization outside the colony which is named or described either specifically or generally in part II of the schedule to this Act.

(2) A proclamation issued in terms of subsection (1) of this section shall not be open to question in any court of law, but shall be laid before Parliament as soon as may be after it has been published in the *Gazette*, and every such proclamation shall, unless confirmed by resolution of Parliament within twenty-one days of the date upon which it is so laid before it, lapse and cease to have effect as from the date of the expiry of such period of twenty-one days.

(3) The Governor may in like manner revoke any proclamation issued under this section.

. . .

6. Any commissioned officer of police may call upon any person who is or upon reasonable grounds is believed to be an office-bearer or officer of an unlawful organization to furnish him with a list of members of the organization and of all office-bearers or officers of such organization.

7. If a magistrate or justice of the peace is satisfied by information on oath that there is reason to believe that in any house, building or place —

(*a*) A meeting of an unlawful organization or of persons who are members of an unlawful organization is being held; or

(*b*) A member of an unlawful organization resides or is; or

(*c*) Documents or other information relating to an unlawful organization may be found;

he may by warrant under his hand directed to any member of the police empower such member of the police to enter such house, building or place and

(i) To arrest all persons found therein whom he may have reasonable cause to believe to belong to any unlawful organization or to be in any way connected with the purpose of such meeting or with the unlawful organization; and

(ii) To search such house, building or place and seize or cause to be seized all insignia, banners, arms, books, papers, documents, funds or moneys and all other property which he may have reasonable cause to believe to belong to any unlawful organization or to be in any way connected with the purpose of such meeting or with the unlawful organization.

8. . . .

(2) Any person affected by the seizure may in regard to any article, moneys or thing seized make representations to the Minister, who may, in his discretion and after such inquiry as he may deem fit, make such order regarding the disposal of all or any of the articles, moneys or things as may to him seem just.

(3) If after the lapse of three months from the date of the seizure of any article, moneys or thing, no person other than an unlawful organization or an office-bearer, officer or member of such an organization has satisfied the Minister that such article, moneys or thing

does not belong to any unlawful organization or is not in any way connected with any such organization, he shall order that such article, moneys or thing be confiscated to the Crown, destroyed or disposed of in such other manner as he may specify.

9. Any person who

(*a*) Becomes, continues to be or performs any act as an office-bearer, officer or member of an unlawful organization;

(*b*) Carries or displays anything whatsoever or shouts or utters any slogan or makes any sign indicating that he is or was an office-bearer, officer or member of or in any way associated with an unlawful organization;

. . .

(*d*) In any way takes part in any activity of an unlawful organization or carries on any activity in the direct or indirect interests of an unlawful organization in which it was or could have engaged prior to becoming or on the date upon which it became an unlawful organization;

(*e*) Knowingly allows a meeting of an unlawful organization or of members of an unlawful organization to be held in any house, building or place belonging to or occupied by him or over which he has control; or

(*f*) When called upon by any commissioned officer of police to furnish any information in terms of section six of this Act, refuses to furnish such information;

shall be guilty of an offence and liable to a fine not exceeding one thousand pounds or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

10. (1) Any person who attends a meeting of an unlawful organization shall be presumed, until and unless the contrary is proved, to be a member of that organization.

(2) If any books, accounts, writings, papers, documents, banners or insignia of or relating to an unlawful organization are found in the possession or under the control of any person, or if any person wears the insignia of or is marked with any mark of an unlawful organization, it shall be presumed, until the contrary is proved, that such person is a member of the unlawful organization.

. . .

13. (1) No action, indictment or other legal proceeding whatsoever shall be brought or instituted in any court of law in the colony against

(*a*) His Excellency the Governor;

(*b*) Any member of the Executive Council of the colony and any parliamentary secretary;

(*c*) Any person employed in the public service of the colony;

(*d*) Any member of the British South Africa Police; or

(*e*) Any person acting under or by the direction or with the approval of any of the persons mentioned in paragraphs (*a*), (*b*), (*c*) and (*d*) of this subsection;

for, or on account of, or in respect of, any act or thing whatsoever, in good faith advised, commanded, ordered, directed or done under the provisions of this Act.

(2) Every such person as is described in subsection (1) of this section by whom any such act or thing has been in good faith advised, commanded, ordered, directed or done under the provisions of this Act shall in respect thereof be freed, acquitted, discharged, released and indemnified against all persons whomsoever.

14. (1) The provisions of sections three to twelve inclusive and fifteen of this Act shall expire at the end of the period of five years calculated from the date of the coming into operation of this Act, unless Parliament by resolution passed within the period of six months immediately preceding the expiry of the said period of five years prays the Governor to publish a proclamation under subsection (2) of this section extending the operation of the said sections for a further period of five years calculated from the end of the first-mentioned period of five years.

. . .

SCHEDULE

(Sections 2, 3 and 5)

PART I

The African National Congress of Nyasaland.

The African National Congress of Northern Rhodesia.

The Zambia African National Congress.

The African National Congress of Southern Rhodesia.

PART II

The World Federation of Trade Unions.

The World Peace Council.

The World Federation of Democratic Youth.

The Women's International Democratic Federation.

The International Union of Students.

The African National Congress of the Union of South Africa.

THE CHILDREN'S PROTECTION AND ADOPTION AMENDMENT ACT, 1959

No. 28 of 1959[1]

2. The Children's Protection and Adoption Act, 1949, is hereby amended by the addition of the following section ater section 80:

"80A. (1) No person shall at any time publish by radio or in any document produced by printing or any other method of multiplication any information likely to reveal the identity of the parent or adopter of any adopted child normally resident in the colony or, save with the consent in writing of the adopter or of the adopted child if such adopted child is over the age of twenty-one years, the fact that such adopted child has been adopted:

"Provided that if the Minister is of the opinion that such publication would be just and equitable and in the interests of any particular person, he may by written order dispense with the prohibition of this subsection to such an extent as may be specified in the order."

. . .

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[1] Published in *The Statute Law of Southern Rhodesia, 1959*, printed on the authority of the Government Printer.

Of the Children's Protection and Adoption Act, 1949, as amended, the Department of Labour of Southern Rhodesia has written:

"This Act, which repealed the original Act of 1929, is administered by the Director of Social Welfare. To assist him in his duties the Director of Social Welfare has a staff of 21 experienced and/or qualified social welfare officers. This staff is augmented by 8 probation officers and various other experienced officers both male and female in such capacities as superintendents of remand homes and hostels and principals of training schools.

"The Act, *inter alia*, provides for the establishment of juvenile courts; for the protection, welfare and supervision of children and juveniles; for the establishment, recognition or registration of certain institutions for the reception and custody of children and juveniles; moreover it provides for the treatment of children and juveniles after their reception in such institutions; for the establishment of reformatories; for the contribution by certain persons towards the maintenance of children and juveniles; for the adoption of minors; and for other matters connected with the welfare of children and juveniles. It also prohibits under certain conditions the publication of the identity of the parent or adopter of any adopted child."

ROMANIA

LEGISLATION OF THE ROMANIAN PEOPLE'S REPUBLIC ENACTED IN 1959 RELATING TO HUMAN RIGHTS[1]

1. Decree No. 505/1958 ratifying the Treaty with the Hungarian People's Republic concerning the provision of legal assistance in civil, family and criminal cases (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 2, of 17 January 1959)
2. Decree No. 506/1958 ratifying the Treaty with the Czechoslovak Republic concerning the provision of legal assistance in civil, family and criminal cases (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 6, of 18 February 1959)
3. Decree No. 109/1959 ratifying the Treaty with the People's Republic of Bulgaria concerning the provision of legal assistance in civil, family and criminal cases (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 11, of 31 March 1959)

These treaties provide that citizens of either contracting party and bodies corporate established in accordance with the provisions of the treaties in question shall enjoy in the territory of the other party, in respect of their personal and property rights, the same protection as citizens of the other party.

Under the terms of the treaties, citizens of either contracting party have free access to the judicial authorities (courts, procurator's office and state notarial organs) and to other authorities of the other party having jurisdiction in civil, family or criminal cases; they may defend their interests, present petitions and institute proceedings before such authorities under the same conditions as citizens of the other party.

The three aforementioned treaties embody the principle of private international law that the legal capacity of an individual is determined according to the law of the contracting party of which he is a citizen; they embody also the principle *locus regit actum*. Similarly, they provide that the personal and property relations of married couples shall be determined according to the law of the contracting party of which they are citizens.

The treaties include special provisions concerning protection of the interests of minors residing in the territory of one contracting party whose parents reside in the territory of the other party, the exercise of rights of succession arising in the territory of one party in respect of persons domiciled in the territory of the other party, and the enforcement of civil judgements rendered by the judicial authorities of one party against persons domiciled in the territory of the other party.

The provisions of the three treaties which concern legal assistance in criminal cases relate in particular to extradition. The provisions governing extradition fully respect the principle that a State shall not extradite its own citizens; it is also provided that an extradited person may not, without the consent of the contracting party applied to, be prosecuted, punished or surrendered to a third State for an offence other than the one in respect of which extradition was sought and carried out.

(Relevant to Articles 1, 2, 7 and 8 of the Declaration of Human Rights.)

4. Decree No. 115/1959 abolishing the remnants of all forms of human exploitation in agriculture with a view to a constant raising of the material and cultural level of living of agricultural workers and to the promotion of socialist construction (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 10, of 30 March 1959)

This decree prohibits the transfer of agricultural land to other persons by the owner for purposes of farming or cultivation; land which could not be worked by the owner and his family has been taken over, with compensation to the owner, by collective farms or other socialist organizations.

It has thus eliminated the conditions which tended to keep landless or virtually landless peasants in a position of involuntary servitude to other peasants who had more land than they could cultivate themselves, and has thereby abolished the last remaining form of human exploitation in rural areas.

(Relevant to Article 4 of the Declaration of Human Rights.)

5. Decree No. 315/1959 concerning the remission of sentences and the termination of criminal proceedings in respect of certain offences (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 23, of 21 August 1959)

A broad remission of sentences and amnesty was decreed to mark the fifteenth anniversary of Romania's liberation from the fascist yoke (23 August 1944).

[1] Note kindly furnished by Mr. Mircea Malitza, Acting Chargé d'Affaires of the Permanent Mission of the Romanian People's Republic to the United Nations. Translation by the United Nations Secretariat.

The above-mentioned decree remitted all prison sentences of up to five years, and all those of up to ten years in the case of persons who had reached sixty years of age, pregnant women and women with children under the age of five.

Prison sentences of five to eight years were reduced by one-half and those of eight to twelve years by one-third. Sentences of more than ten years were reduced by two-thirds in the case of persons over the age of sixty, pregnant women and women with children under the age of five.

Fines and sentences imposed for involuntary offences were completely remitted.

These provisions were applied also to sentences which had been reduced as a result of previous remissions.

The same decree provided an amnesty in respect of all offences covered by the Penal Code or by special laws for which a prison sentence of up to five years had been imposed.

The only persons to whom the decree did not apply were those who had committed offences presenting a particularly grave danger to the social order, such as offences against the security of the State, murder, and misappropriation of sums exceeding 10,000 lei.

(Relevant to Article 5 of the Declaration of Human Rights.)

6. Decree No. 38/1959 amending certain provisions of the Code of Civil Procedure (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 5, of 16 February 1959)

This decree made two important changes in the Code of Civil Procedure.

(*a*) Under article 45 of the Code, as amended, the public procurator has the right to institute proceedings in all civil matters except those of a strictly personal character, and to intervene at any stage of any proceedings if he deems it necessary to do so in the interest of the State, public organizations or the workers; he also has been granted the right to seek remedy in civil actions and to demand the execution of civil judgements.

Where a civil action is instituted by the public procurator, the person whose right is affected becomes a party to the action. He retains the right to withdraw the complaint or even to renounce the right recognized by the judgement and to make a compromise settlement with respect to the right in question.

Before article 45 was amended by the above decree, the procurator, in civil proceedings, was empowered only to submit an opinion in cases involving minors or legally incapable persons and to employ the ordinary means of seeking remedy against illegal or unfounded judgements.

The amendment is extremely important in that it provides means of defending or — in cases where they have been violated — restoring the rights of legally incapable persons or of persons who, for various reasons, are reluctant to go to court.

(*b*) A new article — 461[1] — provides that, where it is necessary to attach wages or other earnings in enforcement of a judgement ordering maintenance payments, the court issuing the writ of execution for payment of maintenance shall, of its own motion, issue a writ of attachment, which shall be automatically enforceable and require no validation, and the third party on whom the writ of attachment is served shall be required to pay the creditor the sum withheld from the debtor's wages or other earnings. The person on whom the writ of attachment is served and the debtor have the right to contest the attachment.

This provision, which simplifies the procedure for enforcing judgements ordering the payment of maintenance, is of great assistance to the recipients of such payments, who are usually minors, legally incapable persons, or persons with no other means of support.

(Relevant to Articles 8 and 25 (2) of the Declaration of Human Rights.)

7. Decree No. 446/1959 ratifying the Convention between the Romanian People's Republic and the People's Republic of Bulgaria regulating the citizenship of persons having dual citizenship (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 29, of 3 December 1959)

This convention permits persons resident in the territory of one contracting party whom both contracting parties regard as their citizens to opt for whichever citizenship they prefer.

Declarations of option for the citizenship of one of the contracting parties may be filed only by persons of full age. As a rule, children retain the citizenship for which their parents have opted. Persons who opt for the citizenship of the contracting party in whose territory they are not resident are not required to quit the territory of the other party.

The convention enables persons wishing to regularize their citizenship status to opt freely for the citizenship of either contracting party.

(Relevant to Article 15 of the Declaration of Human Rights.)

8. Decree No. 546/1958 concerning the accession of the Romanian People's Republic to the Agreement of Madrid for the international registration of commercial and industrial trade marks, as revised at Nice on 15 June 1957 (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 11, of 31 March 1959)

As a result of the accession of the Romanian People's Republic to the Agreement of Madrid of 14 April 1891, as subsequently revised at Brussels, Washington, The Hague, London and Nice, nationals of the contracting countries may, in the territory of the Romanian People's Republic, ensure the protection of their

commercial and industrial trade marks under the conditions laid down by the agreement, thereby safeguarding their rights of ownership with respect to those trade marks and to the industrial products in question.

(Relevant to Article 17 of the Declaration of Human Rights.)

9. Act No. 2/1959 amending articles 52 and 58 of the Constitution of the Romanian People's Republic (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 31, of 31 December 1959)

This Act increased the term of office of the members of people's councils (the local organs of state authority) from two to four years, except in the case of the chief towns of districts and rural communes, where the people's councils continue to be elected for a period of two years.

As a result of this change in the constitution, the term of office of the members of people's councils is now the same as that of deputies to the Grand National Assembly (the supreme organ of state authority) and greater continuity is ensured in the conduct of public affairs at the local level.

Before the change was made, all people's councils were elected for two years only — a system which proved impractical in view of the need to ensure continuity in the work of the local organs of state authority.

(Relevant to Article 21 of the Declaration of Human Rights.)

10. Decree No. 291/1959 granting exemptions and reductions with respect to the tax on wages (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 20, of 10 August 1959)

This decree exempts from taxation wages of up to 500 lei a month (previously only wages of up to 200 lei were exempt) and reduces by an average of 50 per cent the taxes levied on wages of between 500 and 1,500 lei a month.

The reduction of taxes on low and medium wages, which was accompanied by a reduction in the prices of more than 2,500 articles of mass consumption and a substantial rise in allowances, is one of the measures taken by the Government in July and August 1959 with a view to raising the level of living of the Romanian people.

(Relevant to Articles 23 (3) and 25 of the Declaration of Human Rights.)

11. Decree No. 296/1959 concerning the sale of goods on credit and the provision of services against instalment payments (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 21, of 12 August 1959)

12. Decision No. 1087/1959 of the Council of Ministers implementing decree No. 296/1959 concerning the sale of goods on credit and the provision of services against instalment payments (published in the *Collection of Decisions and Provisions of the Council of Ministers of the Romanian People's Republic* No. 34, of 21 September 1959)

These regulatory enactments authorize state commercial undertakings and organizations and consumers' co-operatives to sell goods on credit, and handicraft co-operatives to provide their services, against instalment payments.

Goods are sold on credit at regular retail prices, with no increase; similarly, in the case of services provided against instalment payments, nothing is added to the regular charge for the type of work concerned.

When the goods in question are delivered, the buyer pays from 15 to 30 per cent of the price (depending on the type of goods); the balance is paid in twelve to twenty-four equal instalments. The same terms apply to payments for services provided by handicraft co-operatives.

These provisions apply to all employed persons and members of handicraft co-operatives.

Needless to say, the introduction of instalment payments for goods and services will help Romanian workers to satisfy their material needs and raise their level of living.

(Relevant to Articles 23 (3) and 25 of the Declaration of Human Rights.)

13. Decree No. 292/1959 respecting entitlement to pensions under the State Social Insurance Scheme[1]

14. Decree No. 293/1959 regulating the pension rights of officers and non-commissioned officers

(These two decrees are published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 20, of 10 August 1959.)

The above decrees established a new pension scheme, which applies also to officers and non-commissioned officers.

In the Romanian People's Republic, pensions are granted and paid, in accordance with the applicable legislative provisions, by the State Social Insurance Administration.

Under the terms of decree No. 292/1959, the following categories of persons are entitled to pensions under the State Social Insurance Scheme: employed persons, persons performing military service, persons who have rendered outstanding services to the country in connexion with their occupational or public activity, and the surviving dependants of such persons.

The following types of pension are established by the decree: old-age pensions, invalidity pensions, special merit pensions, service pensions, and survivors' pensions. The decree further provides that persons who do not fulfil the conditions for the grant of a pension shall receive social assistance.

[1] See International Labour Office: *Legislative Series*, 1959, Rum. 1.

Pensioners and the members of their families are entitled to social assistance in addition to their pensions.

Pensions and social assistance are not liable to taxation.

Old-age pensions are payable to men who have reached the age of sixty years and have completed a period of employment of at least twenty-five years and to women who have reached the age of fifty-five years and have completed a period of employment of at least twenty years. In the case of persons employed in arduous or hazardous occupations, the age requirement for men is reduced to fifty-five years and that for women is reduced to fifty years.

A pension is payable for the entire duration of invalidity to all persons who have become totally or partially incapacitated for work.

A service pension is payable to flying personnel in civil aviation who have completed twenty years' service and have reached the age of fifty years.

Special merit pensions, which are granted by resolution of the Council of Ministers, are payable to persons who have made an outstanding contribution to the establishment and consolidation of the popular democratic regime and persons who have rendered outstanding services in the economic, scientific, artistic and cultural fields or in any occupational or public activity.

Under the terms of the decree, survivors' pensions are payable to the children up to the age of twenty-five years and the spouse, parents, brothers and sisters who were maintained by the deceased person.

Social assistance is payable to employed persons who do not fulfil the conditions for the grant of an old-age pension, but who have reached the age of sixty years, in the case of men, or fifty-five years, in the case of women, and have completed at least five years in employment since 23 August 1944, as also to persons who have become incapacitated, irrespective of the grade of invalidity, but do not fulfil the conditions for the grant of an invalidity pension.

Decree No. 293/1959 set up a pension scheme for officers and non-commissioned officers which, generally speaking, follows the principles governing pensions paid under the state social insurance scheme. The only difference between the two schemes is that there is no old-age pension for officers and non-commissioned officers, who normally receive a service pension after twenty-five years of service when they retire or enter the reserve. Pensions for officers and non-commissioned officers have been increased in the same way as those paid under the state social insurance scheme.

The main features of the new pension scheme set up by the above-mentioned decrees are as follows:

(*a*) There is a single pension scheme for all categories of employed persons apart from military personnel. Previously there were different pension schemes for the various categories of employed persons, who received pensions from different social insurance and pension funds when they retired; all these funds, apart from that for military personnel, have now been unified.

(*b*) Pension entitlement is not dependent on deductions from wages. The moneys to meet the cost of pensions, social assistance and other benefits payable to pensioners and the members of their families are provided by employers without deductions from wages.

(*c*) All persons who fulfil the conditions as to age and period of employment are entitled to pensions even if, on the date on which they apply for a pension, they no longer hold the employment which qualified them for a pension. Previously those applying for pensions were required to hold such employment at the time of application.

(*d*) Old-age pensions are also payable to all men and women who, on reaching the ages of sixty and fifty-five years respectively, do not fulfil the general conditions as to the period of employment but have been employed for at least ten years.

(*e*) All types of pension have been increased by an average of more than 50 per cent, and the minimum rates under previous schemes have been more than doubled; the increase applies also to pensions granted prior to the entry into force of the present decree.

(Relevant to Article 25 of the Declaration of Human Rights.)

15. Act No. 1/1959 approving the state budget for 1960 (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 31 of 31 December 1959)

The 1960 state budget of the Romanian People's Republic provides for a revenue of 56,800 million lei and for the expenditure of 55,390 million lei, of which 13,436.8 million lei is earmarked for the financing of social and cultural measures; the last-mentioned sum is apportioned as follows:

	Million lei
(*a*) Financing of measures provided for in the budget of the state social insurance administration	3,427.7
(*b*) Education	3,327.8
(*c*) Science and culture	985.4
(*d*) Health, physical culture and sports	3,037.4
(*e*) Social welfare	998.8
(*f*) Payment of state children's allowances and state family assistance	1,660.0

The allocations for social and cultural measures of more than 24 per cent of the expenditure provided for in the state budget attests to the State's continuing efforts to provide social assistance of the most effective type possible and to ensure a steady rise in the cultural level of the entire population.

(Relevant to Articles 22, 25 and 27 of the Declaration of Human Rights.)

16. Decree No. 48/1959 concerning short training courses for workers and technical and administrative personnel (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 7, of 6 March 1959)

17. Decision No. 129/1959 of the Council of Ministers concerning the organization and operation of short training courses for workers and technical and administrative personnel (published in the *Collection of Decisions and Provisions of the Council of Ministers of the Romanian People's Republic* No. 12, of 19 February 1959)

In order to meet the constantly increasing need for qualified technical and administrative personnel which has resulted from the steady expansion of industry and other sectors of the economy, and to enable workers and technical and administrative personnel to acquire the specialized knowledge needed to achieve higher skills and the higher pay that goes with those skills, provision has been made, in those two regulatory enactments, for the organization in the various enterprises themselves of qualification and specialization courses. This measure is especially designed to benefit persons who, for various reasons, have had no opportunity to take any type of vocational or technical training.

While they are attending these courses, workers and technical and administrative personnel receive pay equal to their average wages during the preceding three months, as well as school books and supplies and whatever safety equipment is required at the place where they are receiving training; those who take courses in a place other than their normal place of work are also paid for their travel expenses and provided with free housing and facilities for meals.

In this manner, tens of thousands of workers and technicians have been given an opportunity to acquire new vocational skills or to improve those they already possess and thus to raise their level of living as a result of the higher pay to which their new qualifications entitle them.

(Relevant to Article 26 of the Declaration of Human Rights.)

18. Decision No. 271/1959 of the Central Committee of the Romanian Workers' Party and the Council of Ministers of the Romanian People's Republic concerning the improvement of evening and correspondence courses in the field of general and higher education (published in the *Collection of Decisions and Provisions of the Council of Ministers of the Romanian People's Republic*, No. 16, of 14 March 1959)

During the years 1950-54, in order to give workers and employed persons in all sectors of industry, construction, transport, agriculture and state administration an opportunity to acquire a general education and, subsequently, higher vocational qualifications, evening schools were opened in the large enterprises; evening classes were started in some general secondary schools; and evening and correspondence courses were instituted at higher educational establishments (universities, polytechnic institutions and so forth).

Decision No. 271/1959 introduced a number of improvements into the organization and operation of evening and correspondence courses so that they would be as effective as possible in training, in increasing numbers, the highly skilled workers, technicians and engineers with a good general education who are essential to the continuing economic and educational development of the Romanian People's Republic. In particular, students attending evening and correspondence courses now enjoy such advantages as a special work schedule which allows them time to attend courses and prepare for examinations, thirty days of paid annual "study leave" (over and above the regular leave provided by law) just before examination time, exemption from school fees, payment of the cost of travel to the place where the examination is held, and provision of housing and meals during examination time.

This decision is one of a number of measures which the State has taken since 1948 with a view to making education at all levels available to the mass of the population.

(Relevant to Article 26 of the Declaration of Human Rights.)

19. Decree No. 376/1959 providing for the abrogation of Act No. 169 of 4 March 1941 concerning supervision of the disposal of property by foreigners and of decree No. 335 of 26 August 1949 concerning the transfer of certain functions from the Ministry of Industry to the Ministry of Justice (published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 57, of 10 October 1959)

Under Act No. 169, of 4 March 1941, foreigners were not permitted to dispose of their property, rights or interests in Romania without prior authorization from the Ministry of National Economy (which later became the Ministry of Industry). Similarly, shares, bonds and other securities belonging to foreigners which were deposited with banks or credit institutions could not be delivered to their owners without prior authorization from the ministry referred to. Instruments disposing of property which were drawn up without the authorization required by the aforementioned Act were automatically invalid.

Under decree No. 335 of 26 August 1949, the functions of the Ministry of Industry with respect to the application of Act No. 169/1941 were transferred to the Ministry of Justice.

These two regulatory instruments were abrogated *in toto* by decree No. 376 of 10 October 1959.

As a result, foreigners may now dispose of their property, rights and interests in the Romanian People's Republic under the same conditions as Romanian citizens.

(Relevant to Articles 1, 2 and 7 of the Declaration of Human Rights.)

SAN MARINO

NOTE[1]

Act No. 17, of 29 April 1959 (*Bollettino Ufficiale* No. 3 of 25 August 1959), confirmed the extension of voting rights to women[2] and provided that these rights should become effective on 1 January 1960.

[1] Information kindly furnished by the Secretariat of State for Foreign Affairs of San Marino.

[2] See *Yearbook on Human Rights for 1958*, p. 206.

SAUDI ARABIA

ROYAL DECREE ON DRAFT REGULATIONS CONCERNING PRINTING PRESSES AND PUBLICATIONS

No. 15 of 17 February 1959[1]

1. The Printing Presses and Publications Regulations attached hereto shall come into force on the date of their publication.

. . .

Draft regulations concerning printing presses and publications

. . .

PART I

DEFINITIONS

Art. 2. In these regulations the following expressions shall have the meaning hereby assigned to them:

(*a*) "Printing press" means any device which produces printed copies by any mechanical means;

(*b*) "Publications" means any matter printed by mechanical, chemical or other means, whether the original is written or drawn by hand or by means of drawing instruments, if made suitable for circulation;

(*c*) "Printer" means the proprietor of a printing press or any person, paid or unpaid, who replaces him;

(*d*) "Periodical" means any matter printed or published on general or particular subjects from time to time and at various regular or irregular intervals;

(*e*) "Publisher" means a person who engages, either personally or through another, in the publication of any matter;

(*f*) "Publishing and distribution of publications" means the sale, offering as a gift or delivery of publications in any manner to readers, or their exhibition in display places known to the public or in public thoroughfares, in any manner that brings them before readers' eyes.

(*g*) "Newspaper" means any publication issued periodically, whether daily, weekly, bi-monthly, monthly, half-yearly or yearly;

(*h*) "Responsible director" means a person who assumes responsibility to the competent authorities for the administration of the operations of a newspaper or periodical or of a printing press, bookshop or drawing studio;

(*i*) "Editor" means a person who performs editing and editorial control functions and assumes responsibility to the competent authorities for all editorial matters relating to a newspaper or periodical;

(*j*) "Concessionaire" means a person or persons granted the right to publish a newspaper or periodical in accordance with the obligations and undertakings imposed under these regulations.

PART II

GENERAL PROVISIONS

Art. 3. Any proprietor of a printing press, bookshop or drawing studio desiring to engage in his activities shall apply to the Directorate-General of Broadcasting, Press and Publications for a licence. His application shall contain the following particulars:

(*a*) His name;
(*b*) His surname;
(*c*) His nationality;
(*d*) His place of residence;
(*e*) His place of business;
(*f*) The names of his partners, if any, and their places of residence;
(*g*) The amount of capital of the undertaking.

Art. 4. No proprietor of a printing press, bookshop or drawing studio may engage in his activities until he has obtained the licence referred to in the preceding article, without prejudice to the requirements for obtaining other licences laid down in the various regulations.

Art. 5. The proprietor or proprietors of a printing press, bookshop or drawing studio shall inform the Directorate-General of Broadcasting, Press and Publications of any change in the address of the undertaking.

Art. 6. If the ownership of a printing press is transferred by sale, purchase, inheritance or otherwise, the new proprietor shall, within two months from the transfer of ownership, make an application for a new licence to the Directorate-General of Broadcasting, Press and Publications.

Art. 7. Every printer shall indicate, on every publication he prints, except official, personal and commercial publications, the name of the printing press, the name of the author, the name of the publication and the date of printing.

Art. 8. Proprietors of existing printing presses, bookshops and drawing studios who have not ob-

[1] Published in *Umm al-Qura*, issue of 27 February 1959. Translation by the United Nations Secretariat.

tained the regular licence referred to in article 3 shall apply therefor within a period not exceeding two months from the date of publication of these regulations.

Art. 9. Before making publications available to the public, the printer shall deliver by hand five copies to the General Publications Department or to the heads of publications offices in the town where the printing took place, or forward them by registered mail in any town where the printer is located; this shall not apply to official, personal and commercial publications. The General Publications Department shall notify the printer of its views within a period not exceeding one month.

Art. 10. No publication may be printed without an authorization from the Directorate-General of Broadcasting, Press and Publications, and no publication not included in the authorization may be sold, distributed or published, with the exception of official, personal or commercial publications.

Art. 11. Rights of authorship, translation and publication shall be vested in their owners and the Directorate-General of Broadcasting, Press and Publications shall prevent all violations of these rights.

The authority referred to in article 53 of these regulations shall assess the moral and material damages resulting from such violation and determine the amount of compensation.

Art. 12. The Directorate-General of Broadcasting, Press and Publications shall be competent to:

(*a*) Censor publications imported from abroad before their distribution;

(*b*) Authorize the printing and publishing of writings, newspapers and other publications;

(*c*) Issue newspaper licences and licences to open bookshops, printing presses and drawing studios;

(*d*) Take necessary urgent action on the commission of any of the offences specified in these regulations and report thereon immediately to the President of the Council of Ministers.

The President of the Council of Ministers shall make an order defining the scope of and the method of exercising the above-mentioned functions.

Art. 13. No permanent prohibition may be placed on the importation of any newspaper or book into the kingdom except by an order made by the Directorate-General of Broadcasting, Press and Publications with the prior approval of the President of the Council of Ministers.

Art. 14. Subject to the provisions of article 12 of these regulations, the Directorate-General of Broadcasting, Press and Publications shall be responsible for the application of these regulations and shall exercise its functions through the Central Office of the Publications Department, or through the Department's offices in the various cities of the kingdom.

PART III

PROVISIONS CONCERNING NEWSPAPERS

Art. 15. The Directorate-General of Broadcasting, Press and Publications shall be the sole authority competent to grant newspaper concessions and to withdraw such concessions, with the prior approval of the President of the Council of Ministers.

Art. 16. It shall be the object of newspapers of all types to propagate true religion, assert the virtues of morality and guide the public towards the achievement of prosperity, progress and reform.

Art. 17. Any person wishing to obtain a concession or authorization to publish a newspaper or periodical shall make an application to that effect to the competent authority giving the following particulars:

(*a*) The name and address of the newspaper or periodical and the place and times of publication;

(*b*) The subject with which the newspaper or periodical deals;

(*c*) The name, surname, age and place of residence of the applicant.

Art. 18. No newspaper or periodical, whether it appears at regular intervals or temporarily, may be published without a licence from the competent authority or until the requirements prescribed in these regulations are fulfilled.

Art. 19. The responsible director and the editor shall meet the following requirements:

(*a*) They must not be less than 30 years of age;

(*b*) They must be well educated;

(*c*) They must be known to be of good reputation and character, and must never have been convicted under Sharia law or imprisoned for a crime of a dishonourable nature;

(*d*) They must not be under a disability;

(*e*) They must be of Saudi nationality.

Art. 20. The responsibility of the director and the editor shall be as follows:

(*a*) The editor shall be responsible for the entire contents of the newspaper or periodical under his editorial control;

(*b*) The director of the newspaper shall be responsible for that aspect of the newspaper's operations which concerns its printing and publication at the proper time and other similar work of an administrative nature;

(*c*) If the concessionaire or the director of a newspaper performs the functions of editor, editorial responsibility shall rest with the one who actually performs those functions. In such case, the concessionaire shall satisfy the requirements prescribed in article 19 of these regulations. Similarly, if the editor performs the functions of the concessionaire or the director, the responsibility for the work shall rest with him, provided that the competent authority is apprised of the situation in advance.

Art. 21. The name of the concessionaire and the names of the editor and the director shall be clearly shown in a prominent place in the newspaper or periodical; the name of the printing press where the printing is done shall also be shown on the front cover or on the last page of the newspaper.

Art. 22. If the director or responsible editor quits his work, the concessionaire shall report the fact to the competent authority and appoint a director or editor to replace him; the concessionaire shall be responsible for performing all the functions of director or editor until the appointment is made, unless he desires to assume permanently the duties of director or editor and meets the requirements prescribed in article 19.

Art. 23. The concessionaire shall notify the competent authority of all changes and modifications made in the newspaper or periodical with respect to the particulars referred to in article 16.

Art. 24. The name of a former newspaper or periodical may not be used until fifteen years have elapsed since publication ceased, unless the original concessionaire or his heirs relinquish the name in favour of another person who is granted a concession to publish a newspaper or a periodical by the Directorate-General of Broadcasting, Press and Publications.

The Directorate-General of Broadcasting, Press and Publications shall have the right to withdraw the concession relating to any newspaper or periodical whose proprietor fails to publish the same within one year of the granting of the concession.

Art. 25. The responsible director or editor shall publish free of charge in the space assigned to general news all public notices, communications and regulations of an official nature sent to him; these must be published in the first issue of the newspaper following their receipt, and in such a manner as to preserve their intended meaning and the general form in which they were written.

Art. 26. Any newspaper which attributes incorrect statements to a person or body or publishes a false report concerning any person shall, at the request ot the interested party, correct the item and publish it free of charge in the first issue of the newspaper following receipt of the correction and, if possible, in the same place in which the item originally appeared or in a prominent place.

Art. 27. Newspapers may not publish private correspondence unless authorized to do so by the correspondents.

Art. 28. Newspapers may not publish anything which advocates deviation from the truth, or atheism or subversive principles, or which is contrary to the traditions and customs of this country.

Art. 29. Newspapers may not publish regulations, treaties, agreements, bulletins or statistics until they have been officially released by the competent authorities.

Art. 30. Any person wishing to become a co-proprietor of a newspaper or to relinquish his right to a concession shall obtain the approval of the competent authority.

Art. 31. Any person obtaining a concession to publish a newspaper shall, on receipt of the concession certificate from the Directorate-General of Broadcasting, Press and Publications, deposit security in the amount of five thousand (5,000) rials, from which fines payable by the newspaper shall be deducted: the concessionaire shall pay the amount of the fine within a period not exceeding one week from the date of the deduction, so as to restore the amount of security to the required limit. The total amount or remaining balance of the security shall be reimbursed to the concessionaire if the newspaper is finally closed down or the concession is withdrawn. Persons who obtained concessions before the enactment of these regulations shall proceed to deposit the said security within the two months following the date of these regulations.

Art. 32. Foreign correspondents and news agencies may not exercise their functions before obtaining the necessary authorization from the competent authority. They shall submit to the Directorate-General of Broadcasting, Press and Publications, within the twenty-four hours following the dispatch of a report to their agencies or newspapers, a copy of the letter or telegram in which the report was dispatched.

PART IV

CENSORSHIP

Art. 33. The Directorate-General of Broadcasting, Press and Publications may prohibit publication of any material which is not in the public interest.

Art. 34. It shall be unlawful to publish anything which censures or defames sovereigns and heads of friendly republics and States.

Art. 35. It shall be unlawful to publish anything which censures, insults or abuses the heads or members of diplomatic missions or diplomatic or consular agents accredited to the Government of the Kingdom of Saudi Arabia; it shall also be unlawful to publish any material which disturbs relations between Saudi Arabia and other friendly States.

Art. 36. It shall be unlawful to attribute to individuals and local bodies anything which is degrading to them or prejudicial to their honour and dignity, or to divulge a secret likely to impair a person's fortune, reputation or commercial standing, if the motive therefor is to intimidate the person concerned, to compel him to pay money or render a service to another, or to deprive him of his freedom of action.

Art. 37. It shall be unlawful to publish reports and news concerning the army or its security, movements, numbers and camps. It shall also be unlawful to publish news of military or criminal courts except on an application made to the president of the court

concerned through the Directorate-General of Broadcasting, Press and Publications.

Art. 38. Proprietors, editors and directors of existing newspapers and periodicals and proprietors of bookshops, printing presses and drawing studios shall comply with the undertakings and obligations specified in these regulations within a period not exceeding two months from the date of their publication in the *Official Gazette*.

PART V

PENALTIES

[Article 39 provides for the punishment by fines of violations of articles 3-9, 21-23 and 25-27. Article 40 provides for the punishment of violations of article 10 by fines or imprisonment, or both.]

Art. 41. Any person who prints a publication inside Saudi Arabia without a licence or who contravenes one or more of the conditions of the licence to print such publication and the said publication contains anything contrary to the True Faith or inconsistent with state policy, shall be subject to the following penalties:

(1) Seizure of the publication;

(2) A fine of not less than one thousand nor more than two thousand rials or imprisonment for a term of two to six months or both these penalties. In the event of a repetition of the offence the competent authority may double the fine and both the publisher and the printer of the books hall be liable to the penalty specified in the present paragraph of this article.

Art. 42. The penalty prescribed in paragraph (2) of the preceding article shall apply to any Saudi national who prints a book abroad containing anything contrary to the True Faith or inconsistent with state policy.

Art. 43. Where a person contravenes the provisions of article 18 his newspaper or periodical shall be suspended immediately and all issues thereof seized, and the person concerned shall be punished by a fine of not less than five hundred nor more than one thousand rials or by imprisonment for a term of not less than one week nor more than two months or by both these penalties.

Art. 44. The competent authority may close down any newspaper where the concessionaire concerned contravenes the provisions of article 24, and may seize all issues thereof on an application being made to it in writing by the holder of the concession in respect of the name used.

[Articles 45 and 46 provide for the punishment, by fine or imprisonment, or both, of any person giving false information under article 3 and of any person violating article 28 or 29.]

Art. 47. Where a newspaper expresses approval of or incites to disturbances or disorders, the issue containing the seditious material shall be seized, the newspaper shall be suspended for a period not exceeding one year and both the writer of the article and the editor shall be punished by a fine of not less than one thousand nor more than five thousand rials or by imprisonment for a term of not less than one nor more than six months or by both these penalties.

The competent authority may double the penalty if the offence is repeated.

Art. 48. Where a newspaper reveals important state secrets, the revelation of which is prejudicial to the State's interests, its editor and any person who took part in relating and divulging the secret shall be punished by imprisonment for a term of one to three years or by a fine of not less than five thousand nor more than ten thousand rials or by both these penalties.

The competent authority may seize the relevant issues of the newspaper and order the newspaper closed for a period not exceeding one year.

Art. 49. Any person who contravenes the provisions of article 32 shall be punished by a fine of not less than one hundred nor more than five hundred rials. If the report dispatched contains anything injurious to the reputation of the country, prejudicial to its interest or inconsistent with its policy, the offender shall be punished by a fine of not less than five hundred nor more than two thousand rials or by imprisonment for a term of not less than one week nor more than two months or by both these penalties.

The competent authorities may order the expulsion of the offender if he is an alien.

[Articles 50-51 provide for the punishment, by fines or imprisonment, or both, of violations of articles 33-37.]

Art. 52. The fact that the offences specified in articles 37, 41, 42, 47 and 48 of these regulations are deemed to be press offences and are punished as such shall not preclude the application of penalties which the President of the Council of Ministers considers necessary to safeguard the Islamic faith, the security of the State and the safety of the army.

Art. 53. The President of the Council of Ministers shall designate the authority to which the offences specified in these regulations shall be referred for investigation and decision.

The President of the Council of Ministers may set up a special body to examine any specific offence.

Art. 54. If any of the offences specified in these regulations is committed, the editor or his substitute shall be liable to the penalties prescribed for the offence in question.

Art. 55. The Directorate-General of Broadcasting, Press and Publications may, in exceptional cases and whenever offences by proprietors of newspapers are intentionally repeated, withdraw the concession from its holder by a decision approved by the President of the Council of Ministers.

Art. 56. These regulations revoke all previous provisions concerning printing presses and publications.

. . .

SENEGAL

CONSTITUTION OF 24 JANUARY 1959[1]

PREAMBLE

The Senegalese people affirm their devotion to fundamental rights, as set out, on the one hand, in the Declaration of the Rights of Man of 1789 and the Universal Declaration of 10 December 1948, and, on the other, in the preambles to the constitutions of 27 October 1946 and 5 October 1958.

In conformity with article 76, and in view of the possibilities provided for in articles 86 and 88, of the constitution of the Community, the Republic of Senegal, by a free decision of the elected representatives of its people, proposes to make every effort to achieve African unity within the framework of a democratic federation. It intends to promote the advancement of its people by helping them to build their independence in friendship and association with the people of France. This will be done in such a way as to meet the requirements of a new civilization based on the complete and harmonious development of their economic, social and cultural resources, now placed at the service of mankind.

Now, therefore, the Constituent Assembly adopts, as the fundamental law regulating the rights and duties of the citizens, the following constitutional instrument.

TITLE I

SOVEREIGNTY

Art. 1. Senegal is a republican, indivisible, secular, democratic and social State; it takes the name of the Republic of Senegal.

. . .

Sovereignty shall be vested in the people, who shall exercise it through their representatives and by way of referendem.

No section of the people nor any individual may assume the exercise of sovereignty.

Suffrage may be direct or indirect and shall be exercised in the conditions provided for by law.

The vote shall in all cases be equal and secret.

All citizens of both sexes who are of full age, are members of the Community and are in full possession of their civil and political rights, shall be entitled to vote in the conditions determined by law.

TITLE II

CIVIL LIBERTIES. THE HUMAN PERSON

Art. 2. The human person is sacred. The State has a duty to respect and protect it.

The Senegalese people acknowledge the existence of inviolable and inalienable human rights as the basis of all human community, of peace and of justice in the world.

Every person shall have the right to the free development of his personality, on condition that he does not encroach upon the rights of others or infringe the rule of law. Every person shall have the right to life and physical integrity in the conditions laid down by law.

The liberty of the human person shall be inviolable. No person may be convicted of an offence except by virtue of a law which came into force before the offence was committed. There shall be an absolute right of defence at all stages and at all levels of prosecution proceedings.

Art. 3. All human beings shall be equal before the law.

Men and women shall have equal rights.

In Senegal there shall be no subject or privileged status based on place, birth, person or family.

Art. 4. Every person shall have the right to express and disseminate his opinions freely in oral, written or pictorial form. Every person shall have the right to receive an education without hindrance from sources accessible to all.

These rights shall be subject to the limitations imposed by the provisions of laws and regulations and by respect for the good name of others.

Art. 5. All citizens shall have the right freely to establish associations and societies on condition that they observe the formalities laid down by laws and regulations.

Groups whose aims or activities are contrary to the penal laws or directed against law and order shall be prohibited.

Art. 6. The secrecy of correspondence and of postal, telegraphic and telephonic communications shall be inviolable. Restrictions on such inviolability may be imposed only by virtue of a law.

Art. 7. All citizens of the Community shall have the right to freedom of movement and of recidence throughout the republic of Senegal.

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République du Sénégal* of 30 January 1959. Translation by the United Nations Secretariat.

This right may be restricted only by law. No person may be subjected to security measures except in the cases provided for by law.

Art. 8. The right to property, both individual and collective, shall be guaranteed by this constitution. It may be overridden only in a case of legally recognized public necessity and on condition that fair compensation is paid beforehand.

Art. 9. The residence shall be inviolable.

A search of premises may be ordered only by a judge or other authority designated by law. Such search may be carried out only in the form prescribed by law.

Measures infringing or restricting inviolability of the residence may be resorted to only for the purpose of warding off a collective danger or protecting persons whose lives are in jeopardy. Such measures may also be taken, as provided by law, to guard against immediate threats to public order, and in particular to counteract the risk of epidemics or to protect young people in danger.

Marriage and the Family

Art. 10. Marriage and the family constitute the natural and ethical basis of the human community. They shall be placed under the protection of the State.

The State and the community have the duty of promoting the physical and moral health of the family.

Art. 11. Parents have the natural right and the duty to bring up their children. They shall be supported in that task by the State and the community.

Young people shall be protected by the State and the community against exploitation and moral neglect.

Education

Art. 12. The State and the community shall establish the prior conditions and the public institutions that will ensure the education of children.

The organization and administration of primary and secondary education shall be the responsibility of the republic of Senegal.

Art. 13. The education of young people shall be provided by public schools. The State and the community shall be responsible for the establishment of such schools. Religious institutions and communities shall also be recognized as means of education.

Art. 14. Private schools may be opened with the authorization and under the supervision of the State.

Religion and Religious Communities

Art. 15. Freedom of conscience and the free profession and practice of religion shall be guaranteed to all, subject only to the requirements of public order.

Religious institutions and communities shall have the right to exist and develop without hindrance. They shall be exempt from state supervision. They may regulate and administer their affairs independently.

Work

Art. 16. Every person shall have the duty to work and the right to obtain employment. No person may be hindered in his work because of his origin, opinions or beliefs.

Every worker may join a trade union and defend his rights through trade union action.

The right to strike is recognized. It shall be exercised in conformity with the laws by which it is governed. It shall in no case impair the freedom of employment.

Every worker shall participate, through his elected representatives, in the determination of working conditions.

The conditions for the assistance and protection afforded by society to workers shall be determined by special laws.

TITLE III

INSTITUTIONS

. . .

The Legislative Assembly

Art. 29. The deputies to the Legislative Assembly shall be elected by direct universal suffrage for a term of five years.

. . .

Art. 33. . . . A compulsory mandate shall be null and void.

. . .

SPAIN

NOTE[1]

All the rights proclaimed in the Universal Declaration of Human Rights of 10 December 1948 are recognized and protected in Spanish law not simply as general principles, but as rights specifically set out in an extensive series of legal provisions of various types; Spanish political and legal thinking has always been guided by the tenets set out in the preamble to the Universal Declaration as the basis of the Declaration.

The principle that all human beings are born free and equal in dignity and rights; the right to security of the person; the recognition of every individual as a person before the law; the right to found a family, the protection of the family by society and the State, the prohibition of arbitrary arrest, detention and exile; the right to be tried with all the guarantees necessary for one's defence; the right to take part in the government of one's country and to have equal access to the public service; the realization of the economic, social and cultural rights indispensable for human dignity and the free development of the personality; the right to work and to just remuneration; the right to rest and to periodic holidays with pay, the right to the various benefits classed under the heading of social security, special assistance to motherhood and childhood; the right to education; and the right to the protection of scientific, literary and artistic property, etc. — these are not only the principles that underlie Spanish law, but also the subject of numerous specific enactments of various kinds which guarantee their exercise and enjoyment, subject only to such limitations as are determined by law for the purpose of meeting the just requirements of morality, public order and the general welfare in Spanish society or, to quote the Universal Declaration itself (article 29), "subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others".

The present note draws attention to certain legal provisions relating to human rights which are of fundamental importance in Spanish law.

A. RIGHT TO FREEDOM, EQUALITY AND SECURITY OF THE PERSON

The new Spanish State has fully respected the substance of the very liberal legislation concerning these rights enacted during the nineteeth century and has supplemented it with new provisions which reaffirm and endorse it by adapting the rights to the present needs of the Spanish people, thus fully guaranteeing their effective application.

Book I of the Civil Code of 24 July 1879, which regulates all matters relating to persons, established that all persons were equal and provided that legal personality is created by birth and is extinguished on death (articles 29 and 32), the acquisition of legal personality being subject to no distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth status (Universal Declaration, article 2).

In keeping with Spain's ancient traditions in the matter of criminal law and procedure, the legislation in force — the Penal Code of 23 December 1944 and the Code of Criminal Procedure of 17 September 1882 — is based on the highest humanitarian principles, which are substantially identical with the relevant provisions of the Universal Declaration of Human Rights, and provides that persons charged with a penal offence shall be tried by a proper, impartial and competent court, with the fullest guarantees for the accused, whose right to a hearing and to be represented and defended by qualified counsel, including, if necessary, free legal aid, is fully assured.

The right of everyone not to be subjected to arbitrary arrest, detention or exile (article 9 of the Universal Declaration of Human Rights) not only has been traditionally acknowledged in Spanish law, but is safeguarded and guaranteed in such a way as to prevent its being infringed in practice and to ensure that any attempt to infringe it will be punished.

The very liberal legislation on the subject enacted during the nineteenth century and embodied in the Code of Criminal Procedure of 17 September 1882 has basically survived intact. The Penal Code now in force, together with other legal measures to which we shall refer later, merely provides penalties for any infringement of this right, which, furthermore, is solemnly proclaimed in the Charter of the Spanish People, article 18 of which states: "No Spaniard may be arrested except in the cases and in the form prescribed by law. Within a period of 72 hours all arrested persons will be set free or turned over to the judicial authorities."

While, in common with all legislation, the Code of Criminal Procedure permits detention in custody as

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

a preventive measure making it possible to establish whether or not there is any criminal liability, its article 489 states categorically that neither a Spanish national nor an alien may be arrested except in the cases and in the manner prescribed by law, while article 490 *et seq.* lay down far-reaching and detailed regulations concerning every aspect of detention.

The Penal Code of 23 December 1944 which is now in force provides for the punishment of offences against the legal provisions governing arrest or exile, whether by public officials and authorities or by private individuals; the former are dealt with in book Two, title II, chapter II, which is headed "Offences committed by public officials against the exercise of the rights of the individual recognized in law" (article 184 *et seq.*) and the latter in book Two, title XII, chapter I, headed "Offences against liberty and security" (articles 480 *et seq.*).

There is no need to reproduce here the text of the articles in question, which was incorporated in a previous report and published in the volume entitled *Freedom from Arbitrary Arrest, Detention and Exile: Yearbook on Human Rights, First Supplementary Volume.* We refer the reader expressly to that volume and shall confine ourselves to a brief survey of the basic features of Spanish law on the subject of arrest and detention, whether it be of Spaniards or of aliens.

Having laid down the general principle that neither a Spanish national nor an alien may be arrested except in the cases and in the manner prescribed by law, the law accepts the need for arrest as a preventive measure to be carried out by the authority concerned in respect of any person in the following categories:

(1) A person attempting to commit an offence, at the time of the attempt;

(2) An offender caught *in flagrante delicto*;

(3) A person who has escaped from a prison establishment where he was serving a sentence;

(4) A person who has escaped from the prison where he was awaiting transfer to the prison establishment or place in which he was to serve a sentence ordered by a judgement not subject to appeal;

(5) A person who escapes while being conducted to the establishment or place mentioned in 4 above;

(6) A person who escapes while in custody or in prison pending trial;

(7) An individual tried or sentenced by default:

(8) Any person prosecuted for an offence [delito] for which the Code prescribes a penalty heavier than that of simple imprisonment;

(9) A person prosecuted for an offence [delito] punishable with a lighter penalty, if, in view of his record and the circumstances of the case, it appears likely that he will fail to appear when summoned by the court; the provisions of the above paragraph do not apply to an accused who furnishes immediately a security deemed by the authority arresting him to make it reasonably certain that he will appear when summoned by the competent judge or court;

(10) In the case specified in the previous paragraph, a person who has not yet been prosecuted, provided the following two circumstances apply: (i) the authority concerned has reasonable grounds to believe that an act has been committed which constitutes an offence [delito]; (ii) there are reasonable grounds for suspicion that the person whom it is proposed to arrest was concerned in the offence.

In the first seven instances quoted, the arrest can also be made by any person, but in so carrying out his duty as a citizen the person concerned is not entitled to the arbitrary use of force; this has been stated in a number of decisions by the Supreme Court of Spain.

Judges and courts may also order the arrest of persons within any of the categories referred to above.

A private individual, judicial authority exercising police powers, or police officer who arrests a person in accordance with the provisions of the law must, within the twenty-four hours following thereafter, release that person, or deliver him to the judge nearest to the place where the arrest was made; any delay in so doing which exceeds this time limit shall render the party responsible liable to the penalties laid down in the Penal Code.

Except in the case of escaped prisoners or of persons sentenced by default, each person arrested must be brought before the competent judge or court; such judge or court must either commit that person to prison or release him within seventy-two hours from the time of his delivery. If the judge himself or the court ordered the arrest, the above provision is to apply with the same time limit.

The judicial order or the order of a committal to prison must specify the substance of the charge and the main reasons given in the decision which deprived the accused of his liberty (circular dated 4 May 1900 from the Public Prosecutor's department, Supreme Court of Justice). By law, the accused has the right to appeal against this decision either orally or in writing.

An order for imprisonment pending trial may be made only by the competent judicial authorities and then only in the circumstances specifically referred to in the law, viz.:

(1) When there is evidence that an act has been committed which has the characteristics of a criminal offence;

(2) When the penalty prescribed for such offence is heavier than simple imprisonment or, even if the penalty prescribed is lighter, the judge considers that, in view of the circumstances of the case and the accused's record, it is necessary to hold him provision-

ally in custody until he furnishes the security specified by the judge;

(3) When there are sufficient grounds for believing that the person whose imprisonment is ordered is the person responsible for the offence under criminal law;

(4) When in the first and third cases referred to the accused fails to appear without any valid reason on being summoned for the first time by the judge or court dealing with the case.

In all such cases, even if in the case of the offence in question the penalty is that specified under 2 above, the judge or court may order the release on deposit of security of an accused, provided that the accused has a good record or there are grounds for believing that he will not endeavour to escape from justice and provided further that the offence has not caused public alarm and such offence is not one frequently committed in the territory of the province in question. Similarly, the judge can authorize a mitigation of imprisonment pending trial by ordering that the person concerned be confined in his own residence or that a person imprisoned pending trial may leave his residence for the number of hours necessary to do his work or carry on his occupation, subject to such supervision as is considered necessary for the security of the prisoner.

The law provides that the accused is to be placed in custody, or imprisoned pending trial, in such a manner as to cause the least possible harm to his person and reputation. Restrictions may be placed upon his liberty only to the extent which is absolutely indispensable to secure his person and to ensure the proper examination of the case. Persons in custody must be kept separate, taking into account their degree of education, age and sex and the nature of the alleged offence; care must be taken that young persons and first offenders are not in contact with adults and habitual offenders. Subject to the conditions prescribed in the prison regulations, any person in custody may receive a visit from a minister of his own faith, a medical practitioner, the relatives, or persons with whom he entertains a relationship or who are in a position to give him advice, and by his counsel. In no event, not even when he has been forbidden all communication, may a person in custody be prevented from writing to the higher officers of the judiciary. No extraordinary security measures may be taken against persons in custody or in prison pending trial except in cases of disobedience, violence, mutiny or attempted escape. Such measures must be temporary and may be applied only as long as is absolutely necessary. Once a week, without giving prior notice, examining judges, accompanied by a representative of the public prosecutor's department [Ministerio Fiscal] must visit the prisons in the locality in order to acquaint themselves with all matters affecting the position of persons in prison awaiting trial or in custody and must take appropriate measures within their power to remedy any abuses which may come to their notice.

In short, Spanish legislation regulates arrest and detention pending trial, fully safeguards persons under arrest or detention awaiting trial and restricts the latter practice as far as possible. This is clear not only from the summary of legal provisions set out above, but also from the various circulars issued by the public prosecutor's office [fiscalía] of the Supreme Court of Justice, from repeated decisions of that court, and from the royal order of 20 March 1916, which lays down the following:

"Examining judges, bearing in mind the true purpose of the law, should order the detention of accused persons pending trial only where it is absolutely necessary and should endeavour to dispose of cases in which the accused is detained with the utmost dispatch, should not allow the time limits laid down by law for each stage of the proceedings to be exceeded and should ensure that the documents relating to such cases are clearly marked to indicate that the accused are in custody."

The respect shown in Spanish legislation for the human person and the liberty of the individual penetrates into the restricted sphere of military jurisdiction under which, despite its special character, arrest and imprisonment are also regulated in such a manner as to prevent any arbitrary action. The following is quoted from the preamble of the Code of Military Justice now in force, which was approved by the Act of 17 July 1945 and deals with the administration of military justice in the land, sea and air forces:

"In view of the exceptional importance attached to the matter, and in the light of the safeguards granted to the individual in the basic laws of all peoples, steps have been taken in the Code to define with precision the position of persons subject to proceedings in military courts. To that end, a careful distinction has been drawn between detention in custody, imprisonment and provisional release and, to provide for each of these different stages of a case, regulations have been made stating in what circumstances, in what manner, at what point, for how long and under what conditions these may be ordered or continued and when they must be terminated; these regulations apply both to trials and to judicial documents, thus avoiding any possibility of mistake or of abuse of authority. . . ."

As has been mentioned earlier, the Charter of the Spanish People and the Code of Criminal Procedure, in which the basic principles governing arrest and imprisonment are set out, have an appropriate counterpart in the Penal Code now in force, through which those principles are given practical effect. In any analysis of the provisions of the Code on this subject, a distinction should be drawn between those which apply to public officials in general, to prison officials and to members of the judiciary.

Where public officials in general are concerned, the Code covers two kinds of offence: illegal detention properly so called, and undue retention in custody. The last mentioned refers to cases in which a public official delays in complying with a court order to release a prisoner or person in custody held by him. It also covers cases where a public official not having judicial powers holds a person in custody for an offence and does not place that person at the disposal of the judicial authority within the twenty-four hours following the arrest.

The following offences by prison and other public officials against the provisions relating to detention and imprisonment are listed in the Penal Code:

(1) Allowing twenty-four hours to elapse without notifying the judicial authority after a prison official or other public official has taken any person into custody;

(2) Failure on the part of the official, within seventy-two hours of having notified the judicial authority of the arrest, to release a person who is in custody but has not been committed to prison;

(3) Concealing a prisoner from the judicial authority;

(4) Preventing a prisoner awaiting trial or under sentence from communicating with the outside or keeping such person in a place other than the prescribed place, without an order from the judicial authority;

(5) Imposing undue hardship upon a prisoner awaiting trial or under sentence or treating such a person with excessive rigour;

(6) Denial to a person in custody, to a prisoner, or to any person representing him of a certificate of custody or imprisonment or failure to transmit an application for his release;

(7) Retention of a person in the prison establishment after receipt of official notification of his pardon or the termination of his sentence.

Where members of the judiciary are concerned, the Code regards the following as offending against the provisions relating to detention in custody and imprisonment:

(1) A member of the judiciary who, within seventy-two hours of the person in custody being placed at his disposal, fails to release him or to make an order committing him to prison on specified grounds;

(2) A member of the judiciary who, otherwise than in the case specified under No. 1 above, continues to keep a prisoner a person who should be released from custody;

(3) A member of the judiciary who improperly makes an order barring a prisoner from communication with the outside or unduly prolongs such a measure.

In the particular case of clerks of courts, the Code lists the following offences:

(*a*) Failure within seventy-two hours to notify the person in custody of the order committing him to prison or requiring his release;

(*b*) Undue delay in notifying a prisoner of an order lifting the bar on communication with the outside or requiring his release;

(*c*) Delay in advising a higher or lower court of an application for release made by a person in custody or by a prisoner, or by his representative.

Appropriate penalties are laid down in the Code for all these offences, and may consist of suspension from office, suspension and a fine, absolute disqualification from holding office, short-term imprisonment or long-term imprisonment. In cases where there has been a failure to observe time-limits, the period of suspension and the amount of the fine vary in proportion to the length of the delay which has occurred.

In addition to what has been set out above, book Two, title 12, of the Penal Code now in force deals with offences against liberty and security; this definition is in accord with the three aspects from which the law considers man — as a physical being, a moral being and a free being.

Chapter I of this title deals specifically with illegal detention and lists the following offences under this head:

(1) A private individual who confines or detains another so as to deprive him of his liberty shall be liable to long-term imprisonment [prisión mayor]; the same penalty shall apply to any person who furnishes premises for the commission of this offence. This penalty is reduced if the offender releases within three days the person whom he has confined or detained, without obtaining the intended result and before any proceeding has commenced.

On the other hand, the penalty is increased by the infliction of a fine of 1,000 of 25,000 pesetas, without prejudice to any other liability which the offender may incur, if the period of confinement or detention exceeded twenty days, if the offender pretended that he was acting as a public authority, if the person confined or detained was seriously injured or threatened with death, or if a ransom was demanded for release.

(2) A private individual who, otherwise than in those cases authorized by law, apprehends another in order to bring him before the authorities shall be liable to the penalty of long-term detention [arresto mayor] and a fine.

Any person who has unlawfully detained another person and fails to declare the place where such person is detained, or to adduce satisfactory evidence that he has set that person free, shall be liable to the penalty of imprisonment with hard labour [reclusión mayor].

Because of the special circumstances involved and of the particular gravity of the offence, abduction

forms the subject of a law dated 18 April 1947 under which this crime is punishable by death if the person abducted should die or be mutilated or violated or if, the victim having disappeared, the guilty party refuses to give information as to his or her whereabouts. In other cases, penalties range from major penal servitude to death. The provisions of this special law apply only when the circumstances of the case do not make it clearly evident that no reasonable fear need have been entertained at any time for the life or bodily safety of the kidnapped person, as such cases are dealt with under the ordinary law.

In the light of the legal tenets already mentioned which govern detention in custody and imprisonment, article 6 and the following articles of the prison service regulations approved by the decree law of 2 February 1956 and now in force lay stress on the fact that it is the duty of the governor of a prison to comply with all legal stipulations concerning the time-limits within which a person in custody must either be released or committed to prison. The regulations provide that if, after having been notified by the prison governor, the appropriate authority does not make an order for the detention or release of the person in custody within twenty-four hours of his arrival in the prison, the governor is to release him. They further provide that, if the necessary order either to release the person in custody or to turn him over to the judicial authorities has not been received at the prison within the time limit of seventy-two hours laid down in article 18 of the Charter of the Spanish People, the prison governor shall address a request for it to the authority by whose order the person was taken into custody.

Local banishment is also recognized and regulated in Spanish law. In this connexion, article 14 of the Charter of the Spanish People solemnly proclaims that "Spaniards are at liberty to fix their residence inside the national territory."

An exception to this general rule are certain laws dictated by reasons of public safety, under which local banishment is permitted either as a penalty or as a preventive measure in very special circumstances. For example, under article 41 of the Act of 28 July 1933 (amended on 18 October 1945) dealing with the maintenance of law and order, the civil authority had already been empowered to compel persons regarded as a public danger or suspected with good reason of having taken part in acts prejudicial to public order to change their place of residence. Such persons could not, however, be directed to reside more than 150 kilometres from the place where they had lived. Under article 28 of the new Act for the maintenance of law and order, dated 30 July 1959, government authorities were also given power, during a state of emergency, to remove temporarily from the town or from their place of residence persons whose past history or conduct gave grounds for suspecting them of subversive activities. Furthermore, articles 4 and 5 of the Rogues and Vagabonds Act of 4 August 1933 provide as a security measure that persons declared to be dangerous may either be compelled to reside in a given place or be prohibited from residing in a place or area specified by the court.

With regard to measures specifically affecting aliens, the above-mentioned Act for the maintenance of law and order and the Rogues and Vagabonds Act authorize certain steps to be taken, notably the deportation of temporary visitors if they fail to comply with the regulations concerning them laid down by the authorities, or if there is evidence that they are in league with rebels. Provided that sufficient justification has been put forward for taking such a step, foreign residents may also be deported if their conduct gives grounds for considering that they are in association with disturbers of the peace; however, they have the right of appeal. In addition, under the Rogues and Vagabonds Act, aliens found by a judge to be dangerous (article 6) may be deported, subject to their right to appeal against the resolution imposing that measure.

Banishment in cases other than those permitted by law is an unjust and arbitrary act and is punished as such by the law itself. Such an eventuality is explicitly provided for in article 189 of the Penal Code, whereby a public official who causes anyone to be banished or compels him to change his domicile or residence otherwise than in cases permitted by law is liable to the penalty of banishment or to a fine. Any public official who deports a person or causes him to leave the national territory in circumstances other than those prescribed by law is also liable to banishment and a fine (article 190 of the Penal Code).

The arrest, detention or exile of Spanish nationals or aliens is regulated by the Penal Code and the Code of Criminal Procedure and by the provisions of the Code of Military Justice of 17 July 1945, the Rogues and Vagabonds Act of 4 August 1933, and the prison service regulations of 2 February 1956. The provisions are based on the principle of absolute respect for the dignity and freedom of the human person and provide the broadest guarantees for arrested persons and persons in custody. Arrest and detention pending trial are limited to the fullest possible extent and any official acting in excess of his powers and violating the guarantees established by law is liable to criminal penalties.

In harmony with the spirit of these provisions, the importance of safeguarding these rights has been emphasized in various circulars issued by the Fiscal-General in the Supreme Court of Justice, in numerous decisions of the Supreme Court and in orders issued by the Ministry of Justice (*inter alia*, Supreme Court decision of 21 January 1932 and royal order of 20 March 1916), which are still in force. It is laid down that, in the case of exile, the distance prescribed by law must be measured in a straight line and not on the basis of the actual distance travelled, as the latter may vary with the means of transport used.

In conclusions, it will be seen from the foregoing that, under Spanish law, the right of all persons, whether Spaniards or foreigners, not to be subjected to arbitrary arrest, detention or exile is recognized, provided for and safeguarded and that provision is made for suitable penalties for authorities, officials or private individuals who fail to respect this right or infringe it.

The rights to freedom, equality and security of the person, like all the other rights proclaimed in the Universal Declaration, are also embodied in the Charter of the Spanish People of 17 July 1945, which, as fundamental law of the State, takes precedence over all other laws and can only be amended or repealed by means of a national referendum and with the approval of the Cortes (Act of 26 July 1946, article 10).

The Charter of the Spanish People lays down the rights and duties of the Spanish people, including social and economic, as well as substantially political rights. Article 1 of the Charter provides: "The Spanish State proclaims, as a guiding principle of its acts, respect for the dignity, integrity and freedom of the human person, recognizing that man as a bearer of eternal values and member of the national community, possesses duties and rights whose exercise is guaranteed with due regard to the common good." Article 14 provides that Spaniards have the right to establish their residence freely within the national territory.

The principles underlying the Charter of the Spanish People are solemnly reaffirmed in the Basic Law of the State of 17 May 1958. As principles of the National Movement, by which is meant the communion of Spaniards in the ideals which gave birth to the new State, the Basic Law proclaims that the national community is based on man as a bearer of eternal values and on the family as the foundation of social life; that the law protects the right of all Spaniards alike (principle V); that all Spaniards shall have access to public office and functions on the basis of merit and capacity (principle VIII); that all Spaniards have an equal right to independent justice, to the benefits of social assistance and security, to an equitable distribution of the national income and of the burden of taxation (principle IX); and that economic values shall always be subordinate to human and social values (principle XI). These principles and the human rights derived from them, like the other human rights proclaimed in the Act of 17 May 1958 and in the earlier Charter of the Spanish People, are protected by a system of judicial, economic-administrative and administrative remedies which ensure the practical application of the legal provisions in which the rights are embodied. Effect is thus given to article 36 of the Charter of the Spanish People and articles 2 and 3 of the Act of May 1958 which stipulate that the law shall make provision for the punishment of any infringement of any of the rights proclaimed and shall specify the proceedings that may be taken to secure the protection of any such right before the competent courts; that all the organs and authorities of the State are bound to observe them strictly and that any law or regulation, of whatever kind, that impairs or abridges them shall be null and void.

Too much space would be required to describe the Spanish legal system for the protection of human rights in detail, but particular reference should be made to the Act of 20 July 1957, laying down regulations for the Spanish public administration. The Act establishes and defines the liability of the State and of authorities and officials and reaffirms the hierarchical principle that must be respected in administrative orders and instructions at the various levels, all of which must be conformable to law. It thus fully guarantees respect for the rights of all persons under the law.

B. RIGHT TO NATIONALITY

Spanish legislation recognizes and protects the right of everyone to a nationality, the right not to be arbitrarily deprived of one's nationality and the right to change one's nationality.

The provisions regulating these rights, contained in book One, title I, of the Civil Code, were amended by the Act of 15 July 1954, the principal effects of the amendments being to broaden the rules concerning the attribution of Spanish nationality and to limit the grounds on which Spanish nationality may be lost. The right to change one's nationality is respected, with the very logical proviso, as far as Spaniards are concerned, that a person who voluntarily acquires another nationality while Spain is at war shall not cease thereby to be a Spanish national (Civil Code, article 22, as amended by the Act of 15 July 1954).

Because of the common tradition and spiritual unity which form such close ties between Spain and the peoples it discovered and civilized ("Spain, parent of a great family of peoples with whom it feels indissolubly linked . . ." — Act of 17 May 1958, principle III), article 22 of the Civil Code makes provision for the possession of dual Spanish and Ibero-American or Philippine nationality. The article provides that, where an express agreement to this effect has been entered into with the State concerned, a Spanish national who acquires the nationality of an Ibero-American country or of the Philippines, or a national of one of those countries who acquires Spanish nationality, shall not thereby lose his nationality of origin. The agreements with Chile (of 24 May 1958, ratified on 28 October 1958), Peru (of 16 May 1959, ratified on 15 September 1959) and Paraguay (of 25 July 1959, ratified on 15 December 1959) give effect to this right to dual nationality; and in view of the solid ground on which it is based there is every reason to hope that agreements giving effect to the rights will soon be concluded with the other countries to which the provision applies.

The administrative rules regarding the right of nationality are laid down in the Civil Registration

Act of 8 June 1957 and the Civil Registration Regulations of 14 November 1958. The rules concerning the various nationality proceedings contained in the Act and the regulations supplement the substantive provisions on which they are based and are designed to facilitate the determination of nationality by means of the civil register. (Civil Registration Act, title V, section I, chapter IV and Regulations, title V, section VI, sub-sections I and II.)

In addition to the grounds for loss of Spanish nationality set out in the Civil Code, and limited by the amendments mentioned above, Spanish law also provides for deprivation of nationality by a final decision of a court of justice (Civil Code, article 23, and Penal Code, articles 27, 34, and 141), but the provision is applicable only to naturalized aliens guilty of offences against the external security of the State. The broad judicial and procedural guarantees provided by law, to which reference was made above, preclude any possibility of the arbitrary application of this penalty.

With regard to the right of nationality and the other rights deriving from it, it should also be noted that article 27 of the Civil Code, reflecting the principle that invariably guides Spanish law in regard to aliens, provides that an alien shall possess the same civil rights in Spain as does a Spanish national, a provision that is indicative of the position taken by Spain in matters affecting nationals of other countries.

C. RIGHTS CONCERNING THE FAMILY

Respect for the institution of the family is also traditional in Spanish law. The relevant provisions of the Code are based on the principles of catholic dogma and recognize the freedom of both spouses to enter into marriage, without prejudice to the respect owed by them to their parents or to those *in loco parentis*, the mutual obligations and rights of both spouses, and the rights of the children. In the interest of the children the principle of parental authority is conceived of as a series of obligations or duties and rights, in which the former predominate over the latter. This view has long been upheld by the Supreme Court of Justice, according to many decisions of which parental authority is an institution established for the benefit of the children and the rights of the children take precedence over those of the parents (see, *inter alia*, decisions of 24 May 1909, 24 June 1929 and 3 March 1950).

In conformity with this traditional respect for the rights of the family, articles 22 and 23 of the Charter of the Spanish People provide: "The State recognizes and protects the family as a natural and fundamental institution of society with rights and duties prior and superior to all human positive law. That matrimony shall be one and indissoluble. The State shall afford special protection to large families. Parents are under a duty to provide for, educate and instruct their children. The State shall suspend the exercise of parental authority by, or deprive of parental authority, any persons who fail to exercise such authority worthily, and shall transfer the custody and education of children under age to the persons designated by law."

The Basic Law of the State of 17 May 1958 affirms that the national community is based on man as a bearer of eternal values and on *the family* as the foundation of social life (principle V); that the family, as a natural unit of society, is a basic structure of the national community (principle VI), and that through the family — and certain other bodies — the people shall participate in the work of legislation and in other functions of general interest (principle VIII).

The extensive protection afforded by the Spanish State to the family is reflected in a large number of legal provisions providing the family with broad benefits in such matters as taxation, social security, wages, education, rents, etc., which owing to limitation of space cannot be described in detail in this short report. As a brief indication of the legal provisions in question reference will be made to the following:

The Act of 13 December 1943 for the protection of large families and the implementing regulations of 31 March 1944 (as amended on 5 November 1948), 28 June 1951 and 6 March 1953 give effect to article 22 of the Charter of the Spanish People, which provides that the State shall protect large families. A large family is defined as a family composed of the head of a family, the spouse if any, and four or more unmarried legitimate or legitimized children under eighteen years of age, or, if over eighteen, unable to work. The Act and the regulations provide a series of benefits which include: exemption from or reduction of fees for registration, apprenticeship, certificates or any other fees of the like nature; reduction of or exemption from certain taxes; increased family allowances; cheap tickets on railways and other means of land and sea transport, and reduced rates for accommodation, board and medical fees of all kinds at watering places, sanatoria and other similar establishments, whether state or privately owned. The heads of large families are also entitled to priority when applying for certain posts in the public administration and in private firms, and have a preferential claim to family agricultural holdings under the Settlement Act of 26 December 1939, and to low-cost, controlled housing, whether made available on a rental or purchase basis. The Act establishes three categories of family for the purpose of determining the scale of benefits applicable:

(1) Families with four to seven children;

(2) Families with more than seven children; and

(3) Families with more than twelve children.

The decree of 25 February 1949 contains regulations concerning the annual award of grants to the parents of large families of fifteen or more children, for the specific purpose of acquiring a farm to constitute or increase the family patrimony.

The decree of 22 February 1941, as amended on 20 February 1949, establishes and contains regulations concerning annual cash bonuses to assist large families and encourage an increase in the birth rate.

The Act of 12 March 1942, which reflects the new State's special interest in the family as a fundamental institution of society, makes desertion of the family an offence punishable with medium-term imprisonment and a fine of not less than 1,000 or more than 10,000 pesetas and possible deprivation of parental authority, guardianship or marital authority.

The order of 29 March 1946 (as amended and extended in 1950 and 1952) contains basic regulations concerning the "family bonus", a payment made to the worker over and above his regular wages in consideration of his family responsibilities. Together with the "family allowance" (financial assistance also granted to the worker in addition to his normal wages in proportion to the number of dependent children or other dependants classed as such living in his home) established by the Act of 18 July 1938 and subsequently extended and broadened, the family bonus establishes the family wage called for in declaration III of the Labour Charter of 9 March 1938 through the equitable distribution of the burden of dependency among those who should assist in bearing it — the State, employers and the workers themselves.

The Act of 23 September 1939 extended the benefits established by the Act of 18 July 1938 to the widows and orphans of workers, thus providing greater family protection in the event of the death of the head of the family. Provisions concerning such widows' and orphans' benefits have been embodied in the various national labour regulations.

The decree of 29 December 1948 instituted cash bonuses for marriages and births. The fund set aside for the former purpose was substantially increased by the decree of 23 July 1953.

The Act of 15 July 1954 instituted a system of family financial aid for civil servants, which was extended by the Act of 17 July 1956 to retired civil servants.

Special mention should be made of the Act of 24 April 1958, which amended the provisions of the Civil Code relating to the status of women and removed certain existing disabilities. In accordance with the principle that there is no natural or social reason justifying discrimination on grounds of sex alone in the field of civil law resulting in limitations on the legal capacity of women, the new Act accords women full legal capacity to witness wills and to serve as guardian. In the case of guardianship women have the privilege under the law of declining to serve without being required to state a reason. A married woman must have the consent of her husband to serve as guardian.

Without prejudice to the power of administration necessary to marriage, which continues to be vested in the husband, married women have been granted new rights in regard to the disposal and encumbering of ganancial property [bienes gananciales] while the marriage subsists. The wife's consent is required for any such disposal of real property or commercial establishments by her husband. If the husband disposes of property other than that mentioned in a way that may involve serious risk to the joint estate [sociedad de gananciales], the court may on the application of the wife, the reasons for the application being stated, order such precautionary measures or safeguards as it may deem appropriate. In order to afford full protection to the property rights of married women the Act of 24 April 1958 provides that no acts involving the disposal of property, whatever the status of the property, executed by the husband in contravention of the provisions of the law or in fraud of his wife may prejudice the wife or her heirs (Civil Code, article 1413, as amended by the Act of 24 April 1958). A widow's rights of succession are identical with those of a widower, having been broadened by the amendments to the Civil Code contained in the Act of 24 April 1958.

In the case of a petition for separation or annulment of marriage, the Act amending the Civil Code and the Act, also of 24 April 1958, amending the Civil Procedure Act place the wife on an equal footing with the husband with regard to any provisional measures that may be taken in respect of the children and financial arrangements, it being left to the discretion of the court to decide which of the spouses is to retain the use of the common dwelling, taking into account the family interests most urgently requiring protection, and which of the spouses is to have custody of one or all of the children and which is to exercise parental authority. In so far as concerns financial arrangements, in addition to transferring to the wife the administration of any paraphernal property that may have been placed in the hands of the husband, the court has discretion also to transfer to the wife the administration of property forming part of the unappraised dowry and all or part of the ganancial property [bienes gananciales]. The amendments are designed to provide effective safeguards for the rights and legitimate interests of both spouses, in particular those of the wife, which are ordinarily in greater need of protection, while at the same time, as is stated in the preamble of the Act amending the Civil Code, bearing constantly in mind the interests of the "children, who are the most precious of all the goods to be safeguarded when the marriage on which a family is based is in danger."

D. THE RIGHT TO WORK

Spanish legislation contains broad regulations for the protection of the right to work in accordance with the provisions of the Universal Declaration of Human Rights.

The principles of the new Spanish State with regard to the right to work are solemnly proclaimed in the Labour Charter of 9 March 1938, which has been

implemented by means of numerous enactments, the most important of which were described and discussed in the report furnished on 9 November 1957 in accordance with resolution 624 D (XXII) of the Economic and Social Council. The following data are taken from that report:

The Labour Charter, of 9 March 1938, also raised to the status of basic law of the nation by article 10 of the Act of 26 July 1947. It is a solemn declaration of principles which reaffirms the catholic tradition of social justice and the lofty humanitarian aims of the legislation of the Spanish Empire. It envisages work as one of the loftiest attributes of social status and honour, and establishes the right and duty to work. It lays down that the State shall protect both the life and the employment of the worker and shall ensure that he is given an adequate return for his labour which will enable him and his family to lead a moral and decent existence. It also requires the State to issue appropriate regulations governing the duration of the working day, annual paid holidays, and the conditions of work itself, due regard being paid to the age and sex of workers. The Charter makes provision for the establishment of the necessary institutions which will enable workers to enjoy all the benefits of culture, health and sport during their leisure hours. Provision is also made for protecting the worker against disaster. Social insurance against old age, sickness, maternity, labour accidents, industrial diseases, tuberculosis and forced stoppage is extended with a view to introducing comprehensive coverage. An overriding aim is to provide elderly workers with an adequate pension.

Along with the rights, the Charter proclaims the duties of workers. It declares that the State is responsible for the control of relationships between workers and employers, the interests of both being subordinate to the national interest.

In short, the Labour Charter is both a law setting forth a series of moral principles and a code of production and economics. Basically, it proclaims the rights of man with regard to work, subsequently embodied in the Universal Declaration of Human Rights of 10 December 1948.

The principles laid down in the Labour Charter have been elaborated and given full legal force by various later enactments. These, together with previous enactments endorsed by the new State, constitute the existing body of legislation on the right to work in Spain. It would be impossible to cite this legislation in detail without unduly extending this report. The basic enactments are as follows:

(*a*) Contract of Employment Act of 1944.

(*b*) Order of 29 March 1946, establishing what is known today as the "family bonus", an allowance paid to the worker over and above his normal wage by virtue of his marital status and his family responsibilities.

(*c*) Act of 13 July 1940 and order of 25 January 1941, which provide for holidays on Sundays and feast days with normal pay.

(*d*) Act of 27 February 1908, which set up the National Welfare Institute, the organ responsible for social security in Spain. The Institute was later reorganized under the decree of 14 June 1957. It has been given the task of drawing up as soon as possible a national social security scheme which will group together those bodies at present discharging welfare functions as well as those social insurance institutions which are now in existence or which may be subsequently set up or incorporated in the scheme.

(*e*) Order or 31 January 1940 which established the General Regulations on Labour Security and Hygiene and the decree of 7 July 1944, which set up the National Institute of Labour Medicine, Hygiene and Security, a technical body which is responsible for research, supervision and the enforcement of standards in those particular fields.

(*f*) Decree of 16 June 1954 and order of 31 March 1955, which complete an already existing body of legislation on labour stoppages in general. They contain regulations governing insurance against technological stoppages in anticipation of the possible transfer of labour from one branch of production to another as a result of the application of streamlining techniques in various industries and in response to national economic developments.

(*g*) Decree of 22 June 1956 approving the consolidated text of the new Act and regulations governing insurance against industrial accidents; Act of 14 December 1942 and order of 19 February 1946, which contain regulations for sickness insurance; decree of 9 July 1948, which brings maternity benefits under sickness insurance; decree of 18 April 1947, containing regulations for old-age and disability insurance; Act of 18 July 1938, establishing a system of family allowances which makes social insurance compulsory and is designed to guarantee workers, irrespective of their normal remuneration and their family bonus, a sum of money paid at regular intervals in respect of and in proportion to the number of their children or dependants; and order of 31 March 1947 extending welfare benefits to foreign workers in Spain.

(*h*) The various national labour regulations, the mere enumeration of which would take up a large part of this report. Each one of these elaborates in its respective sector the principles proclaimed in the Labour Charter and in the enactments mentioned above. They also make provision for the participation of the workers in the profits of undertakings.

The most important legislation enacted since the preparation of the report previously mentioned is as follows: The Basic Law of the kingdom, of 17 May 1958, which affirms the principles of the national movement on which the new State was founded, recognizes labour as the source of all rank, duty and honour (principle X) and recognizes the enterprise as an association of men and resources directed to

production, constituting a community of interests and an economic unit. Relations between the members of the enterprise must be based on justice and mutual loyalty, economic values being subordinated at all times to human and social values (principle XI). The law also proclaims the State's obligation to provide its citizens with satisfactory working conditions and the benefits of social security and social assistance (principles XI and IX) and expressly declares that, as the principle and objective of state action in labour matters, the Christian ideal of social justice embodied in the Labour Charter shall be the basis of legislation and policy (principle IX).

The Act of 24 April 1958 (supplemented by various later provisions — order of 13 June 1958, regulations of 22 June 1958, order of 15 September 1958 and order of 24 January 1959) contains provisions concerning trade union collective agreements. The objective of such agreements is to promote the spirit of social justice and a sense of unity in productive activity and of partnership at work, to improve the standard of living of the workers and to increase productivity. The conditions laid down in the general legislation and in the various national labour regulations may not be modified by trade union collective agreements except to the advantage of the worker, any clause or stipulation implying less favourable conditions for the worker being automatically null and void.

The Act of 24 April 1958 partially amends the procedure in labour suits, increasing its functional flexibility and adapting it to the latest advances in national social policy. The consolidated text of the procedural provisions in question was published in the decree of 4 July 1958. A worker may bring a suit to court without cost to himself but the Act provides that no labour suit shall be heard by a court unless an attempt has been made to institute conciliation proceedings before the competent trade union authority. The regulations governing conciliation proceedings were laid down in the order of 7 August 1958 supplementing the Act of 24 April 1958.

The decree of 5 September 1958, re-enacted as the Act of 23 December 1959, established the National Agrarian Social Security Service, as a part of the General Insurance Directorate of the Ministry of Labour. The service is responsible for undertaking specific activities to give prompt and effective application to the social security provisions for the welfare of rural workers. Regulations concerning its organization and operation were issued in the Ministry of Labour's order of 27 May 1959.

The decree of 17 March 1959 established, and the order of 6 April 1959 contains regulations concerning the national pension fund of the Domestic Workers' Union. Under the scheme, domestic servants receive the social security benefits established by the Act of 19 July 1944, in particular old-age and disability pensions, health assistance (including medical and pharmaceutical services, in accordance with the regulations approved by the order of 4 November 1959), dowry on marriage or entering a religious order, family assistance, death benefits, and other special benefits, such as long-service bonuses, which indirectly reflect state protection for large families, since the period of service and contributions necessary to obtain such benefits and increased old-age pensions is reduced in the case of domestic servants in large families.

The decree of 6 February 1959 established industrial health services, regulations for which were issued in the order of 8 April 1959.

The decree of 23 April 1959 established the Agrarian Mutual Aid Insurance Service, which is responsible for the administration of social security in rural areas.

The decree of 4 June 1959 makes provision for increased co-operation with business enterprises through their full participation in the management and administration of social security. The decree consolidates various provisions concerning compulsory social insurance and provides for the compulsory inclusion in the scheme of all Spanish citizens over fourteen years of age working for an employer and earning not more than 40,000 pesetas a year. The provision applies to manual and non-manual workers, whether employed on a permanent or temporary basis or as home workers. Andorran, Brazilian, Philippine, Portuguese and Hispano-American subjects working for an employer in Spain are also compulsorily included in the scheme on the same footing as Spanish citizens. The position of other foreign workers is governed by the provisions of the applicable treaties or agreements. Regulations concerning the participation of business enterprises in the management and administration of social security under powers delegated for that purpose by the National Social Welfare Institute were approved by the order of 30 June 1959.

The decree of 9 July 1959 contains the new regulations concerning employment placement services, the primary purpose of which is to achieve the highest level of employment and to offer the maximum employment opportunities to the country's working population. The regulations contain provisions concerning the registration of workers with placement services, the obligations of employers and workers in the matter, action to balance the supply of and demand for labour at the district, provincial and state levels, and the registration of workers on the basis of employment cards furnishing a full record of each workers' employment, as well as provisions relating to jurisdiction and inspection and penal provisions.

The decree of 26 November 1959 institutes a special grant payable in the event of unemployment resulting from emergency situations. The regulations concerning the payment and the amount of the grant are contained in the order of 11 December 1959.

The decree of 2 June 1960 contains regulations concerning the work of the bodies responsible for the

administration of social security designed to prevent possible irregularities in the payment of the funds allocated to carry on the social security work undertaken by the new State. The decree establishes penalties and prescribes procedures for appeal.

The decree of 23 June 1960, developing the principles proclaimed in the Charter of the Spanish People (article 28), the Labour Charter (principle X) and the Basic Law of 17 May 1958 (principle IX), which guarantee to Spaniards the benefits of social security and assistance, extends the benefits of workers' insurance to independent and self-employed workers and artisans, regardless of the occupation in which they are employed, subject to the provisos that they must not be simultaneously working for an employer under a contract of employment — in which case they would already be included in the social security scheme — and that their earnings must not exceed the maximum levels laid down by the various social security schemes for the admission of other workers.

The special importance attached by the new Spanish State to the right to work and related matters is apparent in the recent Act of 23 July 1959 instituting national funds for the social application of taxes and savings. Title III of the Act institutes a National Labour Welfare Fund into which is paid the entire revenue received from the tax on the negotiation and transfer of negotiable securities levied in accordance with the Act of 13 March 1943. The National Fund will be used for the following purposes:

(*a*) To provide necessary assistance to workers who, in accordance with the legislation in force, are discharged as a result of the execution of plans for the more rational use of labour and development and improvement of equipment submitted by undertakings or industries and approved by the Government.

(*b*) To assist the internal and external movement of labour in response to the needs of the national economy.

(*c*) To encourage the growth of the co-operative movement and make loans to workers to enable them to join co-operatives.

(*d*) To promote the employment of fathers of large families.

A board, under the chairmanship of the Minister of Labour and including the Under-Secretary of the Treasury and representatives of the Ministeries of Finance and Foreign Affairs and of the National Trade Union Office, is responsible for submitting to the Government proposals concerning the general principles that are to govern the administration of the tax on which the fund is based, the allocation of resources to the various purposes, and the principle to be followed by the ministers concerned in the distribution of resources. In this noteworthy legislation the Spanish Government gives further practical expression to the fundamental principles set out in the Act of 17 May 1958, in this case principle IX, which affirms that the Christian ideal of social justice as reflected in the Labour Charter shall be the basis of legislation and policy.

It should also be noted that under treaties or agreements signed with other countries, the benefits of the social security schemes provided for in Spanish law are extended to most foreign workers employed in Spain. Treaties of this kind were concluded with Belgium, France and Italy in 1957 and with Paraguay, Peru and Switzerland in 1959.

E. THE RIGHT TO EDUCATION

The declarations of principle contained in the Basic Law of 17 May 1957 are developed by the School Assistance Act of 27 April 1959 and other less important provisions establishing the percentages of non-fee-paying pupils to be admitted to all recognized or assisted non-state educational establishments.

The workers' universities, which are intended to provide vocational and technical training and their further cultural and general education for Spanish workers, have proved of great usefulness and benefit and have thus justified their existence.

In the short period of time since their establishment was authorized, five of these educational centres have been opened and are in operation, while several others are planned to be opened in the near future.

The worker's universities were originally maintained by the workers themselves through their organizations, but in view of the importance of their activities it was considered necessary to reorganize them and to integrate them with the country's overall institutional structure. Under the new regulations contained in the Act of 11 May 1959, the State is responsible for the protection and development of the workers' universities through the Ministry of Labour, which will make provisions concerning their governing bodies and their administrative powers. The Ministry of Education has specific functions in matters of instruction in the workers' universities, which are bodies corporate with the right to own property and the status of non-state public institutions. A state contribution is now made to their development and maintenance from the funds appropriated for the Ministry of Labour section under the general budget.

A further impetus was given to secondary education by a system of adoption by the State of independent schools belonging to local corporations under the decree of 2 June 1960, which will make it possible to extend the network of schools of this type to rural districts hitherto without such schools. Secondary education will thus be made available throughout the country in accordance with the provisions of article 1 of the Secondary Education Act which provides that the State shall make secondary education available to all Spaniards capable of profiting fromt it.

Education insurance, which was established by the Act of 17 July 1953 to provide social security for

students and furnish them with full protection and assistance in the event of accidents and other risks, has been further developed by its application to other student groups under the provisions of the order of the Ministry of Education of 1 June 1960.

The Act of 23 July 1960 set aside specific national funds, consisting of allocations from the income tax revenue, to be used to provide equal opportunities for all Spaniards to undertake vocational training and research, through fellowships, specialization courses, unsecured loans, the extension of students' social security for the benefit of those in greatest need of financial assistance, etc. Among such funds are the social security, labour welfare and personal property protection funds.

PUBLIC ORDER ACT 45/1959 OF 30 JULY[1]

CHAPTER I

PUBLIC ORDER AND THE AUTHORITIES RESPONSIBLE FOR ITS MAINTENANCE

Art. 1. The normal functioning of public and private institutions, the maintenance of domestic peace, and the free and peaceful exercise of the individual political and social rights recognized by law constitute the basis of public order.

Art. 2. The following acts shall be contrary to public order:

(*a*) Acts which disturb or are intended to disturb the exercise of the rights recognized in the Charter of the Spanish People and in other fundamental laws of the nation, or which are prejudicial to the spiritual, national, political and social unity of Spain;

(*b*) Acts which, by taking unfair advantage of the existing circumstances, impair or are intended to impair public security, the normal operation of the public services or the stability of supplies and prices;

(*c*) Collective work stoppages and the illegal closing or suspension of enterprises, as well as inciting to or facilitating such acts;

(*d*) Acts which give rise to disturbances on the public highway and any other acts involving coercion, threats or the use of force or the use or attempted use of arms or explosives;

(*e*) Public demonstrations and meetings which are illegal or which lead to disturbances or violence, and the holding of public entertainments in the same circumstances;

(*f*) All acts propagating, recommending or provoking subversion or promoting violence or means conducive to violence;

(*g*) Offences against public health and infringements of the sanitary regulations for the prevention of epidemics and contagious diseases;

(*h*) Incitement to non-compliance with the regulations relating to public order and disregard of any measures decided on by the government authority or its agents to maintain or restore order;

(*i*) Acts which in any manner not specifically mentioned in the preceding paragraphs constitute a breach of the provisions of the present Act or an offence against public order or community life.

. . .

Art. 8. Any person having knowledge of an act prejudicial to public order shall bring it to the attention of the government authority, on penalty of being liable to the fine specified in article 259 of the Code of Criminal Procedure. A person shall be required to co-operate in restoring public order only if he is ordered to do so by the government authority or its agents and is able to do so without exposing himself to grave personal injury or risk.

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CHAPTER II

ORDINARY GOVERNMENT POWERS

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Art. 11. The government authority and its agents may not enter the dwelling of any person without his consent or without a writ, except in the following cases:

(1) If an attack against the government authority or its agents originates from the dwelling;

(2) In a case of *flagrante delicto*, both in pursuit of the suspected persons and for the seizure of the instruments and articles used to commit the crime, and the gathering of evidence;

[1] Published in *Boletín Oficial del Estado*, year XXIV, No. 182, of 31 July 1959. Translation by the United Nations Secretariat.

Concerning this Act the Government of Spain has communicated the following information to the United Nations Secretariat:

"The aim that the Spanish lawmaker had in mind in promulgating the Public Order Act of 30 July 1959 was to combine in a single harmonious text the traditional body of law enshrined in the Act of 28 July 1933, as partly amended by such enactments as the Acts of 23 May and 18 June 1936 and the decree of 18 October 1945. This body of legislation, which has stood the test of time, has been adapted to the trends that have appeared in recent years and has thus been forged into a legal instrument capable of meeting the needs of public order in Spain with the greatest possible chances of success.

"In this work of revision, particular attention has been given to the formulation of a precise and up-to-date definition of public order and an organic and unified description of the instrument responsible for it. The development of public order through its vital and critical stages is systematically and clearly defined. Those stages have been reduced to the rationally admissible minimum, and, for each stage, there is a clear specification of the means available to the government authorities and the scope of their powers for meeting and remedying emergency situations is such a way as to involve the least possible interference with the free exercise of individual rights."

(3) If disturbances prejudicial to public order occur in the dwelling;

(4) If summoned by the persons living in the dwelling;

(5) If necessary to assist persons in need or to prevent imminent and grave damage to property.

The official report and signed statement to be drawn up on such occasions shall be transmitted without delay to the competent judicial authority for any necessary action, including the remedying of any misuse of power which may have occurred. All cases of misuse of power shall be reported to the Civil Governor.

Art. 12. 1. The government authority or its agents may arrest any person who commits or attempts to commit an act contrary to public order and any person who disobeys a direct order given by the government authority or its agents in connexion with such an act.

(2) A person so arrested shall be released or handed over to the judicial authority within seventy-two hours.

Art. 13. 1. If groups of persons create a disturbance in a public place, they shall be ordered to disperse. If such an order is not obeyed, the government authority or its agents shall give the said persons not more than three warnings and, if the final warning is disregarded, shall disperse them by such means as, in its prudent judgement, are best suited to the circumstances.

2. If the disturbance occurs in enclosed premises or in a non-government public building, the agents of the government authority may enter therein and take whatever measures are necessary to restore order.

3. Except in the case of a serious breach of the peace, a building occupied by a public corporation or body shall not be entered without the consent of the official or person responsible therefor.

Art. 14. 1. Any illegal meeting or unauthorized demonstration or any meeting or demonstration that goes beyond the limits or conditions laid down by the government authority may be dissolved by the forces responsible for the maintenance of order. Before such a step is taken, the participants in the meeting or demonstration shall be summoned, three consecutive times and at sufficiently long intervals, to disperse.

2. When a demonstration, whether or not it has been legally authorized, becomes disorderly, only one warning need be give before the police disperse it. No warning shall be required if the police have been attacked by the demonstrators, provided that no shots shall be fired on the demonstrators, even if they persist in their resistance, unless a warning has been given, save where the demonstrators produce arms or fire on the police.

Art. 15. The government authority shall take the necessary steps to ensure that there is no breach of the peace in connexion with authorized meetings or demonstrations.

A meeting or demonstration shall in every case be deemed to be authorized it if is held by an organization mentioned in article 16, second paragraph, of the Charter of the Spanish People.

Art. 16. An association which promotes or carries on any activity prejudicial to public order or which organizes illegal meetings or demonstrations shall be suspended by the government authority, and the directors and executive officers thereof shall be liable to the applicable penalties, without prejudice to prosecution by the competent judicial authority.

. . .

CHAPTER III

STATE OF EMERGENCY

Art. 25. 1. When public order has been disturbed and cannot be restored by normal means, the Government may, by virtue of a legislative decree, declare a state of emergency in all or part of the national territory and assume the emergency powers laid down in this chapter. The Government may proceed in the same manner if the magnitude of a public calamity, catastrophe or disaster makes it advisable to do so.

2. The aforementioned legislative decree shall specify which of the legal guarantees recognized by the Charter of the Spanish People shall be suspended under article 35 of that Charter, and if all such guarantees are not suspended immediately, they may be suspended by successive legislative decrees enacted as and when appears desirable.

Art. 26. 1. The Government shall forthwith give notice to the Cortes of the legislative decrees mentioned in the preceding article and of the legislative decree by which normal conditions are restored, the procedure laid down in article 10, item 3, of the Act of 26 July 1957 not being compulsory.

2. If it has not been possible for normal conditions to be restored within the three months following the declaration of the state of emergency, the Government shall inform the Cortes of the reasons for which it would be desirable to prolong the state of emergency.

Art. 27. Any measures which may be adopted for the partial or total restriction of the guarantees suspended by the legislative decrees declaring the state of emergency shall in each case remain in force only for so long as is required in the interest of public order.

Art. 28. The government authority may under such decrees or legislative decrees as are enacted:

(*a*) Prohibit pedestrian and vehicular traffic; congregating or stopping on the public highway; and — either unconditionally or subject to proof of identity and the furnishing of particulars of the route of travel — the movement of persons from place to place;

(*b*) Designate certain areas as protection or security areas and specify the conditions for remaining therein, and close certain areas to persons who might impede the action of the police;

(*c*) Place any person under arrest if such action is considered necessary for the maintenance of public order;

(*d*) Require that two days' notice must be given of any change of domicile or residence;

(*e*) Provide for the temporary removal from their area or place of residence of persons who, because of their previous history or behaviour, may be suspected of subversive activities;

(*f*) Assign the persons mentioned in the preceding paragraph a place of residence in a specified area or territory of the nation, in harmony, so far as possible, with the personal status of the individual.

These measures shall be discontinued as soon as the circumstances which made them necessary have ceased to exist.

Art. 29. The government authority may exercise previous censorship of the press, publications of all kinds, radio and television broadcasts and public entertainments and may suspend the same if they are likely to be prejudicial to public order.

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SUDAN

AMENDMENTS TO THE DEFENCE OF THE SUDAN (GENERAL) REGULATIONS, 1958

The following were among the amendments made during 1959 to the Defence of the Sudan (General) Regulations, 1958:[1]

(i) The Defence of the Sudan (General) Regulations Amendment 1959 (1959 L.R.O. No. 4)[2] added the following new regulation after regulation 33:

"33A. *Employment of Idle Persons*

Where the performance of any work is necessary or expedient for the public welfare, a competent authority may order any idle person to report at any fixed time and place and perform any such work, being work reasonably suitable to his physical and mental capacity, at such place and upon such reasonable conditions as to payment, hours of work, rest, and otherwise as the competent authority may specify.

Explanation

In this regulation, "idle person" means any able-bodied person who wilfully neglects or refuses to maintain himself or his family, or who begs in public, or who has no ostensible means of subsistence and cannot give a satisfactory account of himself."

(ii) The Defence of the Sudan (General) Regulations (Amendment No. 3) 1959 (1959 L.R.O. No. 13):[3]

(*a*) Deleted the full stop at the end of regulation 34 (1)[4] and added the words "or the Defence of the Sudan Act, 1958."

(*b*) Added the following proviso after regulation 34 (2):

"Provided that it shall not be necessary to forward a person so arrested to a magistrate if the Minister of the Interior is of the opinion that it would be prejudicial to the public security or the defence of the Sudan to do so; and the Minister of the Interior may, in such case, order the detention of such person for a period not exceeding one month in any place specified by him."

(*c*) Added the following regulation after regulation 34:

"35. *Power to remove Suspects from Specified Areas*

(1) Where a person is suspected of acting, or of having acted, or of being about to act in a manner prejudicial to the public safety or the defence of the Sudan, the Minister of the Interior may by order prohibit him from residing in or entering any area or areas which may be specified in the order, and upon the making of such an order the person to whom the order relates shall, if he resides in any specified area, leave that area within such time as may be specified by the order, and shall not subsequently reside in or enter any area specified in the order. Any order made as aforesaid may require the person in respect of whom it is made to comply with such conditions as to residence, reporting to the police, restriction on movements or otherwise as may be imposed on him.

(2) Any such order may further require the person to whom the order relates to report for approval his proposed place of residence to the police and to proceed thereto and report his arrival to the police within such time as may be specified in the order, and not subsequently to change his place of residence without leave of the Minister of the Interior.

(3) The Minister of the Interior may delegate his powers under the preceding paragraph to any person."

(iii) The Defence of the Sudan (General) Regulations (Amendment No. 4) 1959 (1959 L.R.O. No. 21)[5] added, after the words "in any place specified by him" in regulation 34 (2) as amended, the following proviso:

"Provided further that the Minister of the Interior may at the end of the month order the detention of such person for a further period or periods as specified by him from time to time as long as the circumstances under which the person has first been detained still exist."

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[1] See *Yearbook on Human Rights for 1958*, pp. 209-211.

[2] *Legislative Supplement to the Republic of the Sudan Gazette No. 930. Dated 15th February 1959. Supplement No. 1: General Legislations.*

[3] *Legislative Supplement to the Republic of the Sudan Gazette No. 932. Dated 15th April 1959. Supplement No. 1: General Legislations.*

[4] Before amendment, regulation 34 read as follows: 34. (1) Any policeman, any member of the armed force of the Sudan acting in his duty as such, and any other person authorized by a competent authority may arrest without warrant any person whom he has reasonable ground for suspecting to have committed an offence under these regulations. (2) Any person so arrested shall be forwarded as soon as practicable to the magistrate competent to take cognizance of the offence.

[5] *Legislative Supplement to the Republic of the Sudan Gazette No. 934. Dated 15th June 1959. Supplement No. 1: General Legislations.*

SUDANESE REPUBLIC

CONSTITUTION OF 23 JANUARY 1959[1]

PREAMBLE

. . .

The Sudanese Republic solemnly reaffirms the rights and freedoms of man and of the citizen consecrated by the Declaration of Rights of 1789, as supplemented by the Universal Declaration of Human Rights of 10 December 1948, and by the preambles to the constitution of 5 October 1958 and the constitution of the Federation of Mali.

It recognizes the right of all men to work and rest, the right to strike, and the freedom to join co-operative or trade-union organizations of their choice in order to defend their occupational interests. Work is also a duty for every Sudanese citizen, but no person may be forced to do specific work except for the performance of an exceptional public service in the general interest on a basis of complete equality and in the conditions determined by law.

The Sudanese Republic shall provide the necessary conditions for the harmonious development of the individual and the family in a modern society and with due respect for the African personality.

Title I

SOVEREIGNTY

Art. 1. The Sudanese Republic is indivisible, democratic, secular and social.

It shall ensure equality before the law for all persons, without distinction as to origin, race, sex or religion.

. . .

Its principle shall be government of the people, by the people and for the people.

Art. 2. Sovereignty shall be vested in the people as a whole. No section of the people or any individual may assume the exercise of sovereignty.

The people shall exercise their sovereignty through their representatives and, in certain cases, by way of referendum. The vote shall be universal, equal and secret. Suffrage may be direct or indirect, in the conditions established by the present constitution, the constitution of 5 October 1958,[2] or the constitution of the Federation of Mali.[3]

All citizens of the Federation of Mali of both sexes who are of full age and in full possession of their civil and political rights, and, subject to reciprocity, all citizens of the community fulfilling the same conditions, shall be entitled to vote in the conditions established by law.

Art. 3. The political parties and groups shall in the ordinary course assist in the exercise of the franchise.

They may be formed and engage in their activities freely, subject to respect for democratic principles and for the interests and the laws and regulations of the State.

Art. 4. Any act of racial or ethnic discrimination and any regionalist propaganda which might threaten the internal security of the State or the territorial integrity of the republic shall be punished by law.

. . .

Title III

THE PARLIAMENT

Art. 18. The Parliament shall be composed of a single Assembly, known as the Legislative Assembly. The Assembly shall meet at Bamak. The deputies to the Legislative Assembly shall be elected by direct universal suffrage for a term of five years.

. . .

Art. 20. A compulsory mandate shall be null and void.

. . .

Title VI

THE JUDICIAL POWER

Art. 43. The Sudanese Republic shall ensure and guarantee the independence of the judiciary, which is the guardian of personal freedom. . . .

Title IX

AMENDMENT

. . .

Art. 50. . . .

The republican form of the government shall not be subject to amendment.

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[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République soudanaise* of 31 January 1959. Translation by the United Nations Secretariat.

On 22 September 1960, the Legislative Assembly of the Sudanese Republic passed a law changing the name of the former Sudanese Republic to the Republic of Mali.

[2] The Permanent Representative of the Republic of Mali has informed the Secretary-General that the constitution of 5 October 1958 was altered as a result of the Franco-Mali agreements.

[3] The Federation of Mali went out of existence in September 1960.

SWEDEN

NOTE[1]

I. LEGISLATION

1. On 28 May 1959, Parliament adopted an Act with certain provisions regarding treatment in mental hospitals. Anyone whose psychological state is such as to indicate that treatment in a mental hospital could be useful may be admitted with the permission of the competent medical officer without the otherwise relevant rules of detaining the patient against his wish becoming applicable. Only if the doctor considers the patient's being outside the hospital dangerous to the safety of other people or to the patient himself may the latter be detained, for not more than ten days, for further investigations. At the end of this period the patient must either be discharged or made subject to the general rules of admission including the right of compulsory detention. These rules are combined with various measures to protect the personal safety and liberty of the patient.

2. General compulsory school attendance begins in the year in which children reach the age of seven years, and lasts for as many years as are compulsory in the municipality where the child lives. In most municipalities the length of compulsory school attendance is seven or eight years. Since the decision of Parliament in 1950 on the gradual change to a nine-year compulsory school attendance, this change has already been carried out in more than one-fifth of the school districts. It is estsimated that the reform will have been completed by the late nineteen-sixties or the early nineteen-seventies.

Parents wishing to send their children to private schools still have the right to do so.

The state is responsible for the high schools, attendance at which is voluntary. There are no fees in these schools. Pupils wishing to attend one of the high schools but having no such schools available to them at the place where they live obtain certain state allowances to defray the costs of the daily journeys and meals or full board at the place where the school is situated.

Foreign citizens living in Sweden enjoy the same rights as Swedes as regards the right to attend state schools and the benefits mentioned above.

3. On 5 June 1959, an Act was passed by Parliament introducing a special procedure regarding extradition of criminals to Denmark, Finland, Iceland and Norway. Compared with the usual legislation on extradition, the new act implies certain alleviations both as to the conditions of extradition and the procedure. Among the more essential changes it is to be noticed that with the exception of political crimes a Swedish citizen may, on certain conditions, be extradited. Persons of other nationality than Swedish can be extradited even on account of political crimes. A simplified procedure may, with certain exceptions, be applied when the person whose extradition is under consideration consents to the extradition. The decision in these cases is taken by the prosecutor.

The new Act is intended to be applied only under normal political circumstances, and to be put out of force if this condition no longer exists.

4. 1 January 1960 marks a turning-point in the history of social security in Sweden with the coming into force of a new Pension Act. The new legislation is significant because of the change in the principles underlying the pension system. This change completes a development within the social insurance system, which will most probably result in an eventual amalgamation of its different branches.

A. Underlying Principles

The present phase of the development of the Swedish pension system implies a combination of the pension plans introduced in 1913 and 1946 respectively — though on a higher level. Over and above a tax-financed, flat rate, basic pension, a supplementary pension, financed by premia and related to previous income, will be paid to all employees and self-employed persons at the age of sixty-seven or, in case of incapacity for work, at a lower age. Survivors' pensions are on the same pattern. The level of pensions will be about the same as that of civil servants — about two-thirds of the income earned during the best of the active years.

The idea underlying the level of pensions is that the pension system should provide security corresponding to the standard of living obtained by the individual through his work. The principle has been applied for some forty years in workmen's compensation (industrial injuries insurance) and, since 1955, also in compulsory health insurance. In the state-subsidized unemployment insurance, organized by the trade unions, a similar pattern has been adopted.

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

B. SOME FEATURES OF THE NEW PENSION SYSTEM

As indicated above, the new pension system consists of two parts pending probable amalgamation: the basic national pensions already in force, and the new supplementary pensions.

(i) *Survey of Basic National Pensions*

The present national pensions, which will form the basis of the new pension system, consist of the following:

(1) Old-age pensions, payable to all Swedes resident in Sweden, at the age of sixty-seven, regardless of income. At present these pensions amount to 2,750 kronor a year for a single person or for a married pensioner whose wife or husband does not qualify for a national pension, and to 4,350 kronor for a married couple, both over sixty-seven years, including cost-of-living increments.

(2) Disability pensions, which are subject to an income test and payable before the age of sixty-seven at an amount that may equal but not exceed the old-age pension. The aforementioned income test is expected to be abolished in the near future.

(3) Widows' pensions, payable before the age of sixty-seven without any income test if at the time of the husband's death the wife has reached the age of fifty, and the couple have been married for at least five years, or the widow has children under the age of sixteen, at an amount of 2,750 kronor (including cost-of-living increments) — i.e., the amount of the old-age pension payable to a single old-age pensioner. If the widow has no children under the age of sixteen and if, at the time of the husband's death, the widow has not reached the age of fifty, the maximum pension amount is reduced by one-fifteenth for each year down to the age of thirty-six. When the youngest child of a widow under fifty reaches the age of sixteen, the widow's pension rights are calculated on the basis of her age when the child reached the said age.

(4) Wife's supplements, payable before the age of sixty-seven, subject to an income test, to the wife of a national pensioner, if she has reached the age of sixty, and the couple has been married for at least five years. The maximum amount payable is 2,175 kronor. When the wife becomes eligible for a wife's supplement, her husband's pension is reduced so that their total income from pensions is then a maximum of 4,350 kronor — i.e., equivalent to that of a married couple, both over sixty-seven years.

(5) Child pensions, payable without income test to each child under the age of sixteen at an amount of 1,400 kronor if both parents have died, and 1,000 kronor if the father or mother has died.

Blind persons, all of whom are entitled to disability pensions, and disabled persons in need of constant care receive 1,200 kronor a year in addition to their national pensions. This supplement is not subject to any income tax.

Municipal state-subsidized housing supplements are extended to all categories of national pensioner in nearly all municipalities. These subsidies are always subject to an income test in accordance with rules fixed by the government, but their amounts and the provisions governing their extension vary considerably between municipalities.

(ii) *Supplementary Pensions*

The legislation on supplementary pension insurance provides for old-age pensions, disability pensions and survivors' pensions, all these benefits being added to corresponding benefits payable under the basic national pension system.

The insurance covers all Swedish citizens who have reached the age of sixteen, as well as aliens of this age who are domiciled in Sweden. The right to pensions and the payment of premia are based on earned income, both income earned through employment and income earned through self-employment, while income from proceeds of capital is disregarded.

Adherence is compulsory, but two kinds of exemption with strictly circumscribed effects are permitted:

(1) Anyone may exempt himself from supplementary pension insurance with regard to income earned through self-employment, but would remain covered for income earned simultaneously or subsequently through employment; (2) employees can be exempted only by their trade union, and provided that the union and an employer's organization or an employer conclude a collective contract on pensions meeting certain basic requirements. A collective contract resulting in exemption can, however, be concluded only until 1 July 1961 — i.e., within eighteen months after the date of entry into force of the legislation, and must be deposited with the central administrative authority in charge of pension insurance.

(*a*) *Old-age Pensions*

Supplementary old-age pensions under the new insurance system become payable at sixty-seven years of age, simultaneously with the basic national old-age pensions. The general level of total old-age pensions (basic national pension plus supplementary pension) will amount to approximately two-thirds of the average annual earnings of the beneficiary during his or her fifteen best years. In the initial period, twenty years with a pension-earning income will be required to earn a full supplementary pension, one-twentieth of the full amount being deducted for each missing year. The twenty-year requirement will successively be increased to thirty years, and consequently one-thirtieth will be deducted for each missing year. At the beneficiary's request, the payment of supplementary pensions can begin at sixty-three years, or be postponed until seventy years, with a reduction or increase in its amount.

(*b*) *Invalidity Pensions*

Supplementary disability pensions payable in case of total disability are equal to the full supplementary old-age pension, which the beneficiary would have received at sixty-seven years of age. In case of serious partial disability, 60 per cent of this amount is granted. The computation is based on certain assumptions concerning the income the beneficiary would have earned in the following years, had he not been disabled by illness or accident. (The rules concerning partial disability pension are provisional; a new system for measuring the degree of disability and relating benefits thereto is under preparation.)

(*c*) *Survivors' Pensions*

Pensions to surviving dependants — i.e., to widows and children under nineteen years of age — are set at certain percentages of the supplementary old-age pension which the deceased received or would have received. One survivor (widow or child) receives 40 per cent, two survivors 50 per cent, etc., a maximum of 80 per cent being paid to five or more dependants.

(iii) *Financing of Supplementary Pensions*

Employee premia will be paid by the employers. The self-employed will pay their own premia. No government subsidies are foreseen. The premia paid by employers will amount to 1.9 per cent of payrolls in 1960, gradually rising to 4.5 per cent in 1964; subsequent payment will be subject to legislation, but with an expected ceiling of about 10 per cent.

The method of financing can be described as a "pay-as-you-go plan", which means that annual premia and the yield of the fund are calculated to meet the annual expenditure for benefits when the system will have been in operation long enough for large numbers of persons to qualify for pensions. The "pay-as-you-go" principle has been modified, however, by the collection of premia from the date of entry into force of the legislation (1 January 1960) and the accumulation of premia in a fund during the initial period when expenditure will be non-existent or low. The first pensions become payable in 1963.

II. INTERNATIONAL AGREEMENTS[1]

1. On 16 January 1959 at Buenos Aires, Sweden signed an agreement with Argentina concerning military service.

2. On 18 April and 28 May 1959, an exchange of notes between Sweden and Belgium took place in Stockholm regarding exchange of certificates of civil status.

3. On 15 October 1959, the Swedish instrument of ratification of the Wages, Hours of Work and Manning (Sea) Convention, Geneva, 1958, was deposited with the International Labour Organisation.

4. On 8 September 1959, an agreement was signed by Denmark, Finland, Iceland, Norway and Sweden according to which persons insured against unemployment in one of the countries enjoy the benefit of premia paid and periods of employment in one of the other countries. The agreement comes into operation on 1 January 1961.

[1] See also p. 373.

SWITZERLAND

NOTE[1]

I. CONFEDERATION

A. LEGISLATION

Social Security

The Federal Act respecting disability insurance dated 19 June 1959[2] provides for two classes of benefit:

1. Rehabilitation benefits;

2. Pensions, for those insured persons for whom rehabilitation is either impossible or possible only to a limited extent.

While pensions constitute the most substantial financial benefit, the Act lays prime emphasis on the rehabilitation benefits, designed to place the disabled person in a position to maintain himself wholly or partially by his own efforts. The intention of the legislation is to encourage and strengthen the disabled person's spirit of independence and help him to realize that he is a useful member of society, so that he may lose his feeling of inferiority and be enabled to organize his life independently.

Rehabilitation benefits are medical and vocational in type (vocational guidance, basic vocational training, resettlement, employment service, special schooling, and the provision of appliances.)

The insured person is entitled to rehabilitation benefits, which are provided irrespective of his financial circumstances.

He has a free choice of doctors, druggists, hospitals and sanatoria; he is also, in principle, free to choose between persons excercising a para-medical profession.

Entitlement to pension. An insured person is entitled to a half-pension if he suffers from less than 50 per cent disability. If his disability is more than 66⅔ per cent, he receives the whole of the pension. The disabled man's wife is entitled to an additional pension (40 per cent), and the children are also entitled to a pension (40 or 60 per cent).[3]

A further federal Act of 19 June 1959 amended that of 20 December 1946 on old-age and survivors' insurance.[4]

Patents

A federal order of 8 September 1959 provided that the fourth chapter (dealing with examination of applications for patents) of the federal Act of 25 June 1954 on patents was to enter into force on 1 October 1959. The same chapter of the federal Act was implemented by regulations, also of 8 September 1959. Regulations of 14 December 1959 implemented the first and second chapters of the Act, dealing with conditions required for the acquisition of a patent, effects of the granting of a patent and procedure to be followed in acquiring a patent.

B. INTERNATIONAL AGREEMENTS

By a federal order of 5 October 1959, the Federal Assembly approved the convention on social security signed on 4 June 1959 by Switzerland and Czechoslovakia.

By a federal order of 9 June 1959 the Federal Assembly approved the International Wheat Agreement concluded at Geneva on 10 March 1959.

II. CANTONS

Political Rights of Women

In Vaud, an order of 4 February 1959 proclaimed the result of a referendum, approving amendments to the constitution of Vaud of 1 March 1885 having the effect of granting political rights to women. The Act of 17 November 1948 on the exercise of political rights[5] was amended by an Act of 18 May 1959 so as to change article 2 and add an article 2 *bis*, as follows:

"*Art. 2.* The following shall be deemed to be qualified citizens: citizens of Vaud and citizens of the Confederation, whether men or women, who have completed their twentieth year, do not exercise their political rights in any other state of the Confederation, have their civil domicile (art. 23 ff. of the Civil Code) in the Canton and, in the case of citizens of the Confederation, possess a permit of residence or sojourn.

"This provision is without prejudice to the exceptions specified in the following article:

[1] This note is based upon texts and information received through the courtesy of the Permanent Observer of Switzerland to the United Nations.

[2] The French text of this Act and an English translation have appeared in *Legislative Series* 1959 — Swi. 1, published by the International Labour Office. Translation by the United Nation Secretariat.

[3] Summary kindly furnished by the Permanent Observer of Switzerland to the United Nations. Translation by the United Nations Secretariat.

[4] The French text of this Act and an English translation have appeared in *Legislative Series* 1959 — Swi. 2, published by the International Labour Office.

[5] See *Yearbook on Human Rights for 1949*, pp. 201-2.

"*Art. 2bis.* The following shall not be deemed to be qualified citizens:

(*a*) Persons placed under disabilities (arts. 369 to 371 of the Civil Code);

(*b*) Persons debarred from the exercise of their civic rights under a judgement based on criminal law."

Constitutional amendments granting political rights to women were also approved by a referendum in Neuchâtel on 26-27 September 1959.

Criminal Procedure

In Aargau, an ordinance of 27 October 1959 governed criminal procedure in the case of minors.

Conditions of Work

A Federal Act of 28 September 1956 permitted the cantons to extend the scope of collective agreements.[1] Acting under this enactment, in 1959 Vaud adopted two orders, one of 2 October affecting marble-workers and the other of 29 December affecting horticultural workers.

Health and Social Security

Among other cantonal legislation adopted in 1959, mention may be made of the decree of 23 June 1959 on the application of the Federal Act of 16 March 1955 on the protection of waters against pollution, of Valais, and the Act of 25 March 1958 on sickness insurance, of Neuchâtel, which entered into force on 1 January 1959.

[1] See *Yearbook on Human Rights for 1956*, p. 211.

THAILAND

HUMAN RIGHTS IN 1959[1]

It may be recalled[2] that, following the revolution in Thailand of 20 October 1958, governmental power resided for about three months in the Revolutionary Party. Thereafter, upon the proclamation of the interim constitution of 1959, the Revolutionary Party's power came to an end, and legislation has been effected by the new Constituent Assembly. It is the Government's policy to replace the interim constitution with a permanent one. A proper understanding of Thailand's constitutional experience, however, requires a careful study of the present condition of the country.

In a declaration, the Constituent Assembly took cognizance of a political truth that "the people have to be prepared for democracy, a pearl which the people must first learn to appreciate". The need to build up a cultural basis as a prerequisite to true democracy is generally recognized in this country. With this end in view, a comprehensive series of reforms has since been undertaken.

Indeed, Thailand is now in a crucial stage of transformation, both economic and social. In the economic field, the Government takes much initiative in promoting industrial and commercial enterprises. This is most apparent in Bangkok where new construction works have been taking place. Many new roads and bridges are being constructed. Modern buildings, public and private, begin to take the place of the old. Slum areas are being cleared, and many other improvements are giving new life to the city. The economic effect of all these activities is naturally to help continuously to create more employment among the people.

In the social field, it is the constant policy of the Government to promote social welfare. A new ministry for this particular purpose is to be set up in due course. Along with preventive measures, the necessary suppressive ones have been applied. Undesirable trades have been banned, in particular opium smoking shops and licensed prostitution. Prohibition is combined with measures to cure opium addicts and to provide vocational training for prostitutes. Hooliganism, which is one of the chronic diseases of society, has been severely suppressed. Attempts have similarly been made to provide the hooligans with a good education as well as vocational training. By and large, steps have been taken in the direction of creating a good moral basis for society.

Apart from this, in 1959, the Thai Government was able to solve a delicate problem regarding Viet-Namese refugees in the north-eastern provinces. In this matter, the Government showed beyond question its respect for the principle of self-determination. The refugees were requested under no pressure whatever to choose the country to which they wanted to be repatriated. As is well known, these refugees chose the Republic of North Viet-Nam. Since, however, the Thai Government has no diplomatic relation with the Republic of North Viet-Nam, the task of repatriation has been placed in the hands of the Thai Red Cross with the co-operation of the North Viet-Nam Red Cross. For this purpose, arrangements have been made with special ships offering the best possible conditions in the matter of food and health.

[1] Note kindly furnished by the Minister of Foreign Affairs of Thailand.

[2] See *Yearbook on Human Rights for 1958*, p. 217.

CONSTITUTION OF THE KINGDOM OF THAILAND of 28 January 1959[1]

Art. 1. The sovereign power emanates from the Thai people.

. . .

Art. 19. Judges are independent in conducting trials and giving judgements in accordance with the law.

Art. 20. In the case where no specific provisions of the present constitution are applicable, decision shall be based on Thai constitutional practices.

. . .

[1] Published in the *Royal Thai Government Gazette*, of 7 February 1959. Text kindly furnished by the Acting Permanent Representative of Thailand to the United Nations.

TUNISIA

REPORT ON HUMAN RIGHTS WITHIN THE COMPETENCE OF THE INTERNATIONAL LABOUR ORGANISATION[1]

Since its admission to the International Labour Organisation in June 1956, Tunisia has, in the space of four years, ratified twenty-three international labour conventions, the most important of which have been registered by the ILO during the last three years.

Tunisia was one of the countries which ratified Convention No. 87 concerning freedom of association and protection of the right to organize. The ratification of this convention was registered by the Director-General of the International Labour Office on 11 June 1957.

In Act No. 59-4 of 10 January 1959, to make rules for industrial associations in Tunisia,[2] the Tunisian legislators brought the national legislation into line with the international standards laid down in Convention No. 87, and with the provisions of Article 23 (4) of the Universal Declaration of Human Rights.

The Act of 10 January 1959 abolished the possibility of winding up industrial associations by administrative methods. This eventuality had been expressly provided for by the decree of 16 November 1932, which has now been repealed. Industrial associations may now only be wound up by judicial methods.

Under the terms of paragraph 1 of the new Act, workers or employers or persons engaged in the same occupation, in similar trades or allied occupations connected with the production of a particular article or in the same liberal profession, *have the right freely to form industrial associations.*

Joining of industrial associations is entirely free. This right is extended to a minor over sixteen years of age, if his father, mother or guardian does not object.

Under the new Act, the leaders of professional associations need not be Tunisians. An alien may be elected to a responsible post in an industrial association if he has obtained the authorization of the Secretaries of State concerned. This formality was provided as a safeguard in order to make it possible to ensure that the activities of the person concerned are not such as to prejudice national interests, and that these activities are likely to make a useful contribution to industrial relations.

By Act No. 59-94 of 20 August 1959, the Tunisian Government ratified Convention No. 111 concerning discrimination in respect of employment and occupation. By this ratification, which was registered by the International Labour Office on 14 September 1959, Tunisia wished publicly to recognize the principle of equal rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

By adopting the international standards embodied in this convention, Tunisian legislation has drawn much closer to the principles affirmed in the Philadelphia Declaration to the effect that "all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being" and in the Universal Declaration of Human Rights, article 2 of which stipulates that "everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political opinion . . ." etc.

Within the international labour organizations, the Tunisian delegation has always worked to promote the international acceptance of the principles of universal equality before the law and of non-discrimination based on race, colour, sex, religion, political opinion, national or social origin. For that reason, Tunisia was one of the first countries to ratify this convention, which embodies not only definitions and principles, but also formal and specific undertakings.

Another equally important convention has been speedily ratified by Tunisia: Convention No. 105 concerning the abolition of forced labour, adopted by the International Labour Conference in 1957. Tunisian legislation does not allow any forced or compulsory labour. In the present state of the national legislation, there is no system of forced labour in Tunisia which is likely to threaten the fundamental rights of the human person.

Thus it is clear that Tunisia wished publicly to manifest its desire to conform to the principles embodied in the Universal Declaration of Human Rights and, in particular, to those specified in articles 4 and 23 of this instrument, which proclaim that no one shall be held in slavery or servitude, that slavery and the slave trade shall be prohibited "in all their forms" (article 4) and that everyone has the right "to free choice of employment" and to just and favourable conditions of work (article 23).

Tunisia has ratified four International Labour Con-

[1] Report kindly furnished by the Secretariat of State for Foreign Affairs of Tunisia. Translation by the United Nations Secretariat.

[2] See p. 287.

ventions concerning special protection for women and children:

(1) Convention No. 6 concerning the night work of young persons employed in industry, 1919, ratified by an Act of 23 December 1958 and registered by the International Labour Office on 12 January 1959.

(2) Convention No. 4 concerning employment of women during the night, 1919.

(3) Convention No. 89 concerning night work of women employed in industry (revised), 1948.

(4) Convention No. 45 concerning the employment of women on underground work in mines of all kinds, 1935.

The last three conventions were ratified by the decree of 25 April 1957 and registered by the Director-General of the International Labour Office on 15 May 1957.

Furthermore, it should be pointed out that Convention No. 52 concerning annual holidays with pay, 1936, was also ratified by Tunisia by the decree of 25 April 1957 and registered by the International Labour Office on 15 May 1957.

The national legislation on holidays with pay has conformed to international standards since 1946, when the Tunisian legislators re-drafted the legislation on holidays with pay.

The length of the working day in the different sectors of the national economy and the granting of holidays with pay are so regulated as to be entirely in accordance with article 24 of the Universal Declaration of Human Rights.

For general information, we would point out that Tunisia has ratified other conventions of no less importance during this three-year period.

Among these, mention may be made of:

Convention No. 12 concerning workmen's compensation in agriculture, 1921;

Convention No. 14 concerning the application of weekly rest in industrial undertakings, 1921;

Convention No. 17 concerning workmen's compensation for accidents, 1925;

Convention No. 98 concerning the application of the principles of the right to organize and to bargain collectively;

Convention No. 95 concerning the protection of wages, 1949; and

Convention No. 106 concerning weekly rest in commerce and offices.

CONSTITUTION OF THE REPUBLIC OF TUNISIA of 1 June 1959[1]

. . .

PREAMBLE

In the name of God, the Merciful and the Compassionate, we, the representatives of the Tunisian people, meeting as a Constituent National Assembly,

HEREBY PROCLAIM that the people, which has freed itself from foreign domination thanks to its close-knit unity and the struggle which it has waged against tyranny, exploitation and backwardness, is resolved:

To consolidate the unity of the nation and to remain faithful to the human values common to the peoples which cherish human dignity, justice and freedom and which are working for peace, progress and free co-operation among nations;

To remain faithful to the teachings of Islam, the unity of the Greater Maghreb, its membership in the Arab family, co-operation with the peoples of Africa in the building of a better future, and solidarity with all peoples fighting for justice and freedom;

To establish a democracy founded on the sovereignty of the people and supported by a stable political system based on the separation of powers.

WE PROCLAIM that the republican system offers the best guarantee of respect for human rights and of the preservation of the equality of all citizens with regard to rights and duties; that it constitutes the most effective means of guaranteeing the prosperity of the nation, through the economic development of the country and the exploitation of its wealth for the benefit of the people, as well as the protection of the family and the right of every citizen to work, health and education.

We, the representatives of the free and sovereign people of Tunisia, hereby ESTABLISH, by the grace of God, the present constitution.

Part I

GENERAL

Art. 1. Tunisia is a free, independent and sovereign State. Its religion is Islam, its language Arabic and its regime a republic.

. . .

Art. 3. Sovereignty vests in the Tunisian people, which shall exercise it in accordance with the constitution.

. . .

Art. 5. The Republic of Tunisia guarantees the dignity of the individual and freedom of conscience,

[1] Arabic text promulgated by Act. No. 57 of 1959 and published in the *Official Journal*, 102nd year, No. 30, of 1 June 1959. Translation by the United Nations Secretariat.

and protects the free exercise of religion, provided that it does not disturb public order.

Art. 6. All citizens are equal with respect to their rights and duties. They are equal before the law.

Art. 7. Citizens shall exercise all their rights in the manner and the conditions prescribed by law. The exercise of these rights may not be restricted except by a law enacted to protect the rights of others, safeguard public order and national defence, and promote economic and social development.

Art. 8. Freedom of opinion, expression, the press, publication, assembly and association is guaranteed and shall be exercised in accordance with the law.

The right to form trade unions is guaranteed.

Art. 9. Inviolability of the home and secrecy of correspondence are guaranteed, save in the exceptional cases prescribed by law.

Art. 10. Every citizen has the right to move freely within the country, to leave the country, and to choose his domicile within the limits of the law.

Art. 11. No citizen may be expelled from or prevented from returning to his homeland.

Art. 12. Everyone charged with a penal offence shall be presumed innocent until proved guilty at a trial at which he has had all the guarantees necessary for his defence.

Art. 13. Penalties are personal and may be imposed only under a law enacted prior to the commission of the offence.

Art. 14. The right to own property is guaranteed. It shall be exercised within the limits of the law.

. . .

Art. 17. The extradition of political refugees is prohibited.

Part II

THE LEGISLATIVE POWER

Art. 18. The people shall exercise legislative power through a representative assembly named the "National Assembly".

Art. 19. The National Assembly shall be elected by free and direct general elections with secret ballot in accordance with the procedure and the conditions prescribed by law.

Art. 20. Every citizen who has possessed Tunisian nationality for not less than five years and is over twenty years of age shall be an elector.

Art. 21. Every elector born of a Tunisian father and over thirty years of age shall be eligible for election to the National Assembly.

. . .

Part III

THE EXECUTIVE POWER

Art. 37. The President of the republic is the Head of the State. He shall be of the Islamic religion.

. . .

Art. 39. Every Tunisian who, together with his father and grandfather, has remained Tunisian without interruption, is over forty years of age and is in possession of all his civic rights shall be eligible for election to the presidency of the republic. . . .

Art. 40. The President of the republic shall be elected for a term of five years in free and direct general elections with secret ballot by the electors specified in article 20. The President of the republic shall not be eligible for re-election more than three times in succession.

. . .

Part IV

THE JUDICIARY

. . .

Art. 53. Judges are independent; the only authority above them in the administration of justice is the law.

. . .

Part IX

REVISION OF THE CONSTITUTION

Art. 60. The President of the republic or not less than one-third of the members of the National Assembly may request the revision of the constitution, provided that this does not affect the republican system of the State.

. . .

Part X

TRANSITIONAL PROVISIONS

Art. 63. This constitution shall be sealed and promulgated by the President of the republic on 25 Zu'lkadah 1378 and 1 June 1959 at a meeting of the Constituent National Assembly, which shall remain in office until the National Assembly has been elected and installed.

Art. 64. This constitution shall enter into force on the date of its promulgation in accordance with article 63.

. . .

ACT No. 59-86 OF 30 JULY 1959 (24 MOHAREM 1379) CONCERNING THE ELECTION OF THE PRESIDENT OF THE REPUBLIC AND OF THE MEMBERS OF THE NATIONAL ASSEMBLY[1]

Art. 1. The purpose of this Act is to lay down the provisions for the election of the President of the republic and of the members of the National Assembly.

Title I

COMMON PROVISIONS

Chapter I. — *The Electorate*

Art. 2. Suffrage shall be universal, free, direct and secret.

Art. 3. All Tunisian men and women who have attained the age of twenty years (Gregorian), have been Tunisian nationals for at least five years, are in possession of their civil and political rights and are not under any legal disability, shall be entitled to vote.

Art. 4. No person may be enrolled on the register of electors if:

1. He has been convicted of a crime;
2. He has been convicted of an offence and sentenced to an unsuspended term of imprisonment of more than three months or to a suspended term of more than six months;
3. He is of unsound mind and has been committed to an institution.

Art. 5. Members of the armed forces and the National Guard shall not exercise the franchise during the period of their service or their duties.

Chapter II. — *Registers of Electors*

Art. 6. No person may be enrolled in more than one register of electors.

. . .

Chapter III. — *Propaganda*

Art. 22. Public election meetings shall be free. Notice thereof must be given to the governor or the délégué at least twenty-four hours in advance.

Art. 23. Every meeting shall have a committee [bureau] consisting of not less than three persons. The committee shall be responsible for maintaining order, preventing any violation of the law, ensuring that the meeting preserves the nature ascribed to it in the notice, and prohibiting any speech that is contrary to public policy [ordre public et bonnes mœurs] or that contains an incitement to action which is a statutory crime or offence.

Art. 24. A person representing the authorities may be present at the meeting. He may dissolve the meeting if asked to do so by the committee or if any acts of violence occur.

Art. 25. Propaganda shall be subject to the provisions of the decree of 9 February 1956 (26 Djoumada II 1375) relating to printing, bookselling and the press.

Art. 26. With respect to ballots, the formality of depositing printed matter shall be dispensed with.

Art. 27. No ballots, circulars or other documents shall be distributed on the day of the election.

Art. 28. No public official may distribute ballots, statements of policy or candidates' circulars.

Art. 29. During the period of the electoral campaign, special places shall be set aside by the administration for the display of election posters.

At each of these places an equal amount of space shall be given to each candidate or to each list of candidates.

Notices connected with the election may not be posted at any other place or in the space assigned to other candidates.

Art. 30. Space shall be assigned in the order of receipt of applications, which must be made not later than two weeks before the day of the election.

Art. 31. Candidates shall be permitted to use Radiodiffusion Télévision Tunisienne for electoral broadcasts.

The number, date and hours of broadcasts to be assigned to them shall be drawn by lot by the Secretary of State for Information after the representatives of the candidates or lists of candidates have been duly summoned to appear.

Applications for broadcast time must be received in the Office of the Secretary of State for Information not later than two weeks before the day of the election.

Chapter IV. — *Voting*

. . .

Art. 46. Any voter suffering from a specific infirmity which prevents him from inserting his ballot into the envelope and putting the envelope in the ballot-box may be assisted by a voter of his own choice.

. . .

Title II

SPECIAL PROVISIONS FOR THE ELECTION OF THE PRESIDENT OF THE REPUBLIC

Chapter I. — *Eligibility*

Art. 60. Any Moslem citizen who is a qualified voter may be elected President of the republic subject to the conditions and reservations hereinafter specified.

[1] Published in the *Journal officiel de la République tunisienne*, 103rd year, No. 40, of 28-31 July 1959. Corrigendum: *ibid.*, No. 41, of 4-7 August 1959. Translation by the United Nations Secretariat.

Art. 61. No person may be elected President of the republic unless:

1. His father and grandfather were Tunisian nationals without interruption;
2. He has been a Tunisian national since birth;
3. He has attained the age of forty years (Gregorian).

Art. 62. No person shall be re-elected President of the republic more than three consecutive times.

. . .

Title III

SPECIAL PROVISIONS FOR THE ELECTION OF DEPUTIES

Chapter I. — *Eligibility*

Art. 68. Any citizen who is a qualified voter may be elected to the National Assembly subject to the conditions and reservations hereinafter specified.

Art. 69. No person may be elected to the National Assembly who is not of a Tunisian father or has not attained the age of thirty years (Gregorian).

Art. 70. Persons who have been lawfully deprived of their civic rights by a court decision may not be elected.

Art. 71. The following persons may not be elected: (1) governors; (2) magistrates; (3) délégués, sheikhs, police superintendents or officers in charge of a police station.

Chapter II. — *Incompatibility of Office*

Art. 72. The exercise of a non-elective public office remunerated out of funds of the State, of public institutions or of public agencies shall be incompatible with the function of deputy.

Consequently, any person covered by the foregoing paragraph who is elected to the National Assembly shall be replaced in his post and placed in suspension within one month of the confirmation of his election.

Any deputy appointed or promoted to a public office remunerated out of funds of the State, of public establishments or of public agencies shall cease to be a member of the National Assembly by the very fact of his accepting such office.

The foregoing provisions shall not apply to: (1) members of the Government; (2) deputies sent by the President of the republic on mission to a foreign State or an international organization.

Art. 73. The position of chairman or member of the board of management or administrative head of national undertakings or public institutions shall be incompatible with the function of deputy.

This incompatibility shall not apply in the case of members of parliament appointed as such to boards of management of national undertakings or public institutions which have a statute requiring such appointment.

Art. 74. The position of head of an undertaking, chairman of a board of management, managing director, administrative head or manager shall be incompatible with the function of deputy if held in:

1. Undertakings, companies or institutions which are granted benefits in the form of subsidies, participation or any equivalent form by the State or by a sub-division unless such benefits are derived from the automatic application of a general law or regulation;
2. Companies concerned exclusively with finance and publicly engaged in promoting savings and lending operations.

Art. 75. It shall be unlawful for any deputy to accept while in office a position as member of the board of management or of supervisors, or any permanent position in an advisory capacity, in any of the institutions, companies or undertakings specified in the preceding article.

Art. 76. The provisions of articles 74 and 75 notwithstanding, a deputy may be appointed by the governor or the chairman of a commune to represent the region or the commune in companies or undertakings of regional or local interest.

. . .

Chapter V. — *Propaganda*

Art. 90. The electoral campaign shall begin two weeks before the day of the election.

Art. 91. Posters, ballots, leaflets and statements of policy of lists of candidates must be of the following size:

1. 0.63 m × 0.90 m for posters to be displayed in the places described in article 29 above;
2. 0.21 m × 0.45 m for announcements of election meetings;
3. 0.21 m × 0.27 m for leaflets and statements of policy;
4. 0.20 m × 0.12 m for ballot-papers.

. . .

ACT No. 59-4 OF 10 JANUARY 1995 (29 JUMADE II 1378), TO MAKE RULES FOR INDUSTRIAL ASSOCIATIONS IN TUNISIA [1]

Art. 1. Industrial associations may be freely formed by persons engaged in the same occupation, in similar trades or allied occupations connected with the production of a particular article or in the same liberal profession.

A minor who is over sixteen years of age may become a member of an industrial association if his father, mother or guardian does not object.

A person who has ceased to occupy a post or engage in an occupation may continue to be a member of an industrial association if he occupied the post or engaged in the occupation for at least one year.

Art. 2. Industrial associations shall have no other purpose than that of studying and defending the economic and social interests of their members.

. . .

Art. 11. As soon as an industrial association is formed, the founders shall deposit five copies of the following documents at the offices of the governorship or district in which the association has its offices (or shall transmit such copies by registered letter, the receipt of which shall be acknowledged): (1) articles of the association; (2) a complete list of the persons responsible in any capacity for the administration or management of the association. This list shall give the full name, nationality, parents' names, date and place of birth, occupation and domicile of the persons concerned.

The said documents shall immediately be deposited in the manner prescribed above whenever any change is made to the articles or to the list.

. . .

Art. 13. Federations of industrial associations which are duly constituted in conformity with the provisions of this Act may be formed in the same manner as the industrial associations themselves and for the same purposes. The provisions of sections 2 to 12 of this Act shall apply to such federations.

In addition to their articles and the complete list of persons holding offices of administration and management, such federations shall deposit a list of the industrial associations of which they are composed.

Their articles shall lay down the principles to be observed in the representation of the said associations on the board of management and at the general meetings of each federation.

Art. 14. No industrial association may be formed as an administratively dependent branch of a foreign trade-union organization. Any industrial association formed in contravention of this section shall be deemed to be non-existent.

Art. 15. Any member of an industrial association may resign therefrom at any time notwithstanding any stipulation to the contrary, without prejudice to the right of the association to claim his subscription for the six months immediately following the date of resignation.

A person resigning from an industrial association shall retain his right to belong to any mutual benefit and retirement schemes set up by the industrial association and to which he has contributed or paid a capital sum.

. . .

Art. 17. Any industrial association which is not formed in accordance with the provisions of this Act, or which fails to confine itself to its collective and occupational purpose or whose activities are contrary to law, may be wound up by the order of a court, on application by the public prosecutor's office.

. . .

Art. 19. The decree of 16 November 1932 (17 Rejeb 1351) is hereby repealed.

. . .

[1] Published in the *Journal officiel de la République tunisienne*, 102nd year, No. 2, of 9-13 January 1959. Text kindly furnished by the Secretariat of State for Foreign Affairs of Tunisia. Translation by the United Nations Secretariat.

TURKEY

ACT No. 7286 OF 29 MAY 1959 SUPPLEMENTING ACT No. 5018 OF FEBRUARY 1947 RESPECTING TRADE UNIONS OF EMPLOYEES AND EMPLOYERS, AND FEDERATIONS OF TRADE UNIONS

NOTE

Article 1 of Act No. 7286 of 29 May 1959 provided as follows:

"Where a person is dismissed because he is a member of a trade union or where a trade union member is dismissed because he takes part in trade union activities or engages in trade union business outside of working time or, with the consent of the employer or the employer's agent, during working time, or suffers any other prejudice on such grounds, he shall, without prejudice to any rights he may have under the Labour or other Acts, be entitled to compensation from the employer or employer's agent equal to one year's remuneration."

Article 3 made liable to a fine "any person compelling another person to join or refrain from joining any trade union or to give up or refrain from giving up membership of a trade union, and any employer or employer's agent dismissing or otherwise causing prejudice to a trade union member for the reasons specified in section 1 of this Act".

Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Tur.2.

UKRAINIAN SOVIET SOCIALIST REPUBLIC[1]

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 1959

(EXTRACTS)

The year 1959, the first year of the seven-year plan, saw an enormous increase in the constructive activity of the working masses, and was marked by the continued development of all branches of the national economy and by further improvements in the material prosperity and cultural level of the people of the Ukrainian SSR.

In 1959 the Ukrainian SSR put into effect a number of measures providing for a steady rise in the material prosperity and cultural level of the inhabitants of the republic, and guaranteeing their full and unrestricted enjoyment of all political and civil rights.

As in previous years, the population of the Ukrainian SSR received, at state expense, grants and benefits under the manual and non-manual workers' social insurance scheme, social security pensions, allowances for unmarried mothers and mothers of large families, students' grants, free medical care, free or reduced-rate passes to sanatoria and rest homes, free education and advanced training and many other benefits and advantages.

The total value of all these benefits and advantages received by the population of the Ukrainian SSR in 1959 exceeded 42,000 million roubles, including pensions and allowances to a value of more than 16,000 million roubles.

The yearly average figure for manual and non-manual workers employed in the national economy of the Ukrainian SSR in 1959 was about 9.8 million — an increase for the year of more than 400,000. The number of workers, engineers, technicians and other specialists in industry, construction, state farms and transport increased by more than 300,000 as compared with 1958. The number of persons employed in schools, educational establishments, scientific and research institutions, cultural-educational establishments, medical institutions, sanatoria and health resorts rose by 71,000, and the number employed in trade and in public catering establishments by 34,000.

A start was made on the change-over to the shorter working day for manual and non-manual workers in rail transport and communication-industry undertakings. By the end of 1959, about 1.5 million manual and non-manual industrial workers in the Ukrainian SSR had been put on the shorter working day. The change to a shorter working day is made without any reduction in wages, while in branches of industry in which the change-over was accompanied by a pay adjustment, wages, particularly of low-paid workers, have substantially increased, thanks to the introduction of new higher wage rates and scales.

By the end of 1959, the number of manual and non-manual workers in all branches of the national economy of the Ukrainian SSR who had been placed on the shortened seven- and six-hour working day was 2.8 million, or 28 per cent of the total.

In addition, all manual and non-manual workers received two to four weeks' annual leave without loss of pay.

The year 1959 was marked by further advances in socialist culture. The number of students undergoing training of all types in the Republic totalled 9.5 million. The number of students in general-education schools, including schools for young workers and rural youth and schools for adults, totalled 6.2 million for the school year — an increase of 257,800 over the preceding school year. The number of students attending schools for young workers and rural youth and adult schools while continuing their employment was over 452,000, or 25 per cent more than in the 1958/59 school year. More than 305,000 students completed secondary-school education and received school-leaving certificates.

In the secondary schools administered by the Ministry of Education, 445,000 students in classes 8 to 11 are receiving vocational training in undertakings, on collective and state farms and in experimental farms and school training workshops.

Seven hundred and sixty-six thousand persons carried on studies (including correspondence courses) at higher and specialized secondary-educational establishments. Of the students enrolled at the beginning of the 1959/60 school year in day courses at higher educational establishments, 65 per cent had completed a period of practical work of not less than two years after finishing their secondary-school education. The number of students taking correspondence and evening courses in higher and specialized secondary-educational establishments exceeded 104,000, or 29

[1] Texts kindly furnished by the Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translations by the United Nations Secretariat.

per cent more than in 1958. Three hundred and fifty-eight thousand persons followed studies at higher and specialized secondary-education establishments in 1959 without interruption of employment.

One hundred and seventy-three thousand engineers and technicians graduated from higher and specialized secondary-education establishments in 1959 and went into industry, construction, transport and communications, whereas about 28,000 specialists went into agriculture, more than 34,000 into teaching, and about 20,000 into the medical services.

In application of the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Ukrainian SSR, compulsory universal eight-year education is being introduced in the place of seven-year education, and work has been started on the reorganization of higher and specialized secondary education.

The number of scientific workers in the Ukrainian Republic increased in 1959 by 9 per cent as compared with 1958, rising to 39,900, this figure including more than 14,000 with the degree of Doctor or Candidate of Science. Increases were recorded in the number of scientific workers in technology, physics, mathematics and chemistry.

At the end of 1959 the number of specialists with higher education employed in the national economy of the Ukrainian SSR was more than 600,000, including 165,000 engineers, while the number with specialized secondary education was more than 860,000, including 273,000 technicians.

One hundred and sixteen thousand young skilled workers graduated in 1959 from vocational and technical training schools and went into industry, construction, transport and agriculture. More than 1.5 million manual and non-manual workers improved their qualifications and learned new skills through individual and group apprenticeships.

In addition, the number of cinema units in the republic at the end of 1959 was more than 16,000, an increase of 26 per cent over the preceding year. Seventy-nine per cent of this total are in rural localities.

Books were published during the year in editions amounting to over 102.5 million copies, while magazines and other periodicals were published in printings amounting to about 30 million copies. Newspaper printing increased.

The year 1959 saw a further increase in the number of curative and preventive health institutions, with continued improvement of public medical services.

The number of hospital beds increased by almost 17,000 as compared with 1958, the number of places in permanent crèches by almost 7,000, and the number of beds in sanatoria and rest homes by 2,000.

Further progress was made during the year in housing. The task set by the Party and the Government of putting an end to the housing shortage and thereby solving the housing problem in the next ten to twelve years is being successfully carried out.

The housing construction target fixed for 1959 by decision of the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian SSR was exceeded. A total of 14.1 million square metres of housing was built, financed both by the State, under its housing construction programme, and by residents of urban areas, with the aid of state credit.

In addition, 190,000 dwellings were built in rural areas in 1959 by collective farmers and the rural intelligentsia.

There was large-scale construction during the year of educational, health and cultural establishments and municipal facilities. The number of general-education schools built increased by 18 per cent, and the number of kindergartens and crèches by 44 per cent over 1958. A large number of boarding schools, hospitals and polyclinics, sanatoria and rest homes, cinemas, clubs and houses of culture were built. (From the newspaper *Pravda Ukrainy*, No. 25/5440, 31 January 1960.)

REPORT OF THE CENTRAL STATISTICAL BOARD OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC ON THE LEVEL OF EDUCATION AND THE AGE STRUCTURE OF THE POPULATION OF THE UKRAINIAN SSR

(EXTRACTS)

(Based on date obtained from the population census of 15 January 1959)

The total counted population of the Ukrainian SSR on 15 January 1959 was 41,869,046, including 18,575,382 men and 23,293,664 women. The urban population was 19,147,419, or 46 per cent of the total, and the rural population 22,721,627, or 54 per cent.

1. The number of inhabitants of the Ukrainian, SSR having higher and secondary education (including housewives and pensioners) may be broken down as follows (in thousands):

Type of education	*Total*	*Men*	*Women*
Higher, completed	715	368	347
Higher, not completed	323	153	170
Specialized secondary (course in technical training school or similar educational establishment, completed)	1,545	692	853
General secondary (complete secondary school, completed)	2,181	982	1,199
Incomplete secondary (seven-year course, completed, or incomplete secondary education continued beyond the seven-year course)	7,924	3,904	4,020

Thus the number of persons having higher, uncompleted higher and specialized secondary education totals 2,583,000, while the number of persons who have been graduated from complete secondary schools and seven-year schools totals 10,105,000.

Women account for 50 per cent of the total of persons having higher or uncompleted higher education. They account for more than 55 per cent of the total of persons having specialized secondary education and about 52 per cent of the total of persons having general secondary and incomplete secondary education.

The changes in the number of persons having higher and secondary education as compared with 1939 are shown by the following figures (in thousands):

Type of education	*1939*	*1959*	*% increase 1939-1959*
Higher, completed (total)	272	715	263
of which:			
Men	185	368	199
Women	87	347	399
Higher, not completed, specialized secondary, general secondary and incomplete secondary (total)	3,625	11,973	330
of which:			
Men	2,012	5,731	285
Women	1,613	6,242	387

The number of persons with higher education has increased 2.6 times, and the number of persons with secondary and incomplete secondary education 3.3 times over the past twenty years. The increase in the number of persons having higher and secondary education is particularly great among women: the number of women having higher education has increased almost four times and the number of women having secondary and incomplete secondary education 3.9 times by comparison with 1939.

The rapidly increasing number and high proportion of women having higher, secondary and incomplete secondary education are due to the fact that under the Soviet constitution women have been granted equal rights with men to education.

The number of persons with higher education per 1,000 inhabitants rose from seven in 1939 to seventeen in 1959, and the number of persons with secondary and incomplete secondary education from ninety in 1939 to 286 in 1959.

All children in the Ukraine now go to school. Literacy is universal in the Ukrainian SSR.

2. The number of students at higher and secondary specialized educational establishments may be broken down as follows (in thousands):

	Men	*Women*	*Total*
Higher educational establishments	230	182	412
Specialized secondary educational establishments (technical training schools and similar educational establishments)	215	151	366

The number of students per 1,000 inhabitants has changed as follows as compared with the census figures for 1939:

	1939	*1959*	*% increase 1939-1959*
Higher educational establishments	6.3	9.8	156
Specialized secondary educational establishments (technical training schools and similar educational establishments)	6.8	8.7	128

The Communist Party and the Soviet Government have always attached great importance to the training of skilled workers to meet the economic, scientific and cultural requirements of all the national republics, including the Soviet Ukraine.

The Ukrainian SSR has 138 higher educational establishments and 595 technical training schools and other specialized secondary educational establishments, all providing free instruction.

3. The greater part of the population of the Ukrainian SSR (more than 29 million, or nearly 70 per cent) is made up of persons born since the great October socialist revolution.

The development of the Soviet public health services and the concern of the Government for the welfare of mothers and children have brought about a significant decline in infant mortality, thanks to which it has been possible to save the generations of children born before and during the war years. Part of these generations have now reached working age.

According to the 1959 census data, the number of inhabitants of working age (sixteen to fifty-four years for women, sixteen to fifty-nine years for men) had risen to 24.9 million as compared with 23.1 million in 1939, an increase of nearly 8 per cent.

There were 6.9 deaths per 1,000 inhabitants in the Ukrainian SSR in 1958. The mortality rate in the Ukraine has declined 3.6 times by comparison with the mortality rate in the pre-revolutionary period, and 2.1 times by comparison with the mortality rate in the pre-war year 1940. (From the newspaper *Pravda Ukrainy*, No. 125/5540, 31 May 1960.)

ACT CONCERNING THE STATE BUDGET OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC FOR 1959

(EXTRACTS)

Art. 1. The state budget of the Ukrainian SSR for 1959 (total revenue, 63,257,736,000 roubles; total expenditure, 63,189,601,000 roubles; excess of revenue over expenditure, 68,135,000 roubles) submitted by the Council of Ministers of the Ukrainian SSR, with the amendments adopted on the report of the Budget Commission, is hereby confirmed.

Art. 3. A total appropriation of 33,689,705,000 roubles shall be made under the state budget of the Ukrainian SSR for 1959 for the financing of the national economy: the continued development of heavy industry, construction, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Art. 4. A total appropriation of 26,148,548,000 roubles[1] shall be made under the state budget of the Ukrainian SSR for 1959 for social and cultural development: general-education schools, technical training schools, higher educational institutions, scientific and research institutions, workshop and factory training schools, libraries, clubs, theatres, the press and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances. (*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 15, 31 December 1958, Act No. 136, pp. 408-409.)

[1] *Note:* Expenditure on social and cultural development in 1959 makes up 41.4 per cent of total expenditure under the budget of the Ukrainian SSR, and exceeds the corresponding expenditure in 1958 by 1,958,502,000 roubles.

ORDERS OF THE GOVERNMENT OF THE UKRAINIAN SSR CONCERNING THE REDUCTION OF THE WORKING DAY OF MANUAL AND NON-MANUAL WORKERS IN CERTAIN BRANCHES OF INDUSTRY IN 1959

The reduction of the working day of manual and non-manual workers continued in the Ukrainian SSR during 1959. This bears witness to the constant concern of the Government to ensure to citizens of the Ukrainian SSR the exercise in practice of the right to rest set forth in article 99 of the constitution of the Ukrainian SSR.

1. By order No. 701 of 16 May 1959, the Council of Ministers of the Ukrainian SSR provided that from 1 October 1959 the working day of workers in enterprises of the machine-building and metal-working industry should be reduced to seven hours, with simultaneous wage increases and revision of wage-scales. (*Compilation of Orders, Ukrainian SSR*, 1959, No. 5, p. 47.)

2. By order No. 1074 of 16 July 1959, the Council of Ministers of the Ukrainian SSR, with a view to increasing the material well-being of workers in the petroleum and gas industry, provided that the process of reducing the working day of petroleum and gas industry workers to seven or six hours, with a simultaneous increase in wages, should be carried out in the period from 1 October 1959 to 1 April 1960. (*Compilation of Orders, Ukrainian SSR*, 1959, No. 7, p. 84.)

DECREES OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE UKRAINIAN SSR AND ACTS ADOPTED BY THE SUPREME SOVIET OF THE UKRAINIAN SSR IN 1959 SUPPLEMENTING AND AMENDING THE CONSTITUTION OF THE UKRAINIAN SSR AND EXISTING LAWS

I

On 17 April 1959 the Supreme Soviet of the Ukrainian SSR adopted an Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the Ukrainian SSR.

Fundamental Provisions of the Act

1. Universal compulsory eight-year education for children and young people from seven to fifteen or sixteen years of age shall be introduced in the Ukrainian SSR, in place of universal compulsory seven-year education.

The transfer of schools from the seven-year to the universal compulsory eight-year curriculum shall begin in the 1959-1960 school year and shall be completed within a three-year period. (Art. 2 of the Act)

2. The obligation to send children to school and to provide conditions suitable for their regular education shall lie with parents or with those acting in their

stead. Responsibility for providing universal compulsory eight-year education and for registering children shall lie with the executive committees of the regional, urban, district, settlement and village soviets of workers' deputies. (Art. 3 of the Act)

3. Complete secondary education for young people, beginning at the age of fifteen or sixteen, shall combine scholastic instruction with practical work, in order to ensure that all young people of the age referred to are drawn into socially useful work.

Complete secondary education shall be provided in educational institutions of the following types:

(*a*) Secondary general education schools for young workers and rural youth — evening (shift) schools in which persons who have completed their eight-year schooling and are working in a branch of the national economy can obtain secondary education and improve their skills. The period of training in these schools shall be three years;

(*b*) Secondary general and polytechnic workers' schools providing industrial training, in which persons who have completed their eight-year schooling can obtain over a period of three years secondary education and vocational training for work in a branch of the national economy or culture;

(*c*) Technical training schools and other specialized secondary educational institutions, in which persons who have completed their eight-year schooling can obtain general or specialized secondary education. (Art. 5 of the Act)

4. With a view to extending the responsibilities of society and assisting the family in the upbringing of children, the boarding school system shall be expanded. Boarding schools shall be organized on the same lines as eight-year schools and secondary general and polytechnic workers' schools providing industrial training. (Art. 6 of the Act)

5. Special schools for physically or mentally backward children and young people shall be established, corresponding to the existing types of school but providing for the special needs of the children and young people attending them. Due emphasis shall be placed on the necessity of ensuring that boarding schools cater fully for this category of children and of improving their vocational training. (Art. 7 of the Act)

6. The medium of instruction in schools of the Ukrainian SSR shall be the pupils' mother tongue. With respect to language of instruction, the decision to which school their children are to be sent shall rest with the parents. At the wish of parents and pupils, schools shall make provision for the teaching of any of the languages of the peoples of the Ukrainian SSR other than the language of instruction at the school, provided that such teaching is justified by the demand. (Art. 9 of the Act)

7. In order to ensure the provision of state facilities for the upbringing of children of pre-school age and to enable mothers to take a more active part in production and in public and political activities, the system of establishments for children of pre-school age shall be expanded to the greatest possible extent. Collective farms shall be recommended to intensify the construction of full-time kindergartens and crèches, in order that every collective farm may within the next few years have establishments for children of pre-school age. (Art. 20 of the Act)

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 14, 23 April 1959, pp. 501-520, decree No. 101)

II

On 20 November 1959, the Supreme Soviet of the Ukrainian SSR adopted the following Act concerning the recall of deputies to regional, district, urban, village and settlement soviets of workers' deputies of the Ukrainian SSR:

The Supreme Soviet of the Ukrainian Soviet Socialist Republic, considering that the right to recall a deputy is one of the fundamentals of socialist democracy, an expression of the sovereignty of the workers and a guarantee of the genuine responsibility of the deputy to the electors, in conformity with article 123 of the constitution of the Ukrainian SSR, resolves:

Art. 1. A deputy to a regional, district, urban, village or settlement soviet of workers' deputies may be recalled at any time by the electors of his electoral district if he has failed to justify their confidence in him or has been guilty of actions unworthy of the high office of deputy.

Art. 2. The right to move the recall of a deputy to a regional, district, urban, village or settlement soviet of workers' deputies shall be enjoyed by public organizations and workers' associations (Communist Party organizations, trade unions, co-operative organizations, youth organizations and cultural associations), through their central, republic, regional, district or urban organs; and by general meetings of manual and non-manual workers, held in their undertakings, workshops or establishments, of peasants, held in their villages, collective farms or brigades, and of members of the armed forces, held in their units and sub-units.

Art. 3. Public organizations and workers' meetings moving the recall of a deputy shall inform the deputy to that effect, stating the reasons for their action.

The deputy shall have the right to submit to the public organization or workers' meeting moving his recall an oral or written statement concerning the circumstances giving rise to the motion for his recall.

Art. 4. Motions of public organizations or workers' meetings for the recall of a deputy shall be transmitted to the executive committee of the appropriate soviet of workers' deputies.

The executive committee of the soviet of workers' deputies shall examine the material submitted, and if the recall of the deputy has been moved in conformity with the requirements of this Act it shall order a ballot on the matter.

Art. 5. The motion for the recall of a deputy to a regional, district, urban, village or settlement soviet or workers' deputies shall be discussed and decided at meetings of the electors of the electoral district concerned called by the public organizations referred to in article 2 of this Act or by the executive committees of the appropriate soviets of workers' deputies and held in the undertakings, workshops or establishments, villages, collective farms, brigades, military units or sub-units or places of residence of the said electors.

The decision on the motion for the recall of a deputy to a local soviet of workers' deputies shall be taken by show of hands.

Art. 6. After the executive committee of the soviet of workers' deputies concerned has ordered a ballot on the recall of the deputy, every public organization and every citizen of the Ukrainian SSR shall have the right freely to campaign for or against the recall of the deputy, in accordance with the provisions of article 105 of the constitution of the Ukrainian SSR.

Art. 7. In order to ensure due compliance with the provisions of this Act in the conduct of the ballot on the recall of a deputy, and in order to determine the results of such ballot, a district committee comprising representatives of public organizations and workers' associations and of the general meetings of workers, and consisting of a chairman, a deputy chairman, a secretary, and from two to six members, shall be set up in the election district concerned.

The district committee in charge of the ballot on the recall of a deputy to a regional, district, urban, village or settlement soviet of workers' deputies shall be confirmed by the executive committee of the appropriate soviet of workers' deputies.

Art. 8. The minutes of each meeting of electors shall indicate the time and place of the meeting, the number of electors present and the number of votes cast for or against the recall of the deputy.

The minutes of each meeting of electors shall be signed by all the officers of the meeting and shall be transmitted within three days to the district committee in charge of the ballot on the recall of the deputy.

Art. 9. On the basis of the minutes of meetings of electors the district committee in charge of the ballot on the recall of the deputy shall count the votes cast in the district for or against the recall of the deputy and shall determine the results of the ballot.

The district committee in charge of the ballot on the recall of a deputy to a regional, district, urban, village or settlement soviet of workers' deputies shall transmit a report on the result of the ballot on the recall of the deputy to the executive committee of the appropriate soviet of workers' deputies.

Art. 10. A deputy to a regional, district, urban, village or settlement soviet of workers' deputies shall be considered to have been recalled if a majority of the electors of the electoral district concerned has voted for his recall.

Art. 11. The results of the ballot on the recall of a deputy shall be published by the executive committee of the appropriate soviet of workers' deputies not later than five days after they have been determined.

Art. 12. Complaints of violations of this Act in the conduct of the ballot on the recall of a deputy to a regional, district, urban, village or settlement soviet of workers' deputies shall be examined by the district committee in charge of the ballot on the recall of the deputy.

Complaints of irregularities on the part of the district committee in charge of the ballot on the recall of a deputy shall be examined by the executive committee of the appropriate soviet of workers' deputies.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 32, 26 November 1959, pp. 983-985, decree No. 171)

III

By decree dated 24 March 1959, the Presidium of the Supreme Soviet of the Ukrainian SSR ratified the Universal Postal Convention, the agreement concerning insured letters and boxes, and the agreement concerning postal parcels, which had been signed by the representative of the Ukrainian SSR on 3 October 1957.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 11, 2 April 1959, p. 379, decree No. 83)

With a view to protecting the lives and personal inviolability of citizens of the Ukrainian SSR, the Presidium of the Supreme Soviet of the Ukrainian SSR, by decree of 28 July 1959, amended articles 138 and 139 of the penal code of the Ukrainian SSR to increase the penalties for wilful homicide.

Articles 138 and 139 of the penal code of the Ukrainian SSR were amended to read as follows:

138. Wilful homicide, if committed: (*a*) for purposes of gain (including homicide committed during robbery with violence), or through hooliganism, or for other base motives; (*b*) with the object of facilitating or concealing some other crime; (*c*) during rape; (*d*) by a group of persons; (*e*) by a person having a previous conviction for homicide or simultaneously against more than one person; (*f*) by taking advantage of the victim's helplessness; (*g*) by a means endangering the lives of a great number of persons, or with

particular cruelty; (*h*) by a person who was in a position of special responsibility towards the victim; or (*i*) against a woman known to be pregnant, shall be punishable with deprivation of liberty for not less than seven and not more than fifteen years or with death.

139. Wilful homicide committed otherwise than in the circumstances specified in article 138 shall be punishable with deprivation of liberty for not less than five and not more than twelve years.

The same acts, if committed by an exceptionally dangerous recidivist, shall be punishable with deprivation of liberty for not less than seven and not more than fifteen years.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, No. 22, 6 August 1959, p. 700, decree No. 128)

UNION OF SOUTH AFRICA

NOTE[1]

1. The extracts from the Criminal Procedure Act, 1955 (Act No. 56 of 1955) which appear in *Yearbook on Human Rights for 1955*, pages 235-243, were amended during 1959 by:

I

The Criminal Law Amendment Act, 1959 (Act No. 16 of 1959, assented to on 23 March 1959) which:

(*a*) By its section 11, added the following paragraphs at the end of section 22, sub-section 1:

"(*n*) Any person reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;

(*o*) Any person reasonably suspected of having failed to pay any fine or portion thereof on the date fixed by order of court under this Act;

(*p*) Any person who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or under the laws relating to prisons and gaols"; and

(*b*) By its section 12, substituted for the words "a notification on or attached to the notice of trial" the words "notice served upon the registrar of the court and the accused person or persons", in section 111; and

II

The Criminal Law Further Amendment Act, 1959 (Act No. 75 of 1959), assented to on 3 July 1959), section 5 of which deleted the proviso in section 109, sub-section 2.

2. The Prisons Act, 1959 (Act No. 8 of 1959, assented to on 20 March 1959, which consolidated and amended the law relating to prisons, included provisions on, *inter alia*, the appointment, powers, discipline and removal of prison personnel; the inspection of prisons; conditions governing the reception of persons into prisons; the carrying out of corporal punishment, the death sentence and other sentences; the treatment of prisoners; and release of prisoners and remission of sentence. Section 44 made guilty of an offence any person who:

"(*e*) Without the authority in writing of the Commissioner —

. . .

(ii) Causes any sketch or photograph of any prison, portion of a prison, prisoner or group of prisoners or of any burial referred to in paragraph (*b*) of sub-section 4 of section thirty-five[2] to be published in any manner; or

(*f*) Publishes any false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false, or without taking reasonable steps to verify such information (the onus of proving that reasonable steps were taken to verify such information being upon the accused)."

3. Concerning the Promotion of Bantu Self-government Act, 1959 (Act No. 46 of 1959, assented to on 17 June 1959), the Permanent South African Mission to the United Nations has communicated the following:

"The Bantu peoples of the Union of South Africa do not constitute a homogeneous people, but form separate national units on the basis of language and culture. According to the preamble of the Promotion of Bantu Self-government Act, 1959 (Act No. 46 of 1959), assented to on 17 June 1959, 'it is desirable for the welfare and progress of the said Bantu peoples to afford recognition to the various national units and to provide for their gradual development within their own areas to self-governing units on the basis of Bantu systems of government.' The preamble also declared it 'expedient to develop and extend the Bantu system of government for which provision has been made in the Bantu Authorities Act, 1951, with due regard to the prevailing requirements, and to assign further powers, functions and duties to regional and territorial authorities. . . .' The development of self-government is stimulated by the grant to territorial authorities of control over the land in their areas and it is therefore expedient to provide for the ultimate assignment to territorial authorities of certain rights and powers conferred on or assigned to the Governor-General or the Minister or the Trustee referred to in the Native Trust and Land Act, 1936' and 'to provide for direct consultation between the various Bantu national units and

[1] The legislation dealt with in this note appears in *Statutes of the Union of South Africa 1959*, published by the authority of the Government of the Union.

[2] Section 35 (4) (*b*) concerned certain burials of persons on whom the death sentence has been executed.

the Government of the Union.' Sub-section 1 of section 15 of the Act provides as follows: 'The Representation of Natives Act, 1936,[1] is hereby repealed, but the repeal shall have no effect in relation to any person duly elected as a senator or member of the House of Assembly or a Provincial Council in terms of that Act and holding office at the commencement of this Act.'

"The effect of this provision was to abolish the representation of Bantu in the House of Assembly and Senate of the Union of South Africa and in the Provincial Council of the Province of the Cape of Good Hope as from the end of the term of office of the representatives sitting at the commencement of the Act. In sub-section 2 of section 2 of the Act, provision has, however, been made for the appointment of commissioners-general in respect of the different Bantu national units, whose main function will be to represent the government in the homelands of the various Bantu national units."

4. The Industrial Conciliation Act, 1956 (Act No. 28 of 1956) was amended by the Industrial Conciliation Amendment Act, 1959 (Act No. 41 of 1959, assented to on 2 June 1959). Section 3 of the amending Act amended section 8 (3) of the principal Act[2] concerning the racial separation of members of a trade union whose membership is open to both white persons and coloured persons.[3] Section 14 of the Act of 1959 amended section 77 of the principal Act[4] concerning the reservation of work for specified races. The English text of the Industrial Conciliation Amendment Act, 1959, and a French translation have been published by the International Labour Office as *Legislative Series* 1959 — S.A.2. Concerning the amending Act, the Permanent South African Mission to the United Nations has written as follows:

"Section 8 (3) of the Industrial Conciliation Act, No. 28 of 1956, required trade unions whose membership was open to both white and coloured persons to amend their constitutions within 12 months from the commencement of the Act so as to provide for, *inter alia*, the establishment of separate branches for the white and coloured members. There were certain legal defects in that section and it was amended by the Industrial Conciliation Amendment Act, No. 41 of 1959, to cure those defects. For instance, it was contended in certain legal quarters that the Minister's power to grant exemption from section 8 (3) could only be exercised within the relative twelve months and that he was *functus officio* in that respect once the period of twelve months had expired. As a number of trade unions had obtained exemption from some or all of the requirements of section 8 (3) for specific periods and as others could not give effect to those requirements within the time limit of twelve months, it was found necessary to amend the section so as to enable the Minister to grant exemption at any time.

"The provisions of the original section 77 of the Industrial Conciliation Act, 1956, were found to be inadequate and numerous difficulties were experienced in the implementation thereof. That section was consequently revised in the light of the experience gained since the promulgation of the principal Act and was replaced with a new section 77 by the Industrial Conciliation Amendment Act, 1959. The Act does not itself reserve work for any race but is merely an enabling measure which creates the necessary machinery whereby work may be reserved.

"Whenever it comes to the notice of the Minister of Labour that employees of any race are being replaced by employees of another race he may, in terms of section 77 of the Act, publish a notice in the *Government Gazette* informing interested persons of his intention to have the matter investigated by the Industrial Tribunal and affording them an opportunity of making suggestions as to how the matter may be dealt with without resorting to work reservation. The tribunal is an independent body consisting of five members of whom four are appointed by the minister from amongst nominees submitted by employers and employees. The fifth member, who must be the chairman, is appointed by the minister on account of his knowledge of industrial matters and procedure.

"If no feasible solution is offered in response to the notice published by the minister, he may direct the tribunal to investigate the matter and to submit a report and recommendation to him. That section also requires the minister, in consultation with the parties concerned, to appoint assessors from amongst the employers and employees in the relevant industry to assist the tribunal in an advisory capacity. Should the tribunal recommend that work reservation be not resorted to, the whole matter ends there, since the minister is not empowered to act contrary to the tribunal's recommendations. If the tribunal recommends that work be reserved, the minister must first consult his colleague, the Minister of Economic Affairs, before he reserves work (by means of a determination). The determination must be in accordance with the tribunal's recommendation, and no deviation therefrom is permitted. The determination is published in the *Government Gazette*, and every report and recommendation of the tribunal must in terms of section 77 (13) be tabled in both Houses of Parliament.

"Matters which may be provided for in determinations are specified in section 77 (6). The determination may, for instance, prohibit the replacement of employees of a specified race by employees of another race. It may also prohibit an employer from employing a smaller percentage of employees of a specified race (in proportion to the total number

[1] See *Yearbook on Human Rights for 1948*, pp. 394-5. [Editor's note]

[2] See *Yearbook on Human Rights for 1956*, pp. 238-9.

[3] For the definitions of "white person" and "coloured person" under the principal Act, see *Yearbook on Human Rights for 1956*, p. 238, footnotes 8 and 9.

[4] See *Yearbook on Human Rights for 1956*, p. 239.

of employees of a certain class) than a specified percentage etc.

"The object of work reservation is to safeguard the interests of the different racial groups. It is a precautionary measure against interracial competition and a positive measure to ensure the orderly coexistence of the different races."

5. The Extension of University Education Act, 1959 (Act No. 45 of 1959, assented to on 11 June 1959) provided for the establishment of university colleges exclusively for non-white persons and limited the admission of such persons to certain university institutions. Concerning the Act, the Permanent South African Mission to the United Nations has written:

"University colleges for coloured persons at Bellville, Cape, and for Indians at Durban, Natal, have been founded. There is also a medical school for non-white persons attached to the University of Natal. Non-white students can attend the universities for white persons if they wish to take courses of study not provided at the university colleges for non-whites.

"Non-white persons may also take correspondence courses and enter for the examinations of the University of South Africa — a university empowered by an Act of Parliament to provide tuition by correspondence and to examine such candidates."

UNION OF SOVIET SOCIALIST REPUBLICS[1]

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 IN 1959

(EXTRACTS)

The national income of the USSR in 1959 showed an increase of 8 per cent, or approximately 100,000 million roubles, over the figure for 1958. This made available additional funds for the further expansion of socialist production and made it possible to improve the people's level of living both through increases in the actual wages and salaries of manual and non-manual workers and through the public services provided for the working population.

Substantial progress has been made in the past few years in the change-over to the shorter seven- and six-hour working day for manual and non-manual workers. Following manual and non-manual workers in the coal and ferrous metallurgy industries, in the past two years manual and non-manual workers in undertakings of the non-ferrous metallurgy, chemical and cement industries and in undertakings engaged in the production of ferro-concrete manufactures and structures and the mining of salt and ozocerite have been put on the shorter working day. Manual and non-manual workers in undertakings of the machine-building and metal-using industries, the petroleum and gas industry and various other branches of industry are being put on a shorter working day. A start has been made on the change-over to a shorter working day for manual and non-manual workers in rail transport and communications industry undertakings. The change to a shorter working day is made without any reduction in wages, while in branches of industry in which the change-over has been accompanied by a pay adjustment, wages, particularly of low-paid workers, not only have not been reduced but have substantially increased, thanks to the introduction of new higher wage rates and scales.

By the end of 1959, of the total number of manual and non-manual workers in the national economy, more than 13 million had been put on the shorter seven- and six-hour working day. . . . The change-over to the shorter working day for manual and non-manual workers in all branches of the national economy should be completed in 1960.

As in previous years, the population received, at state expense, grants and benefits under the manual and non-manual workers' social insurance scheme, social security pensions, allowances for unmarried mothers and mothers of large families, students' grants, free medical care, free or reduced-rate passes to sanatoria and rest homes, free education and advanced training and many other advantages. In addition, all manual and non-manual workers received at least two weeks' leave without loss of pay, while workers in a number of occupations received leave for longer periods.

The total value of the benefits and advantages received by the population during the year was about 230,000 million roubles, as compared with 215,000 million roubles in 1958.

. . . Thanks to the increase in the cash incomes of manual and non-manual workers and peasants, deposits by the population in savings banks continued to increase: by the end of the year deposits totalled more than 100,000 million roubles, as compared with 87,000 million roubles at the beginning of the year, and the number of deposits rose to over 50 million, an increase of 3 million for the year.

There was a considerable rise in the purchase of foodstuffs and other goods by the population at state and co-operative shops.

. . . State retail prices for watches, bicycles, portable radios and certain other goods were reduced with effect from 1 July 1959.

The number of students undergoing training of all types in the USSR totalled more than 50 million. The number of students in general education schools, including schools for young workers and rural youth and schools for adults, totalled more than 33 million in the school year, an increase of 1,850,000 over the preceding year. About 1,400,000 students completed the secondary-school course and received school-leaving certificates.

More than 4,150,000 persons carried on studies (including correspondence courses) at higher and specialized secondary-educational establishments. . . . More than 330,000 young specialists were graduated from higher educational establishments during the year, while about 530,000 were graduated from specialized secondary-educational establishments. A total of more

[1] Texts kindly furnished by the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations. Translations by the United Nations Secretariat.

than 860,000 young specialists were graduated during the year, including 106,000 engineers and 260,000 technicians going into industry, construction, transport and communication, 125,000 specialists going into agriculture, about 200,000 teachers and more than 100,000 medical workers.

. . . The medical care of the population was further improved and developed. . . . The number of hospital beds increased by 90,000 as compared with 1958, the number of children in crèches and kindergartens increased by nearly 380,000 and the number of beds in sanatoria and rest homes increased by more than 15,000. The number of physicians increased by 19,000.

During the summer of 1959 about 7 million children and young people enjoyed holidays at pioneer camps, children's sanatoria, and excursion and tourist centres, or spent the summer in the country with their kindergartens, crèches or children's homes.

. . . The population of the USSR increased during the year by 3,660,000, and totalled over 212 million by the beginning of 1960.

. . . More than 80 million square metres of housing, or 2,200,000 well-equipped apartments, were brought into occupancy in 1959 (exclusive of building done by collective farm workers and the rural intelligentsia). In addition, collective farm workers and the rural intelligentsia built some 850,000 dwellings during the year.

. . . Twenty-four per cent more schools and eleven per cent more kindergartens and crèches were built than in 1958. More boarding schools, hospitals and polyclinics, sanatoria, rest homes, cinemas, clubs and houses of culture were also built.

("Fulfilment of the state plan for the development of the national economy of the USSR in 1959." *Report of the Central Statistical Board of the Council of Ministers of the USSR*, Moscow, 1959)

REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE USSR ON THE PRELIMINARY RESULTS OF THE ALL-UNION POPULATION CENSUS OF 1959

(EXTRACT)

. . . The care of mothers and children and the strengthening of the family have always been among the most important concerns of the Soviet State. During the war and in the post-war period measures were taken further to increase the financial assistance given to expectant mothers, mothers of large families and unmarried mothers, to encourage large families, to improve maternal and child welfare services, to develop public health services and to expand the medical facilities available to the population. These measures and the steady rise in the Soviet people's level of living have resulted in a high birth rate, a sharp decline in the mortality rate, particularly among children, and an increase in the life expectancy of the population. Our country now has the highest marriage rate per 1,000 of the population — over twelve a year. The USSR has a high birth rate — over twenty-five per 1,000 of the population, and the lowest death rate in the world — 7.5 per 1,000 of the population. The mortality rate for the population as a whole is one-fourth of the pre-revelutionary figure, while the infant mortality rate is almost one-seventh of that figure. The natural population increase (excess of births over deaths) in our country has recently amounted to over 3.5 million per year. . . .

("Preliminary results of the all-Union population census of 1959". *Report of the Central Statistical Board of the Council of Ministers of the USSR*, Moscow, 1959)

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR CONCERNING THE PROCEDURE FOR THE EXAMINATION OF LABOUR DISPUTES INVOLVING PERSONS DISMISSED BY THE MANAGEMENT WITH THE CONCURRENCE OF THE FACTORY, WORKS OR LOCAL TRADE UNION COMMITTEE

of 27 January 1959

(EXTRACT)

In accordance with the regulations concerning the rights of factory, works and local trade union committees, approved by the decree of the Presidium of the Supreme Soviet of the USSR of 15 July 1958, the Presidium of the Supreme Soviet of the USSR RESOLVES:

That labour disputes involving persons dismissed by the management with the concurrence of the factory, works or local trade union committee shall be examined by a people's court without first being referred to the labour disputes board or the factory, works or local committee.

A statement alleging wrongful dismissal and applying for reinstatement may be lodged by a worker with a people's court within one month of the date on which he is notified of the order for his dismissal.

(*Gazette of the Supreme Soviet of the USSR*, 1959, No. 5, p. 53)

ORDER OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING THE ALLOCATION OF FUNDS TO TRADE UNION ORGANIZATIONS FOR MASS CULTURAL AND PHYSICAL CULTURE ACTIVITIES

of 15 January 1959 (No. 76)

The Council of Ministers of the Union of Soviet Socialist Republics RESOLVES:

To adopt the proposal of the All-Union Central Council of Trade Unions that, with effect from 1 January 1959, financial organs shall allocate funds to trade union organizations for mass cultural and physical and physical cultural activities in the amount of 0.15 per cent of the manual and non-manual workers' wage and salary fund in industrial, transport, communications, agricultural, construction and municipal service undertakings and in state purchasing organizations.

Instructions concerning the procedure for making such allocations shall be issued by the Ministry of Finance of the USSR in agreement with the All-Union Central Council of Trade Unions.

(*Collected Orders, USSR*, 1959, No. 2, pp. 13-14)

ORDER OF THE COUNCIL OF MINISTERS OF THE USSR CONCERNING GRANTS FOR STUDENTS TAKING EVENING AND CORRESPONDENCE COURSES IN HIGHER EDUCATIONAL ESTABLISHMENTS AND SPECIALIZED SECONDARY EDUCATIONAL ESTABLISHMENTS

of 2 July 1959 (No. 720)

(*EXTRACTS*)

In accordance with the Act concerning the establishment of a closer correspondence between education and life and the further development of the educational system in the USSR, the Council of Ministers of the USSR RESOLVES:

1. That, with effect from the 1959/60 school year, additional leave with pay shall be granted to students successfully following evening and correspondence courses offered by higher and specialized secondary educational establishments (faculties or departments), as follows:

(*a*) For the period when laboratory work is being done or tests or examinations are being taken by students following first- and second-year courses: twenty calendar days a year for students following evening courses offered by higher educational establishments, ten calendar days a year for students following evening courses offered by specialized secondary educational establishments, and thirty calendar days a year for students following correspondence courses offered by higher and specialized secondary educational establishments;

(*b*) For the period when laboratory work is being done or tests or examinations are being taken: by students following third-year and more advanced courses: thirty calendar days a year for students following evening courses offered by higher educational establishments, twenty calendar days a year for students following evening courses offered by specialized secondary educational establishments, and forty calendar days a year for students following correspondence courses offered by higher and specialized secondary educational establishments;

(*c*) For the period when state examinations are being taken by students following evening and correspondence courses offered by higher and specialized secondary educational establishments: thirty calendar days;

(*d*) For the period when students are preparing and defending their diploma projects (theses): four months for students following evening and correspondence courses offered by higher educational establishments, and two months for students following evening and correspondence courses offered by specialized secondary educational establishments.

. . .

3. That students following evening and corre-

spondence courses offered by higher and specialized secondary educational establishments shall be granted one free day a week for study for a period of ten school months before beginning their work on diploma projects (theses) or taking state examinations, with pay at the rate of 50 per cent of their wages or salary or at the minimum wage rate, whichever is higher.

4. That 50 per cent of the costs incurred by students following correspondence courses offered by higher and specialized secondary educational establishments in travelling to and from the place where such educational establishments are situated for the purpose of doing laboratory work or taking tests or examinations once a year, and also of preparing and defending their diploma projects (theses) or taking state examinations shall be paid by the undertakings or establishments in which they are employed.

5. That the directors of undertakings and establishments may, on the recommendation of the educational establishments concerned, grant students in the final year of evening or correspondence courses offered by higher and specialized secondary educational establishments one additional month's leave without pay to enable them to obtain first-hand experience of work in their chosen field and to prepare the material required for their diploma projects.

That, during the period of such leave, students shall receive students' grant on the usual terms.

6. That directors of undertakings and establishments may be permitted to grant additional leave without pay to manual and non-manual workers admitted to entrance examinations as follows: fifteen calendar days for students preparing to follow evening and correspondence courses offered by higher educational establishments, and ten calendar days for students preparing to follow evening and correspondence courses offered by specialized secondary educational establishments, exclusive of travel time to and from the place where such educational establishments are situated.

7. That collective farms shall be recommended to grant additional leave to members of agricultural artels enrolled in evening and correspondence courses offered by higher and specialized secondary educational establishments and to fix their pay with respect to the leave provided for in this order.

(*Collected Orders, USSR*, 1959, No. 14, p. 90)

ACT CONCERNING THE RECALL OF DEPUTIES TO THE SUPREME SOVIET OF THE USSR

of 30 October 1959

The right to recall a deputy, as one of the fundamentals of socialist democracy, was established in the Soviet State as a result of the Great October Socialist Revolution, is an expression of the sovereignty of the workers and guarantees the genuine responsibility of the deputy to the electors.

Accordingly, the Supreme Soviet of the Union of Soviet Socialist Republics, in conformity with article 142 of the constitution of the USSR, RESOLVES:

Art. 1. A deputy to the Supreme Soviet of the USSR may be recalled at any time by decision of a majority of the electors in his electoral district if he has failed to justify their confidence in him or has been guilty of actions unworthy of the high office of deputy.

Art. 2. The right to move the recall of a deputy to the Supreme Soviet of the USSR shall be enjoyed by public organizations and workers' associations (Communist Party organizations, trade unions, co-operative organizations, youth organizations and cultural associations) through their central, republic, territorial, regional, area, district or urban organs and by general meetings of manual and non-manual workers, held in their undertakings or establishments, of peasants, held at their collective farms or in their villages, and of members of the armed forces, held in their units.

Art. 3. Public organizations moving the recall of a deputy shall inform the deputy to that effect, stating the reasons for their action.

The deputy shall have the right to submit to the public organization or workers' meeting moving his recall an oral or written statement concerning the circumstances giving rise to the motion for his recall.

Art. 4. Motions of public organizations or workers' meetings for the recall of a deputy shall be transmitted to the Presidium of the Supreme Soviet of the USSR.

The Presidium of the Supreme Soviet of the USSR shall examine the material submitted, and if the recall of the deputy has been moved in conformity with the requirements of this Act it shall order a ballot on the matter.

Art. 5. The motion for the recall of a deputy to the Supreme Soviet of the USSR shall be discussed and decided at meetings of the electors of the electoral district concerned called by the public organizations referred to in article 2 of this Act and held in the undertakings, establishments, collective farms, military units or places of residence of the said electors.

The decision on the motion for the recall of a deputy to the Supreme Soviet of the USSR shall be taken by show of hands.

Art. 6. After the Presidium of the Supreme Soviet of the USSR has ordered a ballot on the recall of the deputy, every public organization and every citizen

of the USSR shall have the right freely to campaign for or against the recall of the deputy, in accordance with the provisions of article 125 of the constitution of the USSR.

Art. 7. In order to ensure due compliance with the provisions of this Act in the conduct of the ballot on the recall of a deputy, and in order to determine the results of such ballot, a district committee comprising representatives of public organizations and workers' associations and of general meetings of workers, and consisting of a chairman, a deputy chairman, a secretary and from four to eight members, shall be set up in the election district concerned.

The district committee in charge of the ballot on the recall of a deputy to the Supreme Soviet shall be confirmed by the executive committee of the territorial and/or regional soviet of workers' deputies in republics which have territorial and regional divisions, and by the Presidium of the Supreme Soviet of the republic in republics which do not have territorial and regional divisions.

The district committee in charge of the ballot on the recall of a deputy to the Soviet of Nationalities shall be confirmed by the Presidium of the Supreme Soviet of the union or autonomous republic, or by the executive committee of the soviet of workers' deputies of the autonomous region or national area respectively.

Art. 8. The minutes of each meeting of electors shall indicate the time and place of the meeting, the number of electors present and the number of votes cast for or against the recall of the deputy.

The minutes of each meeting of electors shall be signed by all the officers of the meeting and shall be transmitted within three days to the district committee in charge of the ballot on the recall of the deputy.

Art. 9. On the basis of the minutes of meetings of electors the district committee in charge of the ballot on the recall of the deputy shall count the votes cast in the district for or against the recall of the deputy and shall determine the results of the ballot.

The district committee shall transmit a report on the results of the ballot on the recall of the deputy to the Presidium of the Supreme Soviet of the USSR.

Art. 10. A deputy to the Supreme Soviet of the USSR shall be considered to have been recalled if a majority of the electors of his electoral district has voted for his recall.

Art. 11. The results of the ballot on the recall of a deputy shall be published by the district committee in charge of the ballot on the recall of the deputy not later than five days after they have been determined.

Art. 12. Complaints of violations of this act in the conduct of the ballot on the recall of a deputy to the Supreme Soviet of the USSR shall be examined by the district committee in charge of the ballot on the recall of the deputy.

Complaints of irregularities on the part of the district committee in charge of the ballot on the recall of a deputy shall be examined by the Presidium of the Supreme Soviet of the USSR.

(*Gazette of the Supreme Soviet of the USSR*, 1959, No. 44, p. 222)

UNITED ARAB REPUBLIC

NOTE[1]

Remedies before Tribunals; Right to a Fair Trial

1. Act No. 55 of 1959, of 21 February 1959 (*Official Journal* No. 33 *bis*B of 21 February 1959), dealt with the organization, composition, jurisdiction and procedure of the Conseil d'Etat.

2. Act No. 56 of 1959, of 21 February 1959 (*ibid.*) set out the organization of the judiciary.

3. Act No. 57 of 1959, of 21 February 1959 (*ibid.*) concerned judicial appeals.

Social Legislation

4. Act No. 91 of 1959, of 25 April 1959 (*Official Journal* No. 71 *bis*B of 7 April 1959) promulgated the Labour Code. The code deals with: placement of unemployed workers; vocational rehabilitation and placement of disabled persons; employment of aliens; apprenticeship and vocational training; individual and collective labour contracts; hours of work; employment of young persons and women; employment of workers in mines and quarries; wage fixing; trade unions; conciliation and arbitration in labour disputes; and labour inspection. English and French translations of the code, as amended by Act No. 227 of 1959, of 30 September 1959 (*Official Journal* No. 211 *bis* of 1 October 1959), have been published by the International Labour Office as *Legislative Series* 1959 — U.A.R.1.

5. Act No. 92 of 1959, of 6 April 1959 (*Official Journal* No. 71 *bis*B of 7 April 1959) promulgated the Social Insurance Code. English and French translations of the Act have been published by the International Labour Office as *Legislative Series* 1959 — U.A.R.2.

6. Act No. 158 of 1959, of 20 June 1959 (*Official Journal* No. 125 *bis* of 20 June 1959) concerns seafarers' contracts of employment. English and French translations of the Act have been published by the International Labour Office as *Legislative Series* 1959 — U.A.R.4.

[1] Information kindly furnished by M. Adel El Tahry, Substitut au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE[1]

1. Article 3 of the Universal Declaration of Human Rights

The position in Northern Ireland with regard to regulations under the Civil Authorities (Special Powers) Acts remains as stated in the *Yearbook on Human Rights for 1958*. The power to require persons in a specified area to remain within doors during certain hours was not used during 1959.

2. Article 10 of the Universal Declaration

Sections 8, 9, and 12 of the Tribunals and Inquiries Act, 1958, were brought into operation on 1 April 1959 by the Tribunals and Inquiries Act, 1958 (Commencement) Order, 1959. Details of the effect of these sections of the Act were given in the United Kingdom contribution to the *Yearbook on Human Rights for 1958*, pp. 246-7, to which reference should be made.

3. Article 19 of the Universal Declaration

The Obscene Publications Act, 1959, amends the law in England and Wales relating to the publication of obscene matter. The main changes are a statutory definition of obscenity for the purpose of the Act; and a provision that proof that publication is for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern shall be a good defence, and that the opinion of experts may be admitted on this point.[2]

4. Article 22 of the Universal Declaration

In March 1959, changes were effected in the adjudication procedure to remove the restriction on the right of appeal to the Commissioner under the Industrial Injuries Act; also to bring the system relating to the determination of family allowance claims into line with that for national insurance claims. In consequence, family allowance claims are now determined by the independent authorities appointed under the National Insurance Act — namely, insurance officers, local tribunals and the Commissioner — and not, as before, by the minister with appeal to an independent referee. The relevant acts and regulations are:

Family Allowances and National Insurance Act, 1959

The Family Allowances (Determination of Claims and Questions) Regulations, 1959

The National Insurance (Determination of Claims and Questions) Amendment (No. 2) Regulations, 1959

The National Insurance (Industrial Injuries) (Determination of Claims and Questions) Amendment Regulations, 1959

The Family Allowances (Making of Claims and Payments) Amendment Regulations, 1959

The Family Allowances (Qualifications) Amendment Regulations, 1959

In April the National Insurance (Earnings) Regulations, 1959, were made to provide for a further easement of the earnings rule to enable gainfully employed retirement pensioners and widow pensioners and widowed mothers to earn more without deduction from their pension or allowance.

The National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations, 1959, were also made in April to ensure that unemployment benefit is paid to workers on short time for the days on which they are losing work.

The National Insurance Act, 1959, provides for payment of a graduated retirement benefit in return for contributions related to the employed person's remuneration. Under the scheme, which is to come into force in April 1961, employed persons and their employers will each contribute 4¼ per cent of the employed person's earning between £9 and £15 weekly, and these contributions will give title to a graduated addition to the existings flat-rate retirement pension. The Act enables employed persons to be contracted out from the graduated scheme if they are members of private occupational schemes providing pension rights at least equivalent to those under the state scheme.

The National Insurance Retirement Pension Increments Transitional Regulations, 1959, were made in August, and introduced higher pension increments for persons postponing retirement from work beyond the normal pension age of 65 (60 for women).

Towards the end of the year, a series of regulations were made concerning the supplementary graduated pension scheme. These regulations (listed below) laid down the procedure for contracting out of the scheme and the conditions under which occupational pension

[1] Note kindly furnished by the United Kingdom Mission to the United Nations.

[2] Extracts from the Act appear below.

schemes may be recognized for that purpose, and also the procedure for appeals on questions arising out of the contracting out arrangements.

The National Insurance (Non-Participation — Appeals and References) Regulations, 1959

The National Insurance (Non-Participation — Certificates) Regulations, 1959

The National Insurance (Non-Participation — Benefits and Schemes) Regulations, 1959

Similar extensions in the field of social security in Northern Ireland have been made by parallel legislation in Northern Ireland.

5. Article 23 of the Universal Declaration

Terms and Conditions of Employment Act, 1959

Section 8 of this Act, which came into operation on 30 May 1959, gives representative organizations of employers or of workers the statutory right to invoke, through the Minister of Labour, the adjudication of the industrial court in cases where it appears to the organization that an employer is not observing the terms or conditions of employment which have been established for the industry.

Disabled Persons (Registration) (Amendment) Regulations, 1959

These regulations came into operation on 1 December 1959, and amend the Disabled Persons (Registration) Regulations, 1945, which amongst other matters specify the disqualifications from the entry of a person's name in the register of disabled persons. This is a register kept for employment purposes. The effect of the regulations is to place mentally disabled persons in the same position as other patients in hospitals, enabling them to apply for registration under the Act provided they are able to undertake employment or work on their own account.

This change follows the main trend of the mental health policy of Her Majesty's Government, away from institutional care of the mentally disordered towards community care.

The Factories Act, 1959

This Act amended the Factories Acts, 1937 and 1948. Its effect was:

(i) To improve the existing provisions with regard to fire precautions in factories;

(ii) To place on the minister the duty of promoting health, safety and welfare in places under the Factories Acts by collecting and disseminating information, and by carrying out and assisting to carry out investigations;

(iii) To revoke regulation 59 of the Defence (General) Regulations, 1939, and replace it with a permanent, but more limited, power to grant exemptions from the law regulating the hours of employment of women and young persons.

(iv) The Act increased the maximum fines which can be imposed for contravention of factory law and strengthened certain existing safety provisions of the Factories Act, 1937, including those relating to dangerous substances and fumes, lifts and cranes, and the maintenance of floors, passages and stairs. The Act also extended the scope of factory legislation to cover railway running sheds where running repairs to locomotives are carried out.

About one-half of the provisions of the Act came into operation on 1 December 1959, among them:

(i) The requirement that floors, passages and stairs should be kept free from obstructions or substances likely to cause persons to slip;

(ii) The replacement of the minister's powers under Defence Regulation 59 by new powers to grant relaxations from provisions of the Factories Acts and associated regulations, regarding the hours of work of women and young persons;

(iii) The minister's responsibility for promoting health, safety and welfare in places under the Factories Acts by collecting and disseminating information and by investigating problems in this field;

(iv) The provision for higher maximum fines for offences under the Factories Acts.

First Aid Boxes in Factories Order, 1959

The Docks (First Aid Boxes) Order, 1959

The Building Operations (First Aid Boxes) Order, 1959

These orders, which came into operation on 1 January 1960, provided for changes in the contents of first aid boxes or cupboards in factories, on docks, and on building sites. In the case of factories, for example, the order specified the minimum contents for first aid boxes or cupboards in three categories of factory; those employing 10 or less, those employing more than 10 but not more than 50, and those employing more than 50. The same range of equipment is to be included in each box, but the quantities vary according to the number of persons employed. Specifications for adhesive dressings for wounds and for eye ointment, for which the order provides, are given in certificates of approval issued by the Chief Inspector of Factories.

6. Article 25 of the Universal Declaration

The Children Act, 1958

This Act gives further powers of control and supervision by local authorities in England and Wales and Scotland for the purpose of ensuring the care and well-being of foster children — i.e., children whose care and maintenance are undertaken for reward by a person other than a relative or guardian.

The Adoption Act, 1958

This Act consolidates earlier enactments in England and Wales and Scotland, and also carries into law a

number of recommendations made by a departmental committee set up in 1953 to consider what changes in adoption policy or procedure were desirable in the interests of children.

The Maintenance Orders Act, 1958

The principal change in the law made by this Act is to permit courts in England and Wales to order payments under a maintenance order to be deducted by an employer from wages and paid into court.

The Matrimonial Proceedings (Children) Act, 1958

This Act extends the powers of courts in England, Wales and Scotland in respect of the welfare of children in connexion with divorce, judicial separation and annulment proceedings, and in particular requires arrangements with respect to the children to be made to the satisfaction of the court before the making of a decree in such proceedings.

The Legitimacy Act, 1959

This Act makes various amendments of the law in England and Wales relating to children born out of wedlock; in particular it enables an illegitimate child to be legitimated by the subsequent marriage of its parents notwithstanding that they were not free to marry at the time of its birth.

Legal Aid and Advice Act, 1949

Section 7 of this Act came into force for England and Wales on 2 March 1959; under it, legal advice is made available for persons of small or moderate means.

THE OBSCENE PUBLICATIONS ACT, 1959[1]

1. (1) For the purposes of this Act, an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In this Act, "article" means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures.

(3) For the purposes of this Act, a person publishes an article who —

(*a*) Distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or

(*b*) In the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it:

Provided that paragraph (*b*) of this sub-section shall not apply to anything done in the course of a cinematograph exhibition (within the meaning of the Cinematograph Act, 1952), other than one excluded from the Cinematograph Act, 1909, by sub-section 4 of section seven of that Act (which relates to exhibitions in private houses to which the public are not admitted), or to anything done in the course of television or sound broadcasting.

2. (1) Subject as hereinafter provided, any person who, whether for gain or not, publishes an obscene article shall be liable —

(*a*) On summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months;

(*b*) On conviction on indictment to a fine or to imprisonment for a term not exceeding three years or both.

. . .

(5) A person shall not be convicted of an offence against this section if he proves that he had not examined the article in respect of which he is charged and had no reasonable cause to suspect that it was such that his publication of it would make him liable to be convicted of an offence against this section.

. . .

3. (1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that, in any premises in the petty sessions area for which he acts, or on any stall or vehicle in that area, being premises or a stall or vehicle specified in the information, obscene articles are, or are from time to time, kept for publication for gain, the justice may issue a warrant under his hand empowering any constable to enter (if need be by force) and search the premises, or to search the stall or vehicle, within fourteen days from the date of the warrant, and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles and to be kept for publication for gain.

(2) A warrant under the foregoing sub-section shall, if any obscene articles are seized under the warrant, also empower the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle which relate to a trade or business carried on at the premises or from the stall or vehicle.

(3) Any articles seized under sub-section 1 of this section shall be brought before a justice of the peace acting for the same petty sessions area as the justice who issued the warrant, and the justice before whom

[1] Published separately by Her Majesty's Stationery Office as 7 and 8 Eliz. 2, ch. 66. The Act was assented to on 29 July 1959 and entered into force on 29 August 1959. It did not extend to Scotland or Northern Ireland.

the articles are brought may thereupon issue a summons to the occupier of the premises, or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before a magistrates' court for that petty sessions area to show cause why the articles or any of them should not be forfeited; and if the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited:

Provided that if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.

(4) In addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(5) Where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to quarter sessions; and no such order shall take effect until the expiration of fourteen days after the day on which the order is made, or, if before the expiration thereof notice of appeal is duly given or application is made for the statement of a case for the opinion of the High Court, until the final determination or abandonment of the proceedings on the appeal or case.

. . .

(7) For the purposes of this section, the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

. . .

4. (1) A person shall not be convicted of an offence against section two of this Act, and an order for forfeiture shall not be made under the foregoing section, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern.

(2) It is hereby declared that the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground.

. . .

UNITED STATES OF AMERICA

HUMAN RIGHTS IN THE UNITED STATES IN 1959

A SUMMARY OF PERTINENT ACTIONS TAKEN BY FEDERAL, STATE, AND OTHER GOVERNMENTAL AUTHORITIES [1]

CONTENTS

INTRODUCTORY NOTE

The following survey is of necessity selective. It is confined to legislative, judicial, and other official acts of consequence during 1959, and therefore does not discuss all the basic rights guaranteed in state and federal law. A more nearly complete picture of achievement would encompass the countless day-to-day activities of the various agencies of government, and of the American people themselves, in the protection, enhancement and enjoyment of individual rights and freedoms for all.

HUMAN RIGHTS IN GENERAL

Human Rights Day

In recognition of the eleventh anniversary of the proclamation of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948 and of the one hundred and sixty-eighth anniversary of the adoption of the United States Bill of Rights on 15 December 1791, President Eisenhower proclaimed the period of 10 December to 17 December as Human Rights Week, and called upon the citizens of the United States " . . . to observe these anniversaries by studying the Bill of Rights of the United States and the Universal Declaration of Human Rights of the United Nations, that we may grow in our understanding of the inherent dignity and the equal and inalienable rights of each member of the human family. In gratitude for the liberties that we enjoy, let us work to advance universal freedom and justice and stand ready to uphold the rights of others which are inextricably linked with our own."

CIVIL AND POLITICAL RIGHTS

Basic guarantees of civil and political rights are contained in the constitution of the United States, particularly in the first ten amendments thereto, collectively known as the Bill of Rights, and in corresponding provisions of the constitutions or organic laws of the states and other jurisdictions. The exercise of governmental power is limited by and must conform to these provisions. Both federal and state courts are vigilant to protect individual rights by preventing, invalidating or redressing action which violates constitutional guarantees. Judicial decisions are therefore of great importance in this field. Those cited in the following sections appear of continuing significance.

During the year 1959, the United States Commission on Civil Rights completed the organization of state advisory committees, one in each of the fifty states. These committees, composed of prominent and respected citizens of the several states, were formed to assist the Commission in its work, to conduct independent studies and to apprise the Commission of the status of civil rights in general within their communities.

In 1959, the Commission conducted hearings, conferences and investigations in various fields including alleged denial of voting rights (see below, under "Government by the Will of the People") and discrimination in education and in housing. During the year, Congress adopted legislation continuing the Commission for an additional two years. On 8 September, the Commission submitted its report to the President and to Congress as required by law; pertinent recommendations in this report are referred to below.

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

Equal Protection of the Law
(Articles 2 and 7 of the Universal Declaration of Human Rights)

Education (article 26(1)). Federal and state courts in 1959 continued to apply the constitutional principles enunciated by the United States Supreme Court in 1954 in *Brown* v. *Board of Education*,[1] which held that state-enforced racial segregation in the public schools violated the equal protection clause of the Fourteenth Amendment.

Two such decisions were rendered by the Supreme Court. In *Aaron* v. *McKinley*,[2] the court affirmed a decision[3] which had invalidated Arkansas statutes authorizing the governor to close public schools and to conduct an election on whether to integrate the schools, and providing that public funds be withheld from such closed schools and instead be applied to other public or private schools maintained on a segregated basis. The court, rejecting an argument that the statutes were valid as an exercise of state police power, held that a prior court order to integrate[4] was still in effect.

In *James* v. *Almond*,[5] the Supreme Court dismissed an appeal, thus leaving standing the decision of the Federal District Court[6] forbidding the enforcement of the so-called "massive resistance" laws of Virginia. Those laws, under which the governor was authorized to close schools which admitted students of all races, while leaving open schools still on a segregated basis, were held by the District Court to be violative of the state's obligations under the Fourteenth Amendment. That court said:

". . . we arrive at the inescapable conclusion that the Commonwealth of Virginia, having accepted and assumed the responsibility of maintaining and operating public schools, cannot act through one of its officers to close one or more public schools in the state solely by reason of the assignment to, or enrollment or presence in, that public school of children of different races or colors, and, at the same time, keep other public schools throughout the state open on a segregated basis. The 'equal protection' afforded to all citizens and taxpayers is lacking in such a situation."

Citing the decision of *Shelley* v. *Kraemer*,[7] the District Court, in response to an argument that the Negroes in the closed schools were not being denied "equal protection" since the whites previously attending those schools suffered the same detriment due to the closing, said that "Equality of treatment is not achieved through indiscriminate imposition of inequalities."

In an allied case involving municipal ordinances enacted to support these same "massive resistance" laws, a federal district court held[8] such an ordinance violative of Virginia and federal law. On appeal, the Circuit Court affirmed[9] this decision. The legal and moral authority of the Virginia Supreme Court of Appeals was added to these decisions when it held statutes in support of the "massive resistance" movement to be in violation of the Virginia constitution, which requires maintenance of "an efficient system of public free schools throughout the state."[10]

The effect of these decisions was immediately apparent. By September of 1959, Negro children were attending school with white children in five Virginia communities for the first time in the public school history of that state.

In other areas, two federal courts approved of gradual, grade-by-grade desegregation where it was felt the local school boards were acting in good faith in trying to comply with the Brown decision.[11] In both cases the courts, appreciating the need for flexibility and the assignment of primary responsibility for solving local problems to local units, held that in the light of conditions such as overcrowding, a history of violence, and inadequate teacher recruitment, and in the light of the psychological advantages arising from grade-by-grade desegregation, it would respect the local board's method of resolving the problem. One of the decisions,[12] nevertheless, while approving a provision for voluntary student transfer to other schools, held invalid a provision requiring schools that in effect became segregated through this voluntary transfer provision to remain segregated. That decision pointed out that although the U.S. constitution does not require integration, it does forbid discrimination. The other of the two decisions[13] nullified a provisions for registration of Negro students and a provision for choice of attending the school nearer the student or the one previously attended. In addition, the latter decision refused to grant the local school board the discretion to delay integration, saying ". . . the power to delay, resting in unfriendly hands, is tantamount to the power to defer interminably or to defeat altogether." Both courts retained jurisdiction in the event further judicial action was necessary.

The other circuit court decisions examined state pupil placement laws that made no reference to race or colour. While one of these laws[14] was held a proper instrument for orderly desegregation under the Brown decision, the other was found not to constitute a

[1] 347 U.S. 483 (1954).
[2] 361 U.S. 197.
[3] 173 F. Supp. 944; aff., 361 U.S. 197.
[4] 261 F.2d 97.
[5] 359 U.S. 1006.
[6] 170 F. Supp. 331.
[7] 334 U.S. 1 (1947).
[8] 267 F.2d 224; cert. den. 361 U.S. 835.
[9] 170 F. Supp. 342.
[10] 106 S.E.2d 636.
[11] 270 F.2d 209; cert. denied 361 U.S. 924 172 F. Supp. 508.
[12] 270 F.2d 209; cert. denied, 361 U.S. 924.
[13] 172 F. Supp. 508.
[14] 271 F.2d 132.

"reasonable start toward full compliance" under conditions existing in that jurisdiction.[1]

Over all, the number of white and Negro children attending the same schools increased substantially in the ten states that initiated desegregation in 1958 and prior years, and in Florida and Virginia in which it was initiated during the year 1959. Only five[2] of the seventeen states that enforced racial segregation in public schools in 1954 retained complete segregation at the elementary and secondary level in 1959. Litigation is pending in federal courts regarding the situation in some of these states.

At the higher education level, in one of the four states[3] that still maintained complete segregation in all their publicly controlled colleges by the close of 1959, a federal court forbade the State Board of Regents to deny admission to qualified Negroes, and specifically forbade the board to require applicants for admission to obtain recommendatory certificates from alumni of those colleges, pointing out that since there were no Negro alumni, and since social patterns in the state would make it difficult for Negro applicants to obtain recommendations from white alumni, the requirement of such certificates was unduly oppressive and, in those circumstances, a denial of equal protection of the laws.[4]

Rounding out judicial implementation of the Brown decision, the Supreme Court of Tennessee[5] and a Federal Circuit Court[6] affirmed convictions of persons interfering with school desegregation.

Public accommodations and facilities and the concept of "state action". The principle of equal protection was applied also in various cases involving public parks, transfer of property, and, under specific state laws, fair employment practices and publicly assisted housing. Since the equal protection clause in the Fourteenth Amendment applies to actions by the state and not to actions by individuals, the crux of the equal protection controversy in the courts is whether the alleged discrimination is attributable to the state.

In one case, a Federal District Court in Alabama forbade the enforcement of a local ordinance making it a misdemeanour for white and coloured persons, at the same time, to enter upon, visit, use or in any way occupy public parks owned and maintained by the city.[7] The decision held the ordinance violated the equal protection of the laws as secured to the Negro plaintiffs by the Fourteenth Amendment. Noting that the city is under no duty to operate such parks, the court held that, if the city does, it must do so in a non-discriminatory fashion.

Similarly, in line with similar decisions in other states, the Florida Supreme Court held invalid a restrictive covenant precluding ownership of land by one not a Christian Caucasian, holding that state enforcement of such a restriction, in contravention to the wishes of both the seller of the land and the buyer, would be state action in violation of the Fourteenth Amendment.[8] A New Jersey court upheld a state statute "making the right of access to publicly assisted housing accommodations a civil right" and held it applicable where the Federal Housing Administration had agreed to insure mortgages on homes within an otherwise private housing development.[9] A New York State court held that under the State Law Against Discrimination inquiry as to a job applicant's religion was not a "bona fide occupational qualification" and therefore was illegal under the statute. That court said, "An engineer who is Jewish is no less an engineer by being so."[10]

On the other hand, where no state or municipal regulation and no public ownership or control was involved, a Federal Circuit Court[11] held that refusal to serve a Negro by a private restaurant not engaged in interstate commerce was not "state action", and therefore was not in violation of the Fourteenth Amendment. The court rejected the argument that state licensing of restaurants for health purposes imposed the affirmative duty upon the state to prohibit arbitrary discrimination by such restaurants. That argument, the decision said, "fails to observe the important distinction between activities that are required by the state and those which are carried out by voluntary choice and without compulsion by the people of the state in accordance with their own desires and social practices."

Examining this same distinction, the Delaware Supreme Court, reversing[12] a lower court decision,[13] held that discrimination on the part of a lessee of state property was private and not state action, and therefore not violative of the Fourteenth Amendment. The high court pointed out that the state did not finance or control the enterprise charged with racial discrimination and that the restaurant was not an instrumentality of the state.[14]

The state of Maine enacted a law prohibiting discrimination because of race, colour, religious creed, ancestry or national origin in places of public accommodation, thus becoming the twenty-fourth state to adopt such a law.

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[1] 272 F.2d 763.

[2] Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

[3] Georgia.

[4] 172 F. Supp. 847.

[5] 326 S.W.2d 664.

[6] 265 F.2d 683; cert. den., 360 U.S. 909, 932; pet. for rehearing den., 361 U.S. 855.

[7] 176 F. Supp. 776.

[8] 116 So.2d 622.

[9] 153 A.2d 700 (1959), Aff. 158 A.2d 177 (1960).

[10] 190 N.Y.S.2d 218.

[11] 268 F.2d 845.

[12] 157 A.2d 894 (1960).

[13] 150 A.2d 197.

[14] But see 180 F. Supp. 296 (1960).

Fair Trial and Hearing

(Articles 3, 5, 9, 10 and 11)

The Declaration of Independence specifies that life and liberty are among the "inalienable rights" with which all men are "endowed by their Creator," and the Fifth and Fourteenth Amendments to the U.S. constitution provide that no person may be deprived of life or liberty by governmental authority without due process of law. Under these amendments, a coerced confession may not be introduced as evidence against a defendant in a criminal proceeding, nor can the defendant be treated in any way that conflicts with "that fundamental fairness essential to the very concept of justice."[1] Through regular procedures guaranteed in the U.S. and state constitutions the courts, on application by defendants alleging grievances, continued during 1959 to scrutinize police activities and to assure maximum observance of these due process requirements in the courts.

Thus, the Supreme Court reversed a conviction based in part upon a confession found to be obtained and used in violation of the Due Process Clause of the Fourteenth Amendment where, subsequent to indictment for a capital crime, the police had refused to summon the defendant's attorney, and the defendant had been questioned for eight hours during the night subject to psychological, though not physical, pressure.[2] The decision stated that the interest in protection of individual rights from unconstitutional police methods outweighs the interest of society in efficient law enforcement, particularly in light of the dubious trustworthiness of such coerced confessions and the broad danger to society arising from illegal police methods.

Likewise, in accordance with the rule requiring federal courts to make an independent examination of the record when an individual asks protection of his constitutional rights, the Supreme Court remanded to a district court for such examination a petition for habeas corpus where the defendant alleged that his confession had been physically coerced.[3] And a circuit court, reversing the lower court's denial of petition for writ of habeas corpus on grounds of coercion, said[4] that the conviction must be reversed "regardless of whether there was ample other evidence, apart from the statements and admissions, to support the jury's verdict."

In another 1959 decision,[5] the Supreme Court reasserted the principle that, where state criminal proceedings in which defendant was not represented by counsel were so apt to result in injustice as to be fundamentally unfair, lack of counsel was a denial of due process under the Fourteenth Amendment. On that basis, the court remanded the petition for habeas corpus to the state court for a full hearing.

At the lower level, two federal courts granted petitions for writs of habeas corpus[6] respectively to two defendants who were young and uneducated and who had been unrepresented by counsel at trial where the state court in each case was found to have failed to apprise the defendant effectively of his right to counsel. One court said: "'. . . where a person convicted in a state court has not intelligently and understandingly waived the benefit of counsel and where the circumstances show that his rights could not have been fairly protected without counsel, the Due Process Clause invalidates his conviction.' In applying this rule . . . [i]t is proper to consider such facts as the gravity of the crime; the age, the education and intelligence of the defendant; the conduct of the court; the complicated nature of the offense charged and the possible defences thereto; and the defendant's prior experience in court."[7]

Protecting a defendant's right to trial by an impartial tribunal, a circuit court granted a petition for habeas corpus[8] where it found that Negroes had been systematically excluded from the jury lists from which juries had been chosen to consider his case. The Supreme Court, in another case, reversed a conviction where the trial judge had refused to admit evidence of defendant's prior record because he felt it would be prejudicial to the defendant and the jury then had read newspaper items concerning that prior record, holding that, even though the jury had testified it would not be influenced by such articles, the need for impartiality justified a new trial.[9]

In order further to protect defendants from oppressive and arbitrary proceedings, the safeguard of a grand jury indictment is secured by the Fifth Amendment. Although generally this safeguard can be waived by a defendant, the Supreme Court held[10] in 1959 that under the Federal Rules of Criminal Procedure the safeguard cannot be waived in a capital proceeding.

Similarly, to protect the defendant from overreaching tactics on the part of the state prosecution, the Supreme Court reversed a conviction[11] as being in violation of due process where the state had knowingly allowed its witness to testify falsely. And in accordance with the principle that due process requires that a person should be able to know with reasonable certainty when his acts constitute a crime, the Supreme Court reversed a contempt conviction[12] for refusal to answer questions put to defendant by a state legislative committee. The court reasoned that

[1] 356 U.S. 560 (1958).
[2] 360 U.S. 315.
[3] 358 U.S. 276.
[4] 270 F.2d 513; cert. denied, 361 U.S. 950 (1960).
[5] 358 U.S. 633.
[6] 171 F. Supp. 558; aff. 266 F.2d 824; & 171 F. Supp. 387.
[7] 171 F. Supp. 387.
[8] 263 F.2d 71; cert. denied, 361 U.S. 838.
[9] 360 U.S. 310.
[10] 360 U.S. 1.
[11] 360 U.S. 264.
[12] 359 U.S. 344.

the purposes of the inquiry and the pertinency of the questions to that purpose were so vague as to deny the defendant an opportunity to assess his legal obligation to respond.

In addition, in order to assure just and fair procedures to poor and rich alike, the Supreme Court held[1] that denying the appeal to a state supreme court of an indigent defendant unable to pay docket and filing fees was violative of the due process and equal protection clauses of the Fourteenth Amendment. The fact that the state had provided another lower review for indigents was irrelevant since indigents are entitled to the same opportunity as others to have the state high court exercise its discretion. Also, to assure full access to the courts and due process, a district court held[2] that prison authorities could not restrain study of law or preparation of legal documents by prisoners in their cells.

Privacy

(Article 12)

The Fourth Amendment to the constitution protects the individual from unreasonable searches and seizures by requiring warrants to be issued only upon "probable cause". Decisions of the Supreme Court in 1959 further defined the standard of reasonableness required for searches and seizures authorized by law without warrants. The standard, in effect, appears to be the same as that of "probable cause" required by the Fourth Amendment.

The court found[3] the standard had been met in an arrest without warrant for narcotics violations, the arrest and subsequent search and seizure incidental to the arrest having been made upon information given by a reliable informant. The court held that there was no violation of the Fourth Amendment, since the federal agent had had probable cause to believe the defendant was violating federal law. The search was "reasonable". In another case, however, the court overruled a conviction[4] based upon evidence obtained in violation of the Fourth Amendment and of federal law, which authorizes felony arrests without a warrant only where an offence was committed "in the presence" of the federal officer, or where the officer had ". . . reasonable grounds to believe that the person to be arrested has committed or is committing" a felony. Noting that mere suspicion does not constitute "reasonable grounds", the court held that observing unidentified packages being put into a car under suspicious circumstances does not of itself provide probable cause for believing an offence has been committed. The court said: "It is better, so the Fourth Amendment teaches, that the guilty sometimes go free, than that citizens be subject to easy arrest."

[1] 360 U.S. 252.

[2] 177 F. Supp. 361.

[3] 358 U.S. 307.

[4] 361 U.S. 98.

In *Frank* v. *Maryland*,[5] the court affirmed the conviction of a householder who refused entrance into his house to an inspector who suspected probable cause that rodents were breeding in the defendant householder's cellar. In apparently holding the search was "reasonable", the court noted that the statute did not authorize entrance by the inspector against the wishes of the householder; that it merely authorized a demand for entrance during the day, based upon probable cause and then provided that refusal would be punished by a fine.

Freedom of Movement

(Article 13)

In 1959 the courts again considered the question of freedom of movement. The Supreme Court had previously declared[6] that the right to "Freedom of movement is basic to our scale of values." 1959 decisions indicated that like other individual rights the right to freedom of movement may be qualified.

In *Worthy* v. *Herter*,[7] a circuit court affirmed a judgement upholding denial of renewal of a passport to a newspaperman who refused to accept the condition that he could not travel to certain countries under communist domination. The denial, the court noted, was not predicated upon the applicant's beliefs nor upon his writings, but rather upon reasons of national policy in the conduct of foreign affairs. While reaffirming that "the right to travel is protected by the constitution, being a part of the right to liberty," the court pointed out that "Liberty itself is inherently a restricted thing. Liberty is a product of order." Thus, the court upheld the restriction of liberty of movement as "an instrument of foreign policy" necessary for that order. The "clear and present danger" of the communist menace, it held, justified the limitation of that liberty. *Frank* v. *Herter*[8] similarly refused to order removal of a travel restraint clause in a passport on the basis of the Worthy decision. These decisions, indicating that freedom of movement may be restricted geographically, distinguished this decision from the 1958 Supreme Court decision in *Kent* v. *Dulles*,[9] which held only that the Secretary of State lacked statutory authority to deny passports on the basis of the applicant's beliefs or associations. The Supreme Court subsequently declined to review both cases, thereby leaving the circuit court decisions in effect.

In another 1959 decision, the Supreme Court also indicated that whether the right to freedom of movement within the states was based upon the Due Process Clauses or the Privileges and Immunities Clause of the Fourteenth Amendment, it was subject

[5] 359 U.S. 360.

[6] 357 U.S. 116 (1958).

[7] 270 F.2d 905, cert. den., 361 U.S. 918.

[8] 69 F.2d 245, cert. den., 361 U.S. 918.

[9] 357 U.S. 116 (1958).

to reasonable qualifications. In *N.Y.* v. *O'Neill*,[1] a case involving the freedom not to move that is implicit in the concept of freedom of movement, the court upheld a state uniform law to secure the attendance of witnesses from within a state in criminal proceedings as applied to one temporarily in Florida who was summoned through the prescribed process of a Florida court to appear as a witness in a criminal proceeding in New York. Noting that the purpose of the law is to assure proper criminal law enforcement, that the statute is hedged with procedural safeguards for the witness, and that the limitation imposed in this instance stems from the citizen's responsibility to his government, the court held that at most the case represents a justified temporary interference with voluntary travel.

Asylum and Nationality

(Articles 14 and 15)

The Senate, on 22 September 1959, enacted a law "To provide for the entry of certain relatives of United States citizens and lawfully resident aliens." The act, which amended the Immigration and Nationality Act, had the effect of liberalizing the provisions of existing law for the purpose of expediting the reuniting of families. It reclassified certain categories of close relatives in the various preference portions of the immigration quotas, and provided for the issuance of special non-quota immigrant visas under specified circumstances.

During the calendar year 1959, 2,701 orphans adopted by United States citizens were among the numerous aliens who came to make a home in the United States.

Manifesting the emphasis traditionally placed by the United States on the right to nationality and a national homeland, 128,215 persons were naturalized and granted citizenship during the calendar year in accord with established practice.

Freedom of Religion

(Article 18)

The First Amendment to the U.S. constitution provides in part that Congress shall make no law (1) "respecting an establishment of religion," or (2) "prohibiting the free exercise thereof." The state constitutions also contain guarantees of freedom of religion. In addition, the prohibitions of the First Amendment have been applicable to the state governments by the Supreme Court's interpretations of the Fourteenth Amendment due process clause.

The Washington State Supreme Court,[2] declaring that a programme whereby public-school children are released from school one hour a week for religious education off school grounds on the written request of their parents would not necessarily contravene the constitution, held that the particular programme at issue, which also employed school facilities, was in violation of the state and federal constitutions, which implicitly forbade use of state funds for religious purposes. The separation of church and state required by the non-establishment clause was found not to have been violated, however, when the Florida Supreme Court held[3] that allowing a church to use a school building temporarily during non-school hours was within the proper discretion of the school authorities, and again when the Supreme Court of Oklahoma upheld[4] the expenditure by the local governments of a bequest for the construction of a nonsectarian memorial chapel on state property for use by an orphans' home.

With regard to the principle of "free exercise" of one's religion, the courts in 1959 repeatedly cited the Supreme Court's prior decision in *Cantwell* v. *Connecticut*,[5] which ruled that: "The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion . . . [T]he Amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

Following this concept, two circuit courts affirmed convictions[6] of alleged conscientious objectors for refusing to submit to induction into the armed forces on the ground that the defendants had failed to prove that their objections to participation in war were based on their religious training and beliefs. One of the courts,[7] in dealing with this more limited right to practice one's religious beliefs through action, said: "Concededly, no one has a constitutional right to exemption from military service. It is a matter of legislative grace. It is granted in recognition of the concept that it is 'more essential to respect a man's religious belief than to force him to serve in the armed forces'," even though "an armed force is a practical necessity in today's world." In light of the Cantwell decision, a district court released one of four other defendants indicted for the same crime.[8] Similarly, with regard to the parent's duty to protect a minor's health, the Court of Appeals of Maryland, while reversing for lack of evidence a conviction of

[1] 359 U.S. 1.

[2] 344 P.2d 1036.

[3] 115 So.2d 697.

[4] 347 P.2d 204.

[5] 310 U.S. 296 (1940).

[6] 266 F.2d 378; and 269 F.2d 613; cert. granted, 361 U.S. 899.

[7] 266 F.2d 378.

[8] 173 F. Supp. 677.

parents charged with neglect, remanded[1] the case for further hearing, saying that the parents' belief in divine healing did not exempt them from the statute requiring that they provide such medical aid as the child might need. The court noted that while the parents were free to believe in such healing, their right to practice their beliefs was limited by laws that the state enacted for the general welfare.

Freedom of Speech, Press and Association

(Articles 18, 19, 20 and 29)

The First Amendment to the U.S. constitution also provides, in part, that Congress shall make no law abridging freedom of speech or of the press, and the Supreme Court has held[2] that the Fourteenth Amendment protects these freedoms from abridgement by the states. In addition, each of the state constitutions provides expressly for freedom of speech and of the press. While these freedoms, like any freedoms, are not absolute ["The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic."[3]] the courts have zealously protected them from federal and state encroachment, often referring to these freedoms of the person as occupying a "preferred position",[4] and always requiring a compelling interest on the part of government to justify restriction of these freedoms.

The Supreme Court found such compelling state interest in *Uphaus* v. *Wyman*,[5] a 1959 decision upholding a contempt conviction due to refusal by a defendant to produce guest lists requested by a state legislative committee investigating subversion against the state. Though the court had in 1958 declared that the related right to freedom of association often required "inviolability of privacy in group action," and recognized that "effective advocacy of both public and private points of view is undeniably enhanced by group association,"[6] the Uphaus decision held that the state's interest of self-preservation was paramount in this instance to that of associational privacy.

Likewise, the court upheld the investigatory power of Congress in the area of communist infiltration into education, as predicated upon that same interest in self-preservation, pointing out that this power could not be denied solely because the subject matter of the investigation was education, and rejecting the argument that it could be circumscribed by the individual right to privacy of association.[7] Thus, the court sustained a contempt conviction for the defendant's refusal to answer questions put to him during such an investigation. Noting that the investigation was not to control what was being taught in educational institutions, but rather to uncover infiltration for the ultimate purpose of violent overthrow of the federal government, the court held that the inquiry was related to a valid legislative purpose, that the questions were pertinent, and that the authorization of the committee to compel testimony was not so vague as to deny witnesses of due process.

A district court invalidated a state law making membership in the National Association for the Advancement of Colored People a disqualification for public employment,[8] saying: "the fact of association alone cannot be used to determine disloyalty or disqualification." In the same case, that court upheld a companion statute requiring teachers to submit a list of organizations to which they belonged or had belonged during the prior five-year period, quoting an earlier Supreme Court decision[9] that "By engaging in teaching in the public schools, [an individual] did not give up his right to freedom of belief, speech, or association. He did, however, undertake obligations of frankness, candor, and cooperation in answering inquiries made of him by his employing board examining into his fitness to serve it . . ."

In another 1959 decision,[10] the Supreme Court, interpreting the Federal Communications Act of 1934, which requires a broadcasting station to give equal time to speeches by political candidates, held that the Act should not be construed to allow a station to censor the material broadcast by a candidate since such a power might be abused and its very existence would undermine the Congressional purpose to increase political debate on an equal basis. Consequently, the court extended to the station an immunity from state defamation statutes. And in a case where a union had issued a "We do not patronize" list of employers so listed, a circuit court found[11] the union's action was so within the protection of the First Amendment guarantee of freedom of speech that the applicable law, the National Labor Relations Act, should not be construed to make such conduct illegal.

In two decisions, the Supreme Court once again indicated that, while obscenity is not within the constitutional protection of free speech, censorship on a broad scale cannot be tolerated. The court, in *Kingsley Pictures Corp.* v. *Regents*,[12] held unconstitutional part of a New York licensing statute that had been construed to require denial of a licence to the film "Lady Chatterley's Lover". The state court, in denying the licence, had rejected the notion that the film was obscene, holding rather that the movie as a whole "alluringly portrays adultery as proper behaviour . . .

[1] 155 A.2d 684.

[2] 268 U.S. 652 (1925).

[3] 249 U.S. 47 (1919) opinion, Mr. Justice Holmes.

[4] 323 U.S. 516 (1945).

[5] 360 U.S. 72.

[6] 357 U.S. 449 (1958), see *Yearbook on Human Rights for 1958*, p. 252.

[7] 360 U.S. 109; see also 269 F.2d 357.

[8] 174 F. Supp. 351; prob. juris. noted, 361 U.S. 947 (1960).

[9] 357 U.S. 399, at 405 (1958).

[10] 360 U.S. 525.

[11] 263 F.2d 796.

[12] 360 U.S. 684.

for certain people."[1] The Supreme Court, noting that motion pictures are within the protection of the First and Fourteenth Amendments, characterized the state action as attempting "to prevent the exhibition of a picture because that picture advocates an idea — that adultery under certain circumstances may be proper behaviour." The First Amendment protection, the court said, is not "confined to the expression of ideas that are conventional or shared by a majority . . . Where advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on" our society depends upon free speech itself, not suppression of such speech, to protect itself.

The court also held[2] that a municipal ordinance imposing absolute criminal liability on a bookseller for mere possession of books found to be obscene, without requiring knowledge of such obscenity on the part of the bookseller, violates freedom of the press. Although the ordinance was directed at obscene books, which are outside of the constitutional protection, the court held that the indirect effect upon materials within the protection of the First Amendment makes the ordinance unconstitutional. Emphasizing the chilling effect upon the free dissemination of ideas, the court pointed out that "If the bookseller is criminally liable without knowledge of the contents . . . he will restrict the books he sells to those he has inspected; and thus the state will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature."

In numerous lower court decisions, the principles of freedom of speech and press were further defined through application. The Supreme Court of Rhode Island, in construing a criminal obscenity statute requiring knowledge of the contents of the book and applying only to commercial distribution to persons under eighteen, upheld a conviction based upon it saying the statute was not too vague and did not infringe upon the constitutionally protected area of free press.[3] The Supreme Court of California, on the other hand, held invalid[4] a country ordinance prohibiting the sale and circulation of crime "comic" books to children under eighteen on grounds that the statute was too broad and that the abridgement of freedom of the press was not justified by a clear and present danger proven to have been caused by those books. A federal district court, holding that "there is no constitutional right to disseminate obscene matter," upheld the postmaster's refusal to accept for mailing hard-core pornography;[5] but, in another case,[6] held that the postmaster could not reject "Lady Chatterley's Lover" for mailing since, judging the book as a whole on the basis of contemporary community standards, the dominant theme did not appeal to the prurient interest, and the book therefore was not obscene. Quoting,[7] the district court said: "All ideas having even the slightest redeeming social importance — unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion — have the full protection of the guarantees, unless excludable because they encroach upon the limited area of more important interests."

[1] 175 N.Y.S. 2d 39 (1958).
[2] 361 U.S. 147.
[3] 156 A.2d 921.
[4] 341 P.2d 310.
[5] 175 F. Supp. 485.
[6] 175 F. Supp. 488.
[7] 354 U.S. 476 (1957).

Government by the Will of the People

(Article 21)

The Declaration of Independence states that governments derive their just powers " . . . from the consent of the governed." This principle was made a matter of basic law by the constitution, which assured to the citizens of the United States a representative form of government. While the federal constitution authorizes the states to establish the qualifications of voters,[8] it also protects the individual against arbitrary treatment through provisions forbidding the states to discriminate on grounds of race[9] and sex,[10] and requiring equal protection of the law.[11] A citizen who meets the qualifications set by his state has a constitutional right to vote and is given a cause of action against any person responsible for depriving him of that right.[12]

The Supreme Court in *Lassiter* v. *Northampton County Board of Elections*[13] upheld a state statute requiring a literacy test to be a reasonable qualification for voting. Since the test on its face was not discriminatory, and was equally applicable to all, the court held it did not violate the constitution. The court held unconstitutional companion legislation in the application of a literacy test which discriminated on the basis of descent.

In another sphere of action Alaska was formally admitted to the Union on 3 January 1959, and on 18 March 1959 Congress enacted legislation to provide for the admission of Hawaii as a state of the Union, thus enabling the people of these areas to attain complete political equality and responsibility with the citizens living in the other states.

In the field of voting, the investigation by the Commission on Civil Rights of alleged denials of the right to vote in seven counties of Alabama, begun in late 1958, was concluded in 1959. Commission representatives were able to examine significant portions of voter registration records in three of the counties. The records confirmed the complaints of

[8] Article I, sec. 2.
[9] Fifteenth Amendment.
[10] Nineteenth Amendment.
[11] Fourteenth Amendment.
[12] 41 U.S.C. sec. 1983.
[13] 360 U.S. 45.

witnesses that they had been denied the right to vote because of their race. In a collateral court proceeding, brought to enforce examination of these records by the Commission representatives, a district court upheld the constitutionality of the Civil Rights Act of 1957.[1]

Among the recommendations for legislative or executive action made by the Commission, two are relevant.[2] The first of these urged the creation of an administrative system for the appointment of temporary federal voting registrars to function in those areas in which there was reason to believe, upon investigation of sworn complaints, that persons were being denied the right to vote because of their race or colour. The other significant recommendation was for federal legislation to require the preservation, as public records, of all state registration and voting records for a period sufficient to permit their examination. Both of these recommendations, in somewhat revised form, were considered by the Congress at its next session and enacted into law.[3]

ECONOMIC, SOCIAL, AND CULTURAL MATTERS

While individual initiative functioning in a system of private enterprise is the principal means for economic, social, and cultural progress in the United States, the various governments co-operate with and aid such private initiative in furtherance of steady advancement and development in these fields. Broad human rights are guaranteed in many state constitutions and laws. Responsibility for legislation in these fields rests largely with state and local governments, though the Federal Government often gives assistance in numerous ways.

Of general interest were international agreements coming into force for the first time, or extended, during 1959. Among these were agreements regarding educational exchanges with Ceylon, Finland, India, Italy, Peru, Sweden and the United Arab Republic; regarding co-operation in development of peaceful uses of atomic energy with Belgium, China, France, the Federal Republic of Germany, the Netherlands, and Viet-Nam; and regarding financial, economic and technical assistance or co-operation with Argentina, Bolivia, Burma, Ecuador, Israel, Italy, the Federation of Malaya, Turkey, Yemen, and Yugoslavia.

Social Security

(Article 22)

In 1959, Congress approved an extensive programme of health insurance for civilian employees of the Federal Government, to go into effect in July 1960; part of the cost of the programme will be borne by the Government. Other federal legislation improved old-age, survivors', and disability insurance protection for small groups in the population not previously covered, such as certain policemen and firemen, and increased retirement benefits for railroad workers.

The non-service-connected pension programme for veterans of military service was also expanded by relating pensions to need and making widows and children of World War II veterans eligible on the same basis as widows and children of World War I veterans.

Most state legislatures made changes liberalizing their public assistance laws during 1959, stimulated by the 1958 amendments to the Social Security Act. Interest in the needs of the ageing was reflected in various actions concerned, in general, with special commissions on the problems of the ageing or with setting standards for facilities providing nursing or other personal care to the aged. Hawaii, the newest state to enter the Union, extended employment security coverage to cover "territorial", and county employees and liberalized and expanded the workmen's compensation law. With the establishment of a programme for the needy, under the Social Security Act, Guam joined the other fifty-three jurisdictions of the United States in taking advantage of federal grant-in-aid provisions for this purpose.

Work and Remuneration

(Articles 23 and 24)

Fair Employment Practices. During 1959 California and Ohio enacted laws prohibiting discrimination in employment, bringing to sixteen the number of states to have adopted such laws. The California law declared that the opportunity to seek, obtain, and hold employment without such discrimination is a "civil right". Connecticut and New Mexico strengthened laws against discrimination adopted earlier, and Missouri passed a law prohibiting discrimination in state employment. Puerto Rico, Wisconsin, Oregon, and Connecticut joined Massachusetts, Pennsylvania and New York in prohibiting discrimination because of age.

Labour Relations. The Congress enacted legislation[4] designed to eliminate improper practices on the part of labour organizations, employers, and professional labour relations consultants. This legislation safeguards basic rights of union members within the organization itself, enforceable through federal courts. The Act provides standards and procedures with regard to the election and removal of officers of labour organizations, requires reports to the Government on certain financial and administrative practices, and safeguards union funds against improper use. The

[1] 170 F. Supp. 63.

[2] Report of the U.S. Commission on Civil Rights — 1959, pp. 137-142.

[3] Civil Rights Act of 1960, see 301, 601, P.L. 86-449.

[4] The Labor-Management Reporting and Disclosure Act of 1959, of which the text and a French translation have been published by the International Labour Office as *Legislative Series* 1959 — U.S.A.1.

legislation also makes certain limited amendments to the National Labor Relations Act.

Migratory Workers. During 1959, the United States Employment Service amended its regulations to assure migratory workers housing and other employment conditions in accord with approved standards. In addition, a number of states enacted laws to improve the working and living conditions of migratory agricultural workers. Oregon enacted a separate law to regulate farm labour contractors, formerly covered under its private employment agency law. California and Oregon made substantial additions to their provisions governing the safe transportation of workers. Migratory agricultural labour camps in various states were improved by the adoption of new laws and regulations supplementing existing standards, so that, at the year's end, twenty-two states had established mandatory standards for this purpose. While children of migrant families attend public schools wherever they are, on the same basis as children resident in the area, Oregon recognized their special needs by establishing a pilot programme for the education of migrant children, and legislation in Ohio and Idaho provided additional aid for this purpose. In California, an amendment to the workmen's compensation law extended compulsory coverage to all farmworkers, thereby including migratory workers on farms.

Equal Pay. Hawaii, Ohio and Wyoming adopted laws prohibiting discrimination in wage payments on the basis of sex, bringing to seventeen the number of states with equal pay laws.

Wage and Hour Laws. The adoption of a minimum wage law by North Carolina in 1959 brought the number of state or other jurisdictions having minimum wage laws to thirty-five. These laws and the wage orders issued under them are especially important to women workers, large numbers of whom are concentrated in the trade and service industries to which these chiefly apply. Maine adopted a minimum wage law of general application, replacing a limited statute, and a new wage and hour law was enacted in Washington, replacing existing legislation. All three 1959 laws covered men as well as women and set a statutory minimum rate equal to that set by the Federal Fair Labor Standards Act — $1 per hour. New Hampshire, Vermont, Alaska, Massachusetts and Connecticut raised their statutory minimums, in the case of Alaska to exceed the federal standard. Higher rates became effective in a number of other jurisdictions by wage-board action.

California, Michigan, Nevada, and Wyoming amended maximum hour laws governing the employment of females to permit women in certain occupations to work beyond the maximum set by law under specified provisions or standards, usually requiring time and one-half pay for excess hours worked.

Safety. At the national level, Congress authorized the Atomic Energy Commission, if it finds a state's programme for control of radiation hazards to be adequate and compatible with its own, to enter into an agreement with the state recognizing state authority with regard to such hazards. A Federal Radiation Council was established to advise the President. A number of additional states passed laws for the control of radiation hazards.

Workmen's Compensation. Major benefit increases were approved in thirty states during 1959. Most of these raised weekly cash benefits for all types of disability and in case of death. In addition, the laws of almost half of the states were amended to cover more workers or to cover new injuries or diseases.

Vocational Rehabilitation

(Article 23)

The number of disabled persons rehabilitated into employment by government agencies reached 80,739 for the fiscal year ending 30 June 1959. This was a gain of nine per cent over the previous year, and forty-five per cent more than in 1954, when the present programme of vocational rehabilitation was initiated.

New legislation in Arkansas, Colorado, Florida, Georgia, Montana, Oklahoma, Pennsylvania, Rhode Island, and Tennessee broadened the concept of rehabilitation, to authorize services not only to the disabled who may be restored to employment but also to those capable of attaining varying degrees of self-sufficiency, if not actual employability. Colorado adopted legislation combining rehabilitation services for all disabled, including the blind, into one agency — the Colorado Department of Rehabilitation — and authorized this agency to administer a new programme for recipients of public aid who, although not disabled, found their capacity to earn a living impaired because of lack of training, experience, skills, or other factors.

In further recognition that, in the rehabilitation process, the sheltered workshop for the disabled is frequently an essential link between a hospital bed and a job, California, Massachusetts and Washington enacted legislation authorizing assistance to public or private agencies in developing and operating such workshops.

Standard of Living

(Article 25)

Since 1947, total personal income has risen, on the average, by $14.8 thousand million a year; in 1959 it rose by $20 thousand million, with continuing increase in family income. During 1959, 37 million consumer units (sixty-six per cent) had incomes over $4,000 as compared with 17 million in 1947. While these increases in living standards reflect primarily the functioning of a dynamic private economy, both federal and state governments encourage and supplement private initiative to improve living standards.

CHILD WELFARE

(Article 25)

During 1959, the President of the United States issued invitations to the sixth decennial White House Conference on Children and Youth, to be held early in 1960. The governor of each state was requested to set up advance consultations to study local problems and prepare recommendations for consideration at the national level. Among the 7,000 persons invited were more than five hundred visitors from foreign countries. Another action of general consequence was a joint congressional resolution shifting the date of Child Health Day to coincide with Universal Children's Day, the first Monday in October.

State legislation continued to emphasize the importance of children being cared for in their own homes. Where children must be away from home, such legislation encouraged the use of guardians, and, if the need is for permanent substitute parental care, the creation of new family ties through adoption. As a further means of preserving and strengthening the family unit, an increasing number of states set requirements for health examinations before marriage. Some states provided additional services to strengthen family ties and enable parents in difficult situations to carry out their responsibilities. For example, where a child has been referred to a court, a full study of his situation is usually required as a part of the adjudication process, with a view to meeting any need for special custody or protective supervision within his own family. Several states adopted legislation to improve court structure and procedure for delinquent children and reorganize services available for them.

Programmes to protect children against poliomyelitis continued, with many states providing the vaccine without charge, and some states making vaccination compulsory. Services for crippled children were expanded in some areas — for example, by broadening the definition of "crippling" to cover additional handicapping conditions, such as cystic fibrosis and congenital heart disease, thereby assuring such children a wider variety of state-aided services.

During the year, President Eisenhower presented the forty millionth copy of *Infant Care* to a family which had been selected as typical of American parents. *Infant Care*, first published by the United States Children's Bureau in 1914, has long been a "best-seller" in the United States, and has been widely translated into other languages.

HEALTH

(Article 25)

Prevention and control of communicable diseases and other health dangers, enforcement of sound food and drug standards, and provision of medical services to certain groups are among co-operative efforts of federal and state governments. However, the great bulk of medical, surgical, and hospital services in the United States is provided by private means. Almost 128 million persons, about five million more than at the end of 1958, were covered by voluntary hospital care insurance at the end of 1959.

During the year, legislation was enacted by the Federal Congress and in various states to combat air pollution. The Federal Government increased financial assistance to students and professional schools for training in public health. In addition, a substantial number of states adopted legislation providing further safeguards against accidents, expanding provisions for the aged, and regulating nursing, convalescent, and similar homes.

In the field of medical research, a new synthetic pain killing drug, phenazocine, ten times more powerful than morphine and somewhat less addictive, was discovered by the National Institute of Health. The Cancer Chemotherapy National Service Center, established in 1955, continued testing potential anticancer compounds, currently at the rate of 50,000 annually, and supervised clinical trials of over one hundred of these compounds in hospitals around the country.

HOUSING

The number of dwelling units exclusive of farm homes on which construction was begun in 1959 was 1,378,500, about fourteen per cent higher than the comparable figure of 1,209,400 reported for 1958. This was the eleventh year with over one million new housing starts.

During the decade 1950-1959, over twelve million such non-farm units were constructed. These have served to overcome the postwar housing shortage, and to improve measurably the quality of the housing supply. The number of homes in good structural condition with a complete bath and hot running water comprised over eighty per cent of all such units compared with seventy per cent at the start of the decade. During the same period, the proportion of all American families who own their homes has increased from fifty-five to over sixty per cent.

These gains and many others listed below have been made with aid provided by all levels of government. The main contribution of the Federal Government has been the insurance or purchase of mortgages on homes, which enabled home purchasers to finance homes with relatively low down payments and over extended periods of time.

The Federal Congress adopted a comprehensive housing law. It included provisions to broaden the federal housing programme for the elderly through mortgages and direct loan, and to facilitate more rental housing for them. Federal aid was authorized for an additional 37,000 units of public housing for low-income families. In 1959, 585,000 such units were already in operation. The legislation also authorized a new programme of federal mortgage insurance for privately owned nursing homes, for which there was

urgent need. Loan authorizations for college housing and related facilities for students and faculties were likewise increased.

The urban renewal programme continued to grow, with legislation now in effect in forty-six of the fifty states, and the Federal Government continuing to aid an increasing number of local public agencies for slum prevention and elimination. Eighty-two urban renewal projects were started in 1959, making a total of 699 projects in 417 communities since the beginning of the programme in 1949. The Federal Government contributes two-thirds of the net cost of these projects and the local communities contribute one-third. The Urban Renewal Commissioner re-emphasized the importance of following state and local laws in all projects, including those that prohibit discrimination in housing because of race, creed, colour or national origin. Under a policy expressed by the Federal Housing Administrator, local citizens' advisory committees, which are set up as a part of workable programmes for community improvement, were required to establish a sub-committee composed of representative members of the principal minority groups in the community to implement the policy of equal opportunity for all.

Connecticut, Colorado, Massachusetts and Oregon enacted statutes prohibiting discrimination in private housing accommodation. These statutes applied to housing wholly in private hands, supplementing previous legislation that applied to housing under public control. In addition, California became the twelfth state to prohibit racial discrimination in publicly assisted housing, and Massachusetts adopted a statute prohibiting a person engaged in the business of granting mortgage loans from discriminating against any person because of race.

EDUCATION

(Article 26)

School facilities of all types continued to expand during 1959, in response to increasing demands and the needs of the growing population. An official survey of comparative expenditures for preceding two-year periods showed that for higher education alone expenditures for the 1957-1958 biennium were almost a thousand million dollars more than in the preceding biennium. Similar expansion took place at the primary and secondary levels.

Since public education in the United States is primarily the responsibility of state and local governments, this expansion in public education was largely the result of legislation adopted in the various states. Forty-eight of the 50 states enacted laws on education during 1959. Almost all substantially increased school budgets and increased scholarship aid, and many provided for construction of new schools. Working conditions for teachers were improved by salary increases and new or increased benefits, including retirement, sick leave, and annual leave.

In addition, many states provided new or improved services for exceptional and handicapped children, expanded facilities for adult education, initiated or improved the use of television in education, and enlarged industrial and vocational training. Some states extended the benefits of certain public-supported school programmes to private schools, such as the school milk and lunch programmes and transportation facilities. Opportunities for foreign language study were expanded in many schools. Among new programmes reflecting interest in other countries was a programme established in Hawaii for Asian students seeking education in the United States and for American students interested in Asian culture.

CULTURAL OPPORTUNITIES

(Article 27)

Cultural facilities in the United States are provided in large part through private initiative and voluntary civic organizations. Government agencies aid by providing public facilities and programmes. In view of the myriad official projects of this type, this year's survey will focus primarily upon library and museum facilities.

In 1959 there were approximately 7,500 public library systems in the United States, comprised of a network of central libraries, neighbourhood branches, and mobile units. These were in addition to the libraries provided regularly in the schools. The public library is conceived of as a community centre of information, inspiration and recreation, offering opportunities for learning in an informal setting with a programme of service geared to meet the changing needs of the individual at any interest or learning level. Public library book collections are found in a variety of places. In rural areas, small branch collections may be placed in community centres, fire stations, post offices, and even country stores. In addition, over one thousand bookmobiles extend public library service and books, bringing them to people wherever they may be — on farms, in logging camps, recreation centres and housing centres. These service outlets make available over 173 million current and reference books, and millions of pamphlets, photographs, pictures, prints, maps, films, slides, art reproductions, and recordings. Approximately 500 million volumes are borrowed annually for home use through public library facilities. Almost half of this circulation is in children's books.

Libraries also provide shut-in service, through which those who are homebound because of illness, advanced age, or physical incapacity receive library service in their homes. The Library of Congress, for example, which alone has collections totalling more than 38 million pieces of material and which carries out research services for Congress, also administers the national library service for the blind. In 1959, it distributed multiple copies of 279 "talking books" to more than 59,000 blind "readers" through-

out the country. Libraries also sponsor educational discussion programmes centred around such topics as world affairs, American politics, classical and contemporary literature, international understanding and similar topics, and participate in educational television and radio, broadcasting programmes of community interest, usually over local stations.

Similarly, public museums in the United States are constantly expanding their services. Present-day museums seek to combine the various arts in multi-purpose cultural centres, developing new techniques such as radio-guided tours, do-it-yourself art projects for children and adults, extension services, planned programmes with schools, and the use of artmobiles, travelling exhibitions, museumobiles, and television. In 1959, museums showed special interest in enlarging their exhibits of science and technology and expanding scientific research programmes.

Another and quite different example of cultural activity is the continuing programme of educational exchanges between the United States and some ninety other countries. During 1959, more than six thousand persons were exchanged between the United States and these countries under the official international educational exchange programme of the Department of State, including students, teachers, university lecturers, research scholars, and specialists. Of the fields of specialization represented, 1,565 grants were in the physical and natural sciences (including medical sciences), 1,646 in the social sciences, 1,380 in the humanities, 1,006 in education, and 494 in miscellaneous fields.

While official programmes represent only a small part of the numbers travelling abroad, they assure continuing contacts between cultural leaders in the United States and in other countries. Further agreements facilitating educational exchanges with other countries came into force in 1959, including an agreement for the first time with the United Arab Republic, for the purpose of promoting mutual understanding "by a wide exchange of knowledge and of professional talents." A new agreement on exchanges in the scientific, technical, educational and cultural fields in 1960-1961 was signed by the United States and the Union of Soviet Socialist Republics in November 1959.

Benefits of Scientific Advancement (Article 27)

During 1959, major efforts were directed toward exploration of outer space and the structure of the earth.

Nine new space satellites were put into orbit by the United States during the year, with Pioneer IV orbiting the sun and becoming an artificial planet. These flights, together with those previously launched, provided valuable information about the shape of the earth, radiation in space, and the weather. Studies of the orbital path of Vanguard I, which had been launched in 1958, showed the earth's sea level to be fifty feet higher in the north polar regions and fifty feet lower in the south than expected, thus giving the earth a very slight pear-shape in addition to a bulging equator. Satellites equipped with instruments to relay cloud cover radiation information paved the way for continuous reporting of world-wide weather patterns. Explorer VI transmitted the first crude picture of the earth's cloud cover by radio. Oceanographic research was also pressed, with scientists in the U.S. Navy's bathscaph *Trieste* exploring the bottom of the Pacific at greater depth than ever before (18,600 feet), in the Marianas trench off Guam.

With regard to applied science, 1959 saw the completion of the St. Lawrence Seaway, one of the great engineering feats of the era, and its opening to ocean-going vessels. As the result of government-aided research, the first nuclear-powered surface ships were launched, one a merchant ship, the N.S. *Savannah*. The reactor for the second U.S. atomic power plant for civilian purposes became active, with full power production expected in 1960.

The National Science Foundation increased measurably its support for international scientific activities. As the International Geophysical Year came to an end, the foundation was made responsible for a vast programme of research in the Antarctic. It continued its educational work designed to improve teacher-training and science-student programmes. Many of these educational activities were carried out on an international scale in co-operative efforts with governmental and private international organizations concerned with Asia, South America, and other areas of the world.

UPPER VOLTA

CONSTITUTION ADOPTED BY REFERENDUM ON 15 MARCH 1959[1]

PREAMBLE

By an act of self-determination, the people of the Upper Volta adopted on 28 September 1958 the constitution proposed by the Government of the Republic, whereby the Community was established. By a decision of their Assembly, they have chosen to become a State member of the Community.

They freely affirm their desire to remain in the Community and to further its development, in order that it may fully conform to the common ideal of liberty, equality, fraternity and solidarity.

They proclaim their adherence to the principles of democracy and of human rights, as set out in the Declaration of 1789 and guaranteed by the constitution of the Community.

Title I

THE STATE AND SOVEREIGNTY

Art. 1. The State of the Upper Volta is a united and indivisible republic. The republic is a member of the Community, to which it adheres individually in accordance with the provisions of article 76 of the constitution of the Community.

The citizens of the State shall *ipso facto* be citizens of the Community, in accordance with article 77, paragraph 2, of the constitution of the Community.

. . .

Art. 3. The Republic of the Upper Volta is democratic.

Its principle shall be government of the people, by the people and for the people.

Art. 4. Sovereignty shall be vested in the people.

No section of the people or any individual may assume the exercise of sovereignty.

Art. 5. The people shall exercise their sovereignty through their representatives.

The vote shall be universal, equal and secret.

All citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote.

Art. 6. The republic shall ensure equality of rights for all without distinction as to origin, race or religion. It shall respect all creeds.

Art. 7. The political parties and groups shall assist in the exercise of the franchise.

They may be formed and engage in their activities freely, subject to respect for democratic principles and the sovereignty of the State.

. . .

Title III

THE LEGISLATIVE ASSEMBLY

. . .

Art. 24. The deputies to the Legislative Assembly shall be elected by universal suffrage in the conditions determined by law.

. . .

Art. 31. A compulsory mandate shall be null and void.

. . .

Title VI

THE JUDICIAL AUTHORITY

. . .

Art. 58. The Superior Council of the Judiciary shall guarantee the independence of magistrates of the bench. Its composition and functioning shall be determined by law.

The statute of the judiciary shall be determined by law.

Art. 59. Magistrates of the bench shall be appointed by the president of the Council on the proposal of the Superior Council of the Judiciary. The said magistrates shall remain in office for life.

. . .

Title XI

AMENDMENT

. . .

Art. 75. . . .

The republican form of the government shall not be subject to amendment.

. . . .

[1] Text published in the *Journal officiel de la Communauté*, 1st year, No. 5, of 15 June 1959, and in the *Journal officiel de la République de Haute-Volta* of 2 March 1959.

URUGUAY

HUMAN RIGHTS IN 1959[1]

I. Principal Measures taken by Parliament and by the Executive

A. *Physical Liberty of the Individual*

Act No. 12688 of 29 December 1959 (*Diario Oficial*, 13 January 1960) putting a seal on what an eminent commentator on the Act has called "a great liberal triumph" (Camaño Rosa, "Commentaries on custody not involving imprisonment and the relevant Act of 29 December 1959", in *La Justicia Uruguaya*, volumes XL and XLI, pp. 75 and 12, second section) greatly extended the field of application of the institution of custody not involving imprisonment which, in Uruguayan penal procedural law, has antecedents of long standing in article 2 of Act No. 1619 of 30 May 1883 on railway accidents, article 10 of Act No. 5510 of 12 September 1916 concerning proceedings for offences against honour and privacy, and article 34 of Act No. 9480 of 28 June 1935 concerning proceedings for printing offences.

The new system provides that "in ordinary criminal proceedings custody pending trial shall not be ordered and the accused shall not be detained in the case of petty offences . . . punishable by local banishment, suspension or a fine", or "asocial offences" if, in the latter case "it seems unlikely that he will ultimately be sentenced to imprisonment" (article 10).

In spite of this general principle, the judge "may order custody pending trial . . . if there are grounds for believing that the accused may attempt to evade the action of the law" or "if there are grounds for believing that to allow the accused to remain at large would impede the effectiveness of the inquiry . . . if it is necessary, for reasons of public security . . . or if the accused is a recidivist or is involved in previous proceedings still *sub judice*" (article 20). "Instead of ordering custody pending trial" the judge has the power to "order the accused to keep away from a specific area, to live in a particular area or areas, to go to certain places and to carry on certain activities, as well as to communicate any changes of address and to present himself periodically to the authorities" (article 13).

"Appeals against judicial decisions pronounced in accordance with" these provisions "can only have the effect of quashing such decisions. They have no suspensive effect" (article 40).

B. *Right to form Associations and Trade Union Rights*

Bearing in mind the first paragraph of article 57 of the constitution of the republic, which provides that "the law shall promote the organization of trade unions, according them charters and issuing regulations for their recognition as juridical persons", and article 332 of the constitution, which stipulates that the provisions of the constitution "which recognize individual rights, as well as those which confer powers and impose duties on public authorities, shall not be without effect by reason of the lack of corresponding regulations, but such regulations shall be supplied on the basis of analogous laws, general principles of justice and generally accepted doctrine", the Executive declared in a decree of 8 January 1959 (*Diario Oficial*, 19 January 1959) that "employers' and workers' associations are exempt from the payment of fees for stamped paper and stamps when they appear before the administration in cases in which they do not have any obvious private or personal interest." This does not apply, however, to "fees relating to the exercise of an occupation" (article 10).

C. *Right to enter and leave the National Territory*

The executive decrees of 24 February 1959 (*Diario Oficial*, 12 March 1959), 24 February 1959 (*Diario Oficial*, 16 March 1959), 5 November 1959 (*Diario Oficial*, 23 November 1959), 17 December 1959 (*Diario Oficial*, 31 December 1959), granted facilities for the temporary admission to the country of citizens of France, the Principality of Liechtenstein, Switzerland, Denmark, the Federal Republic of Germany, Brazil, Canada and Belgium, and to Austrian, British, Finnish, Greek, Norwegian and Swedish citizens and subjects.

However, "in order to prevent these facilities for temporary admission from being used for a purpose other than that intended and becoming a convenient means of evading the legal requirements and regulations regarding the entrance of immigrants and making a mockery of them", it decided, by decree of 5 November 1959 (*Diario Oficial*, 23 November 1959), that henceforward "the Central Immigration Office shall file and take no action on requests for a change of status or permanent residence . . . submitted by aliens temporarily admitted to the country . . . in virtue of the facilities granted by the provisions

[1] Note kindly furnished by Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

giving exemption from the visa requirement for temporary admission" (article 40). It also decided that the "police authorities shall not issue or renew . . . identity cards for persons of foreign nationality who cannot furnish evidence of regular entry and residence in the country in the form of a legal certificate of residence, which shall be issued on request by the Central Immigration Office, to aliens who comply with the legal requirements of good conduct in the penal, politico-social and professional fields and with the health requirements (Acts Nos. 8868 and 9604 of 19 July 1932 and 13 October 1936 and the relevant regulations of 28 February 1947) and have been authorized to immigrate or to reside permanently in the country." This certificate "shall be valid for a period of three years from the date of issue and a record of it shall be kept at the police station concerned" (article 50).

"Aliens who do not present the certificate" referred to are entitled only to a "provisional identity document which shall expressly and clearly state that the bearer is not authorized to settle permanently in the country" (article 70).

D. Suspension of Guarantees of Fundamental Rights

1. On 15 April 1959, in view of the "situation produced" by the "overflowing of rivers and streams", which placed "in serious danger large numbers of people whom the floods had rendered homeless and prevented from communicating with relief centres and . . . produced a state of general alarm" liable to lead to "disturbances" or to encourage the "commission of offences and abuses", the Executive Power exercised its powers under article 168(17) of the constitution, and, with the subsequent approval of the General Assembly, decided that the Ministry of National Defence would "take the necessary steps to provide food, shelter, medicines, medical assistance, transport, and all other welfare and security measures required for the same purpose in the different areas affected by" the floods and that "for this purpose it would centralize all life-saving and protective efforts in those areas" and would co-ordinate all action to achieve the said purposes "with the other services under the authority of the Executive Power and the decentralized and autonomous authorities" (article 10).

Such measures — which by their general application and indefinite nature went distinctly beyond the powers conferred by the article of the constitution already quoted as their legal basis — were to be applied "for the period and to the extent strictly required by the circumstances . . . and without involving any suppression of safeguards unless absolutely necessary" (article 20) (*Diario Oficial*, 24 April 1959).

Additional steps were taken in a series of decrees which restricted the use of electric power and changed the hours of business of commercial and industrial enterprises and public offices (decrees of 18 April 1959, *Diario Oficial*, 24 April 1959, 24 April, 21 May, 14 and 23 July, 20 August and 3 September 1959). These measures were discontinued, except in respect of emergency hours, by the decision of 23 June 1959 (*Diario Oficial*, 30 June 1959), which was reported to the General Assembly.

The reason for discontinuing the measures was that there had been "a very gradual improvement of the situation in the areas affected" by the "floods which upset the normal life of the country".

2. On 12 August 1959, because of the "occupation of the power stations and the cutting off of the electricity supply and telephone services which were essential to the life of the country" resulting from the strike by the employees of the State Power Plants and Telephone Department, the Executive once more exercised the powers conferred upon it by article 168(17) of the constitution and, with the subsequent approval of the General Assembly, authorized "the occupation of the State Power Plants and Telephone Department", and the restoration of the "services supplied by them with the help of any such armed or other forces as may be required" (article 10). It decided "to exercise with regard to the association of civil servants of the department (*Agrapación UTE*) the powers conferred upon it by Act No. 9936, of 18 June 1940, and legislative decree No. 10388, of 13 February 1943", concerning illegal associations, which empower the Executive even to dissolve such groups by administrative decision and to institute penal proceedings against their members (article 20). It prohibited the meetings of that trade union body "and any other meetings which might be connected directly or indirectly with it" (article 30). It also decided to "apply, to the extent appropriate" the second paragraph of the above-mentioned article 168(17) of the constitution of the republic, under which it may take prompt security measures, including the arrest of individuals and their removal from one part of the national territory to another, unless they elect to leave it; and where appropriate, article 50 of Act No. 9604 of 13 October 1936. This sanctions a procedure for the expulsion from the country, by administrative decision, of foreigners even if they are in possession of a citizen's identity card (article 40) and "entrusts to the Ministries of the Interior and National Defence the application" of the decisions (*Diario Oficial*, 21 August 1959).

These measures are not entirely in harmony with the provisions of the Charter, either in form or scope, and in some respects they are quite as questionable, from the constitutional point of view, as the ordinary legislation to which they refer.

On 8 September 1959 (*Diario Oficial*, 14 September 1959), in view of the "fact that the reasons for the adoption of these measures no longer existed", it was decided that they should not be applied by the Executive, and the General Assembly was so informed.

II. Fundamental Decisions regarding Human Rights and their Limits and Safeguards, contained in the Decisions of the Supreme Court of Justice

A. *Political Liberty*

1. The constitution fully and definitely guarantees both aspects of liberty: political liberty and civil liberty (decision of 6 March 1959).

2. The constitution recognizes political liberty when it states that the nation adopts the democratic-republican form of government (article 82) specifying that sovereignty is vested entirely in the nation (article 4), whose sovereignty shall be exercised directly by the voters (*cuerpor electoral*) (article 82); that any citizen may hold public office (article 76); and that every citizen is a member of the sovereignty of the nation (article 77), and as such an elector and eligible for election (decision of 6 March 1959).

B. Right to Equality

1. The principle of equality enshrined in article 8 of the constitution requires that all persons shall be equal before the law, other circumstances being equal, and that no exceptions or distinctions may be made (decision of 29 May 1959).

2. The equality of all persons before the law is not violated when measures are enacted for reasons of general interest (decision of 21 August 1959).

C. *Right to Property*

1. Article 7 of the constitution guarantees the right to the enjoyment of property, subject, however, to restriction, and even to suppression in conformity with laws enacted for reasons of general interest (decision of 27 May 1959).

2. Leases and property rights may be extended or restricted in the interest of the community, which overrides both and varies according to the social circumstances (decision of 21 August 1959).

3. Except by mutual agreement between the State and the expropriated person, there can be no expropriation without a decision of the court (decision of 29 May 1959).

4. The constitution guarantees the right of the State to expropriate, in the last resort, by force. This power is legitimately exercised only when the safeguards of individual rights laid down in the constitution itself are properly respected. Some of those safeguards are purely formal — e.g., strict compliance with the legal expropriation procedure — others are concerned more specifically with the protection of the right affected: the property expropriated must be made good (decision of 29 May 1959).

D. *Scope and Limits of Human Rights*

1. In Uruguay, which has a written, rigid constitution, any restriction of individual rights and freedoms must emanate directly from a specific provision of the constitution or indirectly from legislation, where the power to make restrictions has been delegated by the constituent authority to the legislative authority (decision of 6 March 1959).

2. Individual political and civil rights are not absolute. Individual rights must yield to social rights, which reflect the general interest (decision of 6 March 1960).

3. Individual rights are not absolute; they are subject to any restrictions which may be imposed by law in the general interest (decision of 16 March 1959).

4. The recognition and protection by the constitution of the rights it sets out are based mainly on two essential principles: there are no absolute rights; individual rights must yield to social rights and the interest of the community (decision of 10 April 1959).

5. The possibility of restricting rights is recognized by the constitution itself, in article 7 *in fine* (decisions of 31 July and 10 June 1959).

6. Fundamental human rights are not absolute and may be restricted in accordance with the provisions of the constitution itself, in the light of the general interest and the requirements of society (decision of 20 August 1959).

7. The constitution does not create the rights which belong to every person; these are inherent in the individual as such and existed before the constitution, which merely recognizes and safeguards them (decision of 6 March 1959).

E. *Guarantee of Due Process of Law (Penal and Civil)*

1. The guarantee of defence to a person on trial, stipulated in article 12 of the constitution as an individual right, applies only to penal proceedings; there is no express provision in other cases, but the guarantee is implicit in articles 7, 8, 18, 23, 30 and 72 of the constitution and in the relevant and duly codified regulations (decision of 25 May 1959).

2. The guarantee of defence to a person on trial does not presuppose any particular or special form of procedure; all that is required is that the procedure should satisfy the essential requirements, providing an opportunity for the accused to be heard and to defend himself (decision of 25 May 1959).

3. The fact that legal proceedings are in accordance with the law does not of itself ensure that the guarantee of due process, which, except in regard to penal matters, must be inferred in our constitution, has been respected (decisions of 10 June and 31 July 1959).

4. Under article 16 of the constitution, the presence of the accused person's defender is not an indispensable prerequisite for recognition of the proceedings as valid. It does grant the accused the right to insist that his defender shall be present, but he can waive that right (decision of 13 March 1959).

5. The fact that the declaration of the accused was taken without his defender's being present does not justify an appeal for annulment on the grounds of violation of article 16 of the constitution if the accused has waived that right (decision of 25 February 1959).

6. The fact that the defender was not present at the beginning of the proceedings is no ground for annulment if the accused condoned the fact by giving his consent (decision of 20 February 1959).

7. An appeal for annulment on the grounds that the defender was not present when the statement of the accused was made is not valid if the latter expressly agreed to make a statement without his defender being present (decisions of 13 March, 8 May and 31 July 1959).

8. The absence of the defender when the declaration of the accused was made has not been laid down in any legal text as grounds for annulment (decisions of 15 June and 31 July 1959).

9. When proceedings are brought for the purpose of showing that a law is unconstitutional, it cannot be claimed that the right of due process has been violated because the persons concerned in the alleged misapplication of the law are not allowed to intervene in those proceedings (decisions of 23 February, 20 and 22 April, 11 and 25 May, 17, 24 and 29 June, 3 and 21 August, 7 October, 30 November and 11 December 1959).

10. A judge is a responsible official, and he has wide powers in regard to the protection of fundamental individual rights (decision of 11 March 1959).

11. By the very nature of his functions, a judge is free in his exercise of them and is not subject to orders or directives from above in respect of decisions that lie within his competence (decision of 11 March 1959).

12. The jurisdiction of a judge of a penal court is limited in so far as the trial cannot deal with facts other than those brought out during the arraignment and the sentence may not be more severe than that demanded by the prosecution, either when the accused is arraigned before the judge of first instance or subsequently, if the prosecution asks for a less severe sentence than at first (decisions of 13 March and 21 August 1959).

13. In view of the nature of penal proceedings — which deal with a situation involving public law — and in view of their avowed social purpose, the judge is empowered to evaluate the facts elicited in the course of the proceedings, without being bound by the evaluation made at the time of the arraignment or in the judgement of the court of first instance (decisions of 13 March and 21 August 1959).

14. The laws relating to proceedings cannot be modified by individuals; any changes in such laws must result from another law (decisions of 10 June and 31 July 1959).

15. It is the duty of the judge to individualize the penalty (decision of 20 April 1959).

16. The power of the judge to individualize the penalty is circumscribed (decision of 20 April 1959).

17. Every judge is at liberty to individualize the penalty, provided only that he may not change its nature (decision of 20 April 1959).

18. Personal conviction (article 8 of Act No. 8080 on procuring) is not the ultimate criterion. Moral certainty must derive from the facts considered during the trial and not from the inner psychological make-up of the judge himself (decision of 21 August 1959).

VENEZUELA

DECREE No. 13 OF 30 JANUARY 1958 ABOLISHING COMMISSIONS OF INSPECTORS (CENSORSHIP BOARDS)[1]

Considering:

That freedom of thought, exercised widely but in a dignified and calm manner, is the best guarantee for democratic governments and institutions,

. . .

Sole article. The Commissions of Inspectors (Censorship Boards) provided for in article 2 of decree No. 43 of 30 November 1950 of the provisional government[2] are hereby abolished. Consequently, freedom of thought shall be exercised without restrictions other than those laid down in the constitution and laws of the republic.

[1] Published in *Gaceta Oficial* No. 25574, of 31 January 1958, kindly furnished by the Ministry of External Affairs of Venezuela. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1951*, p. 389.

DECREE No. 440: LAW ON COLLECTIVE AGREEMENTS BY INDUSTRY of 21 November 1958[1]

NOTE

Chapter I of this decree deals with the conclusion of collective agreements and with arbitral awards. Chapter II concerns the compulsory extension of collective agreements and arbitral awards to undertakings and workers in a particular industry who are not already covered thereby.

Translations of the decree into English and French have been published by the International Labour Office as *Legislative Series* 1958 – Ven.1.

[1] Published in *Gaceta Oficial* No. 25818, of 21 November 1958, kindly furnished by the Ministry of External Affairs of Venezuela.

DECREE No. 458, OF 5 DECEMBER 1958, PROMULGATING THE UNIVERSITIES ACT[1]

Chapter 1

BASIC PROVISIONS

Art. 1. The university is fundamentally a community of spiritual interests uniting teachers and students in the task of seeking the truth and establishing transcendental human values.

Art. 2. The universities are institutions in the service of the nation and it is their duty to collaborate in providing leadership in the life of the country through their scholarly contribution to the solution of national problems.

Art. 3. The universities have to provide guidance in education, culture and science. In order to accomplish that, their activities shall be directed towards creating, assimilating and disseminating knowledge through research and teaching; rounding off the whole process of education begun in earlier scholastic stages, and training teams of specialists and experts needed by the nation for its development and progress.

Art. 4. University education shall be guided by a strict spirit of democracy, social justice and human solidarity, and shall be receptive to all the currents of universal thought, which shall be expounded and analysed in a rigorously scientific manner.

Art. 5. The aim of the university as defined in the foregoing articles is identical throughout the nation. Within that framework, the needs of the locality where each university functions shall be taken into account and the freedom of action of each institution shall be respected.

. . .

Art. 7. The universities shall be national or private. . . .

Art. 9. In the national universities, the regular courses of study shall be free of charge; but students who through failure to secure promotion have to repeat a course wholly or in part shall pay the fees required by the regulations.

. . .

[1] Published in *Gaceta Oficial* No. 576 Extraordinary, of 6 December 1958, kindly furnished by the Minister of External Affairs of Venezuela. Translation by the United Nations Secretariat.

YUGOSLAVIA

DEVELOPMENTS RELATING TO HUMAN RIGHTS IN 1959[1]

I. CRIMINAL LAW

ACT AMENDING AND SUPPLEMENTING THE CRIMINAL CODE, OF 30 JUNE 1959

(*Official Gazette of the FPRY*, No. 30/59)

Although this Act represents no radical reform in the criminal law of Yugoslavia, but rather introduces amendments and additions reflecting social and economic changes, some of these amendments are very significant and represent to some extent new criminal law concepts.

I

(*a*) The Act retains the sentence of death, but reduces the number of cases in which it may be pronounced and makes more rigid the conditions under which it may be pronounced. Furthermore, the types of offenders against whom it may not be pronounced are increased. Thus, in addition to the provision of the Criminal Code that the death penalty may not be pronounced upon minor delinquents (persons of fourteen to eighteen years of age) and expectant mothers, the Act provides that the sentence of death may be pronounced against persons not yet twenty-one years of age at the time of commission of criminal offence only in the case of a very grave offence against the people and the State or the armed forces for which such punishment is prescribed. Shooting is the only form of execution of the sentence of death. The sentence of death may still be commuted to imprisonment — not for life (as had been prescribed by the Criminal Code), but for up to 20 years.

The general minimum of terms of imprisonment is raised from 6 months to 12 months, while the general maximum is reduced from 20 years to 15 years. The maximum term of detention is also reduced from 5 years to 3 years.

(*b*) The Act abandons the previous concept of the Criminal Code that recidivism is always an aggravating circumstance and prescribes that, in fixing the punishment, the court shall in particular consider whether or not the perpetrator was convicted earlier, whether the carlier offence is of the same type as the present one, whether both offences were committed for the same motive, and the period of time having elapsed between the former sentence and/or the serving or pardoning of the sentence and the present sentence. The Act confers the power on the court to pronounce a more severe sentence than the prescribed one if the perpetrator was previously not less than twice sentenced to imprisonment or detention for more than three months for offences committed with intent and he shows an inclination to continue committing criminal offences, provided that the new offence is punishable by detention or imprisonment. Such more severe sentence may not exceed double the term of detention or imprisonment prescribed by law, or the maximum term of the type of sentence pronounced. Where the law decrees a maximum term of detention for three years, the court may pronounce a sentence of imprisonment for five years instead.

(*c*) The application of conditional punishment is extended. While the Criminal Code provided for the application of conditional sentence only in the case of punishment by fine or detention for not more than two years, the Act permits its application in such cases irrespective of the term of the sentence. The time during which execution of a sentence may be set aside may not be less than one year or longer than five years.

(*d*) Admonition, as provided for by this Act, is a new measure which may be decided on for criminal offences punishable by detention for up to one year or by a fine, if committed under such extenuating circumstances as make them particularly minor offences. Such a sentence may be pronounced even for criminal offences for which the sentence of detention for more than one year is prescribed, provided that certain conditions are complied with.

(*e*) The Act provides for, amongst other things, compulsory medical treatment of habitual drunkards and narcotic addicts, to be applied to offenders addicted to the use of alcohol or narcotics if such use incites them to the commission of criminal offences and there is a danger of their committing criminal offences again. Compulsory medical treatment is performed in penal reformatory institutions or establishments of custody treatment, and the time spent in such institutions is included in the term of sentence. This measure may also be applied in the case of a conditional sentence, but such sentence may be

[1] Note kindly prepared by Dr. Albert Vajs, Professor of the Faculty of Law, Belgrade University, government-appointed correspondent of the *Yearbook on Human Rights*.

The original texts of the legislation reviewed were published in the *Službeni list FNRJ* (Official Gazette of the Federal People's Republic of Yugoslavia), in Serbo-Croatian, Slovenian and Macedonian editions.

changed if the perpetrator fails to meet the obligation of treatment.

(*f*) The Act provides that the perpetrator of the criminal offence of endangering public communications may foreit his driver's licence; or, if he has not one, a sentence of prohibition of issuance of such a licence may be passed upon him. Such a measure may be imposed for the term of from one to five years.

(*g*) The most important modification introduced in criminal law undoubtedly concerns minors. The whole penal policy towards minor delinquents is permeated with educational measures and, to the extent that it involves punishment, is certainly not of an intimidating or repressive nature.

The Act retains the existing age limits of minor delinquents (14-18 years) and the distinction between junior minors (14-16 years) and senior minors (16-18). But, while the Criminal Code provided for the possibility of punishment of junior minors, the present Act decrees only application of educational measures to junior minors. As a rule, educational measures are applied against senior minors also, and in exceptional cases a special sentence of minor's detention may be passed upon them. The purpose of educational measures is to ensure protection, assistance and supervision of minor delinquents, so as to permit their education, reformation and proper development and at the same time prevent the commission of any criminal offences.

The following educational measures may be passed upon minor delinquents under this Act: disciplinary measures; reprimand or commission to a disciplinary centre for minors; rigorous control by parents or guardians, rigorous control by another family, or rigorous control by the organs of guardianship; institutional measures; commission to an educational institution; commission to an educational-reformatory house; or commission to an institution for defective minors.

All these measures may be applied against both junior and senior minors, though the Act provides that in determining the measure to be applied the court shall consider, *inter alia*, the age of the offender, his degree of mental development, his psychological qualities, his inclinations and the motives for which the offence was committed. The minimum and maximum terms of these measures, except such as by their nature may not be limited (e.g., reprimand), are fixed by law.

The only sentence applicable to minor delinquents is the sentence of minor's detention. This sentence may be pronounced upon a senior minor on condition that he is criminally liable, that the offence committed is punishable under the Act by imprisonment for more than five years, and that owing to the serious consequences of the offence and the high degree of criminal liability the application of educational measures is not justifiable. The sentence of minor's detention may not be passed for a term less than one year or more than ten years, and its execution may not be suspended. This sentence is served in special penal-reformatory houses, where convicted minors remain up to the attainment of the age of 23 years, after which they are transferred to penal-reformatory institutions for adult persons.

All perpetrators of criminal offences are divided by the Criminal Code into three categories: Children under 14 years of age, who are not criminally liable; minors of 14-18 years of age; and adult persons. In conformity with the trends existing in this respect in other countries, the Act introduces one more category, that of adult minors. Thus, the educational measure of rigorous control by an organ of guardianship and commission to an educational-reformatory house may exceptionally be pronounced against an adult offender if at the time of trial he is under 21 years of age and his mental development is equal to that of minor delinquents. These measures are passed upon adult minors under the same conditions as upon other minors. The court is also allowed to impose upon such offenders, irrespective of the degree of their mental development, the measure of rigorous control by the organ of guardianship together with a conditional sentence.

II

Amendments introduced in the special part of the Criminal Code are also significant and numerous, and may be divided into four groups:

(*a*) The first group concerns the abolition of certain criminal offences, which have lost their criminal character owing to changed social and political conditions, the provisions on such offences having already fallen into disuse. The amendments of this type concern mostly criminal offences against the national economy.

(*b*) The second group comprises amendments defining as crimes new socially dangerous acts and some particular forms of offences which are separated from the existing descriptions of criminal offences. They provide for the punishment of responsible persons in the economy who impair social interests for selfish motives, or persons who infringe social discipline by negligent and unscrupulous business. In this respect the Act newly defines as crimes a series of acts, such as: causing compulsory liquidation, impairment of creditors and abuse of powers in the economy.

(*c*) The third group concerns the characteristic features of various criminal offences. They most frequently give a more precise description of criminal offences in order to remove vagueness and indecision in practice.

(*d*) The fourth group relates to criminal sanctions. These reflect a milder attitude on the part of the

legislator towards the perpetrators of criminal offences.

II. LABOUR LEGISLATION

Act on Labour Inspection, of 28 December 1959[1]

(*Official Gazette of the FPRY*, No. 53/59)

The service of labour inspection controls the execution of the legal provisions concerning labour relations and the health and technical protection of workers. There are subject to this control economic and social organizations, state organs, institutions, private employers and those employees who are required by separate provisions to apply directly, or to ensure the application of, the legal provisions on labour relations and the health and technical protection of workers.

Inspection is carried out by the organs of municipal or district people's committees competent for labour relations, provincial or regional labour inspectorates, the labour inspectorates of the various republics and the Secretariat of Labour of the Federal Executive Council. The organs of labour inspection discharge the affairs within their competence through labour inspectors, who must have prescribed qualifications and comply with specified conditions.

The part of the Act dealing with duties and powers of the organs of labour inspection and their procedure contains provisions on the mode and frequency of inspections, reports of the inspections made, the procedure to be applied when irregularities are established by labour inspectors, the procedure when the security of workers requires urgent action, etc.

III. HEALTH INSURANCE AND HEALTH PROTECTION

1. Act concerning the Institution of Health Insurance for Agricultural Producers, of 2 July 1959

(*Official Gazette of the FPRY*, No. 27/59)

Agricultural producers under this Act are persons carrying on agricultural activities as their regular occupation, or hunting and fishing for economic purposes, irrespective of whether or not they derive revenues from other independent occupations. The expenses for medicaments used by agricultural producers under health insurance are, in the cases defined by law, paid entirely from the health insurance fund for agricultural producers. The health protection provided through health insurance is offered to agricultural producers by the public health service where they live.

[1] Translations of this Act into English and French have been published by the International Labour Office as *Legislative Series* 1959 — Yug.1.

2. Act on Mining, of 2 July 1959

(*Official Gazette of the FPRY*, No. 27/59)

This Act, relating to prospecting and exploitation of underground and surface raw minerals in Yugoslavia, includes rules for the protection of the miners' health and safety. The organizations prospecting and exploiting raw minerals must comply with provisions relating to health and technical protection as well as with other provisions concerning the lives and health of miners. Prospecting activities threatening the lives and health of miners may not be carried out. The workers are bound to comply with the provisions relating to health and technical protection. Mining inspection is exercised by the mining inspectorates of the republics.

3. Act concerning Protection from Ionizing Radiation, of 16 April 1959

(*Official Gazette of the FPRY*, No. 16/59)

For the purpose of protection from the harmful effects of ionizing radiation this Act subjects to inspection the sources of radiation and all persons, materials and objects open to radiation. The protection service must be organized wherever such sources are situated and exploited; protection is discharged by the federal organs of administration under the provisions governing the protection service. Permission is required for the erection of places for storing the sources of ionizing radiation. Such permission is issued by the Federal Commission for Nuclear Energy, which also reviews the project as a whole. The procurement, use and sale of the sources of ionizing radiation are subject to the permission of the same commission. Inspection of atmosphere and water for their contamination by radioactive matter is carried out regularly, and that of foods and lands when necessary. Separate measures of protection are provided for all persons dealing with the sources of ionizing radiation.

IV. PROTECTION OF INVALIDS

1. Act on Peace-time Military Invalids (Revised Text), of 11 November 1959

(*Official Gazette of the RPRY*, No. 46/59)

Peace-time military invalids are military persons who are wounded, injured or hurt, without fault on their part, in time of peace, in performing their military duties or other duties in connexion with state security or national defence, in consequence of which they become disabled to an extent not less than 20 per cent. There are also included in this category military persons having caught a disease in the exercise of their military service after 15 May 1945, in consequence of which they have become disabled to an extent not less than 60 per cent. Invalidity rights under this Act are enjoyed by peace-time military invalids, members of their immediate families and parents of military persons killed or having died from injury or the like.

2. ACT AMENDING AND SUPPLEMENTING THE ACT ON WAR-TIME MILITARY INVALIDS, OF 19 OCTOBER 1959

(*Official Gazette of the FPRY*, No. 42/59; basic text: *Official Gazette of the FPRY*, Nos. 33/57 and 44/58)

War-time military invalids whose percentage of invalidity is 100 per cent and to whom the constant assistance of another person is indispensable are entitled to a special allowance to secure the services of such a person, besides their regular invalidity allowance.

War-time military invalids are entitled to rehabilitation treatment (medical and professional) for the purpose of fitting them for specific occupations if their general education, age and health make such rehabilitation possible. War-time military invalids in an employment relationship are to continue to enjoy children's allowances during the rehabilitation course. Members of their immediate families are also to continue to enjoy health protection during that period.

V. SOCIAL ASSISTANCE

ACT CONCERNING ASSISTANCE TO THE MEMBERS OF FAMILIES WHOSE SUPPORTERS ARE SERVING THE OBLIGATORY MILITARY TERM, OF 16 APRIL 1959

(*Official Gazette of the FPRY*, No. 17/59)

If a person supporting his family is serving his military term or other obligatory military service in the Yugoslav People's Army, the members of his family are entitled to a financial payment and health protection during the period of his service. A supporter within the meaning of this Act is a person who, before beginning his military service, lived with the members of his household and supported them from his salary, earnings or other income, if there are no other members of the family capable of earning and obliged under the law to support them.

The members of the family of such a supporter comprise: his spouse, children (legitimate, illegitimate and adopted children, step-children, grandchildren and orphans received for maintenance), parents (father, mother, stepfather, stepmother), adopter, grandfather, grandmother, brothers and sisters. These persons receive a monthly financial payment during the supporter's absence in the army. The amount of the payment depends on whether or not the supporter was in an employment relationship before beginning military service, as well as on the total amount of income and the number of the members of his family. Where several persons living in a common household are entitled to such relief, it is to be equally divided among them.

The health protection to which members of such a family are entitled comprises: medical examination and treatment in health institutions, medicaments and sanitary materials, medical and other assistance before, during and after childbirth in health institutions, lodging of the patient and dental care.

VI. HOUSING

1. ACT ON HOUSING RELATIONSHIPS, OF 14 APRIL 1959

(*Official Gazette of the RPRY*, No. 16/59)

The Act on housing relationships is the basic law in the field of housing legislation. It regulates in detail all the matters concerning the use of dwellings by citizens.

The right to occupy a dwelling is the right to the permanent and undisturbed use of a dwelling in conformity with the laws and regulations. Such a right is acquired at the date of the legal occupation of a dwelling on the basis of a lease or another act representing a valid title to occupation. A citizen may enjoy the right only in one dwelling. Premises used periodically for rest or recreation are not deemed to be dwellings.

The bearer of the right and members of his household acquire a series of rights and duties through the lawful occupation of the dwelling, some private and some public. The first category comprises the obligation of regular payment of rent, the use of dwelling premises and common installations according to their designation under the house rules with the care of a good householder, and payment of the expenses of current repair of the dwelling and a part of the costs of use of common installations. Failure to meet these obligations may bring about the cancellation of the lease by the representative of the house council. Such failure is the only ground on which notice may be given, and notice may be given only after a procedure offering an opportunity to the bearer of the right to occupy a dwelling to satisfy his obligations.

The public rights and duties concern social management of dwelling buildings by their inhabitants. Such buildings are directly managed, by their inhabitants and owners of separate parts of such buildings, through the meetings of inhabitants and the house councils, as organs of social management and on the basis of the rights and obligations provided by law. The meeting of inhabitants comprises all inhabitants of full age in the building and, among other functions, elects the house council.

2. ACT CONCERNING OWNERSHIP OF PARTS OF BUILDINGS, OF 16 APRIL 1959

(*Official Gazette of the FPRY*, No. 16/59)

Under this Act, individual flats or individual premises may be owned as a part of a building. All owners of parts of a building have the permanent right to use house installations used in common by all inhabitants of a multi-story building. Every owner of horizontal property may sell or lease his flat if he does not live in it. In the case of sale the owner must first

offer the premises to the person dwelling in it (bearer of the right to occupy), stating the price and other terms of sale. If the latter fails to respond within 30 days, the owner may sell to another person under the same conditions and at a higher price.

3. Act on Housing Co-operatives, of 22 April 1959

(*Official Gazette of the FPRY*, No. 16/59)

The basic method of solving the housing problem in Yugoslavia is the construction of dwelling buildings. One form of housing construction is the association of citizens and legal persons into housing co-operatives. The housing co-operative is a legal person, for the establishment of which the agreement of not less than 10 persons is required. Such a co-operative is established by the assembly of founders, which also enacts the rules of the co-operative and elects its organs. The rules contain provisions on the organization and operation of the co-operative, as well as on property and other relations within the co-operative. The rules are approved by the competent state organ. Every citizen may acquire not more than two flats through co-operative construction or otherwise.

VII. DWELLING COMMUNITIES (SOCIAL MANAGEMENT)

General Act on Dwelling Communities, of 16 April 1959

(*Official Gazette of the FPRY*, No. 15/59)

Dwelling communities are self-governing organizations with legal personality, managed by the citizens residing in a certain area, immediately or through their elected representatives. The statutes of dwelling communities are enacted by their councils and approved by the respective municipal people's committee. The task of a dwelling community is to organize and improve communal, economic, social, health, educational and other activities and services which help to satisfy the current needs of the family and household. For the realization of these tasks the community may establish various services, shops, enterprises and institutions.

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

TRUST TERRITORY OF NAURU

NOTE[1]

Legitimation Ordinance 1959

The ordinance provides for an "ex-nuptial child" to be deemed to be legitimated by marriage from birth on the registration of the child in accordance with the provisions of the ordinance, and to become entitled to all rights possessed by a child born in lawful wedlock. It additionally refers to the related aspects of succession to real and personal property by the person or issue.

Maintenance Ordinance 1959

This ordinance gives protection to the wife and children (including ex-nuptial children) who have been left without means of or provision for support by the husband or father, respectively. The court may issue a summons requiring the husband or father to show cause why he should not support his wife or child, or may, where the circumstances seem to the court to require it, issue a warrant for the apprehension of the husband or father. Where a warrant has been issued and the court is satisfied that after inquiry and search the defendant cannot be found, the court may proceed *ex parte*.

The court may, after inquiry, order the defendant to pay an allowance for the support of the wife and children; commit the legal custody of a child of the marriage to the wife or some other person; grant the wife, or the defendant, or both, access to the child.

Nauru Local Government Council Ordinance 1959

This ordinance provides for the appointment of a registrar and deputy registrar who shall cause to be kept in respect of each district for the purpose of local government council elections a roll of names of Nauruans entitled to have their names entered on the roll for that district. A person whose application to have his name placed on, or transferred to, the roll of a district has been rejected or whose name has been struck off the roll for a district may within one month of the notice thereof apply to the district court for an order directing that his name be placed on, transferred to, or reinstated on, that roll. The validity of an election or a declaration of election may be disputed by petition addressed to the Court of Disputed Elections (i.e., the central court) and not otherwise.

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

TRUST TERRITORY OF NEW GUINEA

NOTE[1]

Corrective Institutions Ordinance 1959 (Papua and New Guinea)

This ordinance amends the Corrective Institutions Ordinance 1957, by which greater emphasis was placed on rehabilitation of prisoners and less on the purely penal aspects.

Testator's Family Maintenance Ordinance 1959 (Papua and New Guinea)

This ordinance gives the court power to extend the time for making an application for increased maintenance to the wife or child of a testator who had made inadequate provision.

Criminal Code Amendment Ordinance (New Guinea) Amendment Ordinance 1958

This ordinance, mentioned in the *Yearbook on Human Rights for 1958*, pages 273-4, came into operation in 1959.

Adoption of Children Ordinance 1959 (Papua and New Guinea)

Under this ordinance an adopted child is to take the surname of the adopting parent. An amendment of an entry in this respect in the register of births

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

relating to the child is to be effected upon application of the adopting parent.

Amendment of the Education Regulations (Papua and New Guinea) (No. 8 of 1959)

This amendment provides that, in the case of the medical examination of pupils, an inspection is to be made in private and, where the pupil is a female, is to be made only by a female or by a male in the sight and presence of an adult female.

Amendment of the Native Administration Regulations (New Guinea) (No. 4 of 1959)

This amendment removes entirely the curfew restrictions formerly placed on natives in town areas.

ITALY

TRUST TERRITORY OF SOMALILAND

ACT No. 3 OF 1959 ON THE PRESS

of 15 January 1959[1]

Article 1

DEFINITION OF "THE PRESS" AND "PRINTED MATTER"

For the purposes of this Act, the terms "the press" and "printed matter" mean all reproductions which are obtained by typographical or any mechanical or physico-chemical means, and are in any manner intended for publication.

Article 2

REQUIRED PARTICULARS

All printed matter shall indicate the place and year of publication and the name and address of the printer and, if there is one, of the publisher.

Newspapers, publications of news agencies, and periodicals of any kind shall indicate: the place and date of publication; the name and address of the printer; the name of the owner and of the responsible editor or assistant editor.

Article 3

RESPONSIBLE EDITOR

Every newspaper or other periodical shall have a responsible editor.

The responsible editor shall be a Somali citizen and shall possess the qualifications required to vote and to stand for office.

In the event that the responsible editor becomes a member of the Parliament, an assistant responsible editor possessing the qualifications specified in the preceding paragraph shall be designated. He shall be vested with responsibility in place of the editor.

Article 4

OWNERSHIP

In order to publish a newspaper or other periodical, the owner thereof shall possess all the necessary qualifications for voting and standing for office.

Article 5

REGISTRATION

No newspaper or periodical may be published unless it has been registered at the record office of the regional judge in whose area it is to be published.

For purposes of registration, there shall be deposited with the competent record office:

1. A statement bearing the certified signatures of the owner and responsible editor or assistant editor and indicating the names and addresses of the said persons and the name and nature of the publication;

2. Documents establishing possession of the qualifications specified in articles 3 and 4;

3. A copy of the act of incorporation and of the articles of association if the owner is a body corporate.

When it has been ascertained that the documents are in order, the regional judge having territorial jurisdiction shall, within fifteen days, order the newspaper or periodical to be entered in the appropriate register maintained by the record office. The said register shall be open to public inspection.

Article 6

AMENDED STATEMENTS

Any change in the particulars provided in the statement prescribed by the preceding article shall be embodied in a new statement, which shall be deposited, together with any relevant documents, within fifteen days after such change has occurred.

The said change shall be recorded in the manner indicated in article 5, third paragraph.

Article 7

LAPSE OF REGISTRATION

Registration shall cease to have effect if the periodical is not published within six months of the date of its registration or if its publication is interrupted for a period exceeding one year.

Article 8

REPLIES AND CORRECTIONS

The responsible editor or assistant editor of a periodical shall publish therein, in full and without

[1] Text published in *Bollettino Ufficiale della Somalia*, Year III, No. 1, supplement No. 3, of 20 January 1959. Translation by the United Nations Secretariat.

Somalia became independent on 1 July 1960.

charge, any replies, corrections or statements submitted by persons to whom acts, intentions or statements have been attributed which are offensive to their dignity or which are considered by them to be untrue, on condition that such replies, corrections or statements contain nothing which might provide grounds for prosecution.

The replies, corrections and statements referred to in the preceding paragraph shall be published within three days, in the case of daily newspapers, and in the next issue, in the case of other periodicals, and shall appear in the same edition, on the same page or under the same column heading of the periodical and in the same type as the offending article or passage.

Corrections may not exceed in length the article or passage to which they relate. They may, however, be up to twenty lines in length in cases where the length of the article or passage to be corrected is less than twenty lines.

Refusal to comply with the aforementioned obligation shall be punishable by imprisonment for a term not exceeding six months and by a fine not exceeding 800 somalos.

Relevant extracts from the sentence shall be published in the periodical concerned. The sentence shall, where appropriate, order that the reply, correction or statement shall be published.

Article 9

COMPULSORY PUBLICATION

Judges pronouncing sentence in respect of offences committed through the publication of matter in a periodical shall in all cases order the full sentence or extracts therefrom to be published in the periodical concerned.

The responsible editor shall effect publication without charge in the manner prescribed by law.

Article 10

CIVIL LIABILITY

In the case of offences committed through the press, the owner and publisher of the periodical shall be civilly liable conjointly with the offender and with each other.

Article 11

PECUNIARY DAMAGES

A person who has been defamed through the press may, in addition to the remedy provided under criminal law, request the payment of damages. The amount of damages shall be determined in accordance with the gravity of the offence and the extent to which the printed matter was disseminated.

Article 12

CLANDESTINE PUBLICATIONS

Any person who publishes a newspaper or other periodical which has not been registered in the manner prescribed by article 5 shall be liable to imprisonment for a term not exceeding one year and to a fine not exceeding 800 somalos.

The same penalty shall apply to any person who publishes non-periodical printed matter in which the name of the publisher or printer is omitted or falsely indicated.

Article 13

FAILURE TO PUBLISH REQUIRED PARTICULARS

Save as provided in the foregoing articles, all other omissions or inaccuracies in the particulars prescribed by article 2 shall be punishable by a fine not exceeding 200 somalos.

Article 14

FAILURE TO SUBMIT AN AMENDED STATEMENT

Any person who fails to submit an amended statement within the time-limit specified in article 6 or who continues to publish a newspaper or other periodical after the competent judge has refused to record the relevant change shall be liable to a fine not exceeding 400 somalos.

Article 15

FALSE STATEMENTS

Any person who gives false information in the statements prescribed by articles 5 and 6 shall be punished in accordance with the provisions of criminal law dealing with non-material falsification of public documents.

. . .

Article 17

EXISTING PUBLICATIONS

In the case of all newspapers or periodicals actually in existence before the date on which this Act comes into force, the formalities prescribed herein shall be complied with within a period of thirty days from that date on condition that the said newspapers or periodicals are published regularly.

Newspapers or periodicals published at irregular intervals may continue to appear only after the formalities prescribed by this Act have been complied with.

Article 18

PUBLICATIONS NOT SUBJECT TO THIS ACT

Newspapers and other periodicals published by the Government shall not be subject to the provisions of this Act.

. . .

Article 20

ENTRY INTO FORCE

This Act shall enter into force on the date of its publication in the *Bollettino Ufficiale della Somalia* (Official Gazette of Somaliland).

. . .

NEW ZEALAND

TRUST TERRITORY OF WESTERN SAMOA

CITIZENSHIP OF WESTERN SAMOA ORDINANCE, 1959

ORDINANCE NO. 11 OF 1959, OF 8 SEPTEMBER 1959[1]

2. *Interpretation*

(1) In this ordinance, unless the context otherwise requires,

"Alien" means a person who is not a citizen of Western Samoa;

"Foreign country" means a country other than Western Samoa;

. . .

(2) Any reference in this ordinance to a child shall be construed as a reference to a legitimate child; and the expression "father" shall be construed accordingly.

(3) For the purposes of this ordinance,

(*a*) A person born on a registered ship or aircraft shall be deemed to have been born at the place at which the ship or aircraft was registered; and a person born on an unregistered ship or aircraft belonging to the government of a country shall be deemed to have been born in that country;

(*b*) A person required by any ordinance to obtain a permit to enter Western Samoa shall not be deemed to be or to have been at any time resident in Western Samoa if he is not or was not at that time in possession of a permit to enter Western Samoa under that ordinance;

(*c*) 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*) A person shall be deemed not to have attained a given age until the commencement of the relevant anniversary of the date of his birth.

PART I

CITIZENSHIP BY BIRTH OR DESCENT

3. *Citizenship by Birth*

Subject to the provisions of section eight of this ordinance, every person born in Western Samoa after the commencement of this ordinance shall be a citizen of Western Samoa by birth.

4. *Citizenship by Descent*

A person born after the commencement of this ordinance shall be a citizen of Western Samoa by descent if

(*a*) He was born outside Western Samoa; and

(*b*) At the time of his birth his father or, in the case of a person born out of wedlock, his mother was a citizen of Western Samoa by virtue of any of the provisions of this ordinance other than the provisions of this section, or of section fourteen, or section fourteen as extended by section sixteen, of this ordinance.

CITIZENSHIP BY NATURALIZATION

5. *Naturalization of Alien Women married to Citizens of Western Samoa, and of Minors*

(1) The minister may, in his discretion, upon application made in the prescribed manner, grant a certificate of naturalization to an alien woman who after the date of the commencement of this ordinance has been married to a citizen of Western Samoa.

(2) The minister may, in his discretion, upon application made by a parent or guardian of any person who is a minor, the parent or guardian being a citizen of Western Samoa, grant a certificate of naturalization to that person.

6. *Naturalization of Aliens*

(1) The minister may, in his discretion, grant a certificate of naturalization to any alien of full age and capacity who makes application therefor in the prescribed manner, and satisfies the minister

(*a*) That he has either resided in Western Samoa or been in service under the Government of Western Samoa, or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of his application; and

(*c*) That he is of good character; and

(*d*) That he understands the responsibilities and privileges of citizenship of Western Samoa; and

(*e*) That he intends in the event of a certificate being granted to him

(i) To reside in Western Samoa; or

[1] Text printed separately under the authority of the Government of Western Samoa.

(ii) To enter into or continue in service under the Government of Western Samoa or service under an international organization of an official character, or service in the employment of a society, company, or body of persons established in Western Samoa; and

(*f*) That he produces evidence that he is unlikely to become a charge on the Government of Western Samoa.

(2) The minister, if in the special circumstances of any particular case he thinks fit, may allow residence in American Samoa to be reckoned for the purposes of paragraph (*b*) of sub-section 1 of this section.

(3) The minister may, in his discretion, grant a certificate of naturalization to any alien of full age and capacity who makes application therefor in the prescribed manner and satisfies the minister

(*a*) That he possesses the qualifications prescribed by paragraphs (*a*), (*c*), (*d*), (*e*), and (*f*) of sub-section 1 of this section; and

(*b*) That

(i) He was born in Western Samoa; or

(ii) His father, or in the case of a person born out of wedlock his mother, was born in Western Samoa; or

(iii) His father was a citizen of Western Samoa at the time of his birth; and

(*c*) That

(i) He has not acquired the citizenship of Western Samoa under the provisions of this ordinance; or

(ii) Having been a citizen of Western Samoa under the provisions of this ordinance, he has ceased to be such a citizen under the provisions of sub-section (i) of section eight or of section ten of this ordinance.

7. *Date of Naturalization*

A person to whom a certificate of naturalization has been granted under section five or section six of this ordinance shall be a citizen of Western Samoa by naturalization

(*a*) In the case of a person who has attained the age of twenty-one years, on and after the date upon which he takes an oath of allegiance in the manner and form provided by section eighteen of this ordinance;

(*b*) In the case of a person who has not attained that age, on and after the date upon which the certificate is granted.

LOSS OF CITIZENSHIP

8. *Loss of Citizenship by Birth*

(1) Any person

(*a*) Who is either

(i) A citizen of Western Samoa under the provisions of section three of this ordinance whose father or, in the case of a person born out of wedlock, whose mother was not at the date of the birth of that person a citizen of Western Samoa; or

(ii) A citizen of Western Samoa under the provisions of sub-section 2 or sub-section 3 of section thirteen of this ordinance; and

(*b*) Who has, on the day on which he attains the age of twenty-one years (being a day after the commencement of this ordinance), the nationality or citizenship of another country; and

(*c*) Who, for periods amounting in the aggregate to more than four years during the five years immediately preceding the day on which he attains the age of twenty-one years, was resident outside Western Samoa,

shall cease to be a citizen of Western Samoa, unless within one year after attaining the age of twenty-one years he files in accordance with regulations under this ordinance a declaration of retention of the citizenship of Western Samoa, and within two years after attaining the age of twenty-one years he resides in Western Samoa for periods amounting in the aggregate to not less than sixty days; and he takes during one of these periods the oath of allegiance in the manner and form provided by section eighteen of this ordinance.

(2) For the purposes of paragraph (*c*) of sub-section 1 of this section, a person shall be deemed not to be resident outside Western Samoa

(*a*) If he is absent from Western Samoa for the purpose of pursuing a full course of study or attending an institution of learning; or

(*b*) If he is the spouse or child of a citizen of Western Samoa who is absent from Western Samoa on service under the Government of Western Samoa or as an employee of an international organization of an official character.

(3) For the purposes of sub-section 1 of this section a person shall be deemed to be resident in Western Samoa if he is a person to whom the provisions of paragraph (*b*) of sub-section 2 of this section apply.

9. *Renunciation of Citizenship*

If any citizen of Western Samoa of full age and capacity who is also the citizen or national of another country makes a declaration in the prescribed manner of his renunciation of the citizenship of Western Samoa, the minister shall cause the declaration to be registered; and, upon the registration, that person shall cease to be a citizen of Western Samoa:

Provided that the minister may withhold registration if any such declaration is made during any war or armed conflict in which Western Samoa or any country which has any responsibility for the conduct of the external affairs of Western Samoa is involved.

10. *Automatic Deprivation of Citizenship*

A citizen of Western Samoa of full age and capacity shall cease to be a citizen of Western Samoa if

(*a*) He takes an oath or affirmation or makes any declaration or acknowledgment of allegiance or adherence to any foreign country; or

(*b*) He does or concurs in or adopts any act, other than marriage, whereby he may become a national or citizen of any foreign country or entitled to the rights, privileges, or immunities of a national or citizen of any such country; or

(*c*) He voluntarily enters or serves in the armed forces of a foreign country unless, prior to that entry or service, that entry or service is specifically authorized in writing by the minister; or

(*d*) He votes in a political election in a foreign country; or

(*e*) He travels under the protection of a valid passport of a foreign country in which he is described as a national or citizen of that country; or

(*f*) If he is convicted by a court martial or by a court of competent jurisdiction of any act of treason against, or of any attempt by force to overthrow, or bear arms against, Western Samoa.

11. *Deprivation of Citizenship of Naturalized Persons*

Where the minister is satisfied that a citizen of Western Samoa who is such by naturalization was naturalized by means of fraud, false representation, or the concealment of any material fact the minister may, by order, deprive that citizen of his citizenship of Western Samoa, and thereupon the person in respect of whom the order is made shall cease to be a citizen of Western Samoa.

. . .

PART II

TRANSITIONAL PROVISIONS

13. *Birth in Western Samoa before Commencement of Ordinance*

Any person born in Western Samoa before the date of the commencement of this ordinance shall on that date become a citizen of Western Samoa if he possesses any of the following qualifications — that is to say,

(1) His father, or in the case of a person born out of wedlock his mother, was born in Western Samoa; or

(2) He is resident in Western Samoa on that date and has been so resident for periods amounting in the aggregate to not less than three years during the four years immediately preceding that date; or

(3) He has not at that date attained the age of three years and has been resident in Western Samoa since the date of his birth.

14. *Birth outside Western Samoa*

(1) This section applies to any person born outside Western Samoa before the date of commencement of this ordinance whose father or, in the case of a person born out of wedlock, whose mother was born in Western Samoa.

(2) Any person of full age and capacity to whom this section applies who, within ten months after the date of the commencement of this ordinance, files a declaration of assumption of the citizenship of Western Samoa in the prescribed form and takes the oath of allegiance in the manner and form provided by section eighteen of this ordinance shall become a citizen of Western Samoa as from the date on which he takes the oath of allegiance.

15. *Residence in Western Samoa*

(1) This section applies to any person who has, during the eight years immediately preceding the date of the commencement of this ordinance, been resident in Western Samoa for periods amounting in the aggregate to not less than five years.

(2) Any person of full age and capacity to whom this section applies who, within ten months after the date of the commencement of this ordinance, files a declaration of assumption of the citizenship of Western Samoa in the prescribed form and takes the oath of allegiance in the manner and form provided by section eighteen of this ordinance shall become a citizen of Western Samoa as from the date on which he takes the oath of allegiance.

16. *Minors*

Any person not of full age or capacity to whom section fourteen or section fifteen of this ordinance applies shall become a citizen of Western Samoa if, within ten months after the date of the commencement of this ordinance, the parent or guardian of that person files on his behalf and in the prescribed form a declaration of assumption of the citizenship of Western Samoa.

17. *Married Women*

(1) Subject to the provisions of sub-section 2 of this section, a woman shall become a citizen of Western Samoa if she has, before the date of the commencement of this ordinance, been married to a person who falls within one of the following categories — that is to say,

(*a*) He has become a citizen of Western Samoa by virtue of any provision of sections thirteen, fourteen, and fifteen of this ordinance;

(*b*) His father or, in the case of a person born out of wedlock, his mother was born in Western Samoa;

(*c*) He was born in Western Samoa and, being a person who died before the date of the commencement of this ordinance, he had been resident in Western Samoa for periods amounting in the aggregate to not less than three years during the four years immediately preceding his death.

(2) A woman shall not acquire the citizenship of Western Samoa under this section in respect of her marriage to a person who predeceased her

(*a*) If she was not married to that person at the date of his death; or

(*b*) If after the date of the death of that person she has been married to another person.

PART III

SUPPLEMENTAL

18. *Oath of Allegiance*

(1) A person who is required to take the oath of allegiance under the provisions of any section of this ordinance shall take an oath of allegiance or, if he conscientiously objects to take an oath, shall make an affirmation of allegiance, in the manner provided by this section and in accordance with the form contained in the first schedule to this ordinance.

. . .

20. *Posthumous Children*

Any reference in 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 referring to the status or description of the father at the time of the father's death.

. . .

PART IV

ELECTORAL AND PASSPORT QUALIFICATIONS

26. *Electoral Qualification*

As from ten months after the date of the commencement of this ordinance, no person shall be qualified as an elector for the purpose of the elections to the Legislative Assembly of Western Samoa unless he is a citizen of Western Samoa and has taken an oath in the manner and form provided by section eighteen of this ordinance.

27. *Passport Qualification*

As from the date of commencement of this ordinance, no person shall be issued with the Western Samoa passport unless

(*a*) He is a citizen of Western Samoa and

(*b*) If he is a person of full age and capacity, he has taken an oath in the manner and form provided by section eighteen of this ordinance.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

TRUST TERRITORY OF THE CAMEROONS UNDER UNITED KINGDOM ADMINISTRATION

THE NIGERIA (NORTHERN CAMEROONS PLEBISCITE) ORDER IN COUNCIL, 1959[1]

3. (1) There shall be a plebiscite in the Northern Cameroons for the purpose of ascertaining which of the following alternatives would be preferred by the people of the Northern Cameroons upon the relinquishment by Her Majesty's Government in the United Kingdom of their responsibility for the government of the colony and protectorate of Nigeria — namely,

(*a*) That the Northern Cameroons should be part of the northern region of Nigeria; or

(*b*) That the future of the Northern Cameroons should be decided at a later date.

. . .

6. (1) Every person whose name is included in a register of voters prepared under regulations made under section 5 of the Nigeria (Electoral Provisions) Order in Council, 1958,[2] in respect of any area that constitutes a district, and who is entitled under such regulations to vote for the purpose of returning a member to the House of Representatives of the Federation of Nigeria shall, subject to the provisions of this article, be entitled, in that part of that area in which he is registered as being entitled to vote, to cast a vote in favour of one or other of the alternatives specified in paragraph 1 of article 3 of this order.

(2) No person shall be entitled, subject to the provisions of article 10 of this order,[3] to vote more than once in the plebiscite.

. . .

[1] Published as *Statutory Instruments*, 1959, No. 1304, by H.M. Stationery Office, London. The order was made on 28 July 1959 and entered into force on 5 August 1959. The result of the plebiscite favoured the second alternative set out in section 3 (1) of the order. The report of the United Nations Commissioner for the Supervision of the Plebiscite in the Cameroons under United Kingdom Administration is contained in United Nations documents T/1491 and T/1491/Add.1.

[2] The qualifications and disqualifications for registration as an elector under section 5 of the Nigeria (Electoral Provisions) Order in Council, 1958 are those set out in sections 4-6 of the Elections (House of Representatives) Regulations, 1958 (see *Yearbook on Human Rights for 1958*, p. 295) as applied to the northern region of the Federation of Nigeria.

[3] Section 10 provides for the taking of a fresh vote in a district where the result of voting has been declared invalid.

B. Non-Self-Governing Territories

AUSTRALIA

TERRITORY OF PAPUA

NOTE[1]

Corrective Institutions Ordinance 1959 (Papua and New Guinea)

Testator's Family Maintenance Ordinance 1959 (Papua and New Guinea)

Adoption of Children Ordinance 1959 (Papua and New Guinea)

Amendment of the Education Regulations (Papua and New Guinea) (No. 8 of 1959)

These ordinances and regulations are described in the note on the Trust Territory of New Guinea.[2]

Amendment of the Native Regulations (Papua) (No. 3 of 1959)

This amendment entirely removes the curfew restrictions formerly placed on natives in town areas.

By proclamation dated 3 August 1959, made under the *Education Ordinance 1952-1957*, attendance at school of all children not below the age of seven years and not over the age of fifteen years at Yule Island was made compulsory. This is the first time that compulsory education has been imposed in Papua.

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

[2] See p. 335.

BELGIUM

BELGIAN CONGO[1]

BASIC DECREE OF 17 AUGUST 1959 GUARANTEEING THE FREEDOM OF THE PRESS, OF ASSOCIATION AND OF ASSEMBLY[2]

Art. 1. The freedom to disseminate ideas by any means is guaranteed within the limitations fixed by decree. Prior authorization shall not be required.

When the author is known and resides in the Belgian Congo, proceedings may not be initiated against the publisher, printer or distributor.

Art. 2. The right to assemble in peaceful, unarmed meetings is guaranteed within the limitations fixed by decree; prior authorization shall not be required.

Outdoor assemblies and meetings in open and unroofed areas shall be fully subject to police regulations.

Art. 3. Freedom of association is guaranteed within the limitations fixed by decree. Prior authorization shall not be required.

The right to establish political parties is also recognized subject to respect for democratic principles, legality and law and order.

Art. 4. Trade union freedom is guaranteed within the limitations fixed by decree.

[1] The Belgian Congo became the independent State of the Republic of the Congo on 30 June 1960.

[2] Published in the *Bulletin officiel du Congo Belge*, 52nd year, No. 16 *bis*, of 27 August 1959. Translation by the United Nations Secretariat.

DECREE OF 17 AUGUST 1959 RELATING TO INDOOR PUBLIC MEETINGS[1]

Art. 1. Prior notice in writing shall be required for indoor public meetings.

Art. 2. Such notice shall indicate:

1. The place, date and time of the meeting;
2. Its purpose;
3. The exact names of the sponsors.

Art. 3. Such notice shall be given, not less than forty-eight hours before the meeting, to the District Administrator, his deputy or a chief of administrative *circonscription* designated by him and, in towns, to the burgomaster of the commune in which the meeting is to take place.

The authority to which notice is given shall make such notice public.

Art. 4. Representatives of the authorities may attend any public meeting.

Art. 5. Prior notice shall not be required for:

1. Public religious meetings held in houses of worship;
2. The opening of cafés, restaurants and similar establishments, and theatrical and cinematographic performances.

. . .

[1] Published in the *Bulletin officiel du Congo Belge*, 52nd year, No. 16 *bis*, of 27 August 1959. Translation by the United Nations Secretariat.

DECREE OF 17 AUGUST 1959 CONCERNING THE EXERCISE OF FREEDOM OF ASSOCIATION[1]

Art. 1. (1) Every association must, within thirty days of its formation, submit a declaration to the district commissioner or the first burgomaster of the city in which its headquarters are located.

The declaration shall include:

1. The name and the headquarters of the association;
2. Its aim and the purpose that it serves;
3. Full particulars of the persons taking part either in its management or its administration.

A copy of the articles of association shall be attached.

Notice of any change in respect of any of the particulars listed above or in the articles of association shall be given to the authority mentioned in the first paragraph by declaration within thirty days.

[1] Published in the *Bulletin officiel du Congo Belge*, 52nd year, No. 16 *bis*, of 27 August 1959. Translation by the United Nations Secretariat.

The obligation to make the declaration falls jointly on the president and the secretary of the association or, if no member of the association bears the title of president or secretary, on the actual directors of the association.

The authority receiving the declaration shall immediately give it official publication.

(2) For the purposes of the first paragraph, different branches of the same association shall each be considered as a separate association.

. . .

Art. 2. (1) The governor of the province may, after giving due notice, dissolve any association whose activities endanger, or are likely to endanger, public order or tranquillity.

The district commissioner or the first burgomaster, in case of urgency, may order the suspension of the activities of the association, on condition that the governor of the province is notified immediately. The latter shall give a ruling within sixty days after the date of the decision; if, at the expiration of that time, he has neither dissolved the association nor abrogated the decision of the district commissioner or the first burgomaster, that decision shall be null and void.

All decisions taken in accordance with the present paragraph shall be made public.

. . .

Art. 3. The present decree does not apply to associations which have complied with the special laws regulating their activities.[1]

[1] The report of the Legislative Council on the draft decree relating to the exercise of the freedom of association (*loc. cit.*) contains the following clarification:

"The draft therefore applies to all associations other than: civil and commercial concerns, which are already regulated by special decrees; trade associations, which are regulated by the decrees of 25 January 1957; scientific, religious or philanthropic associations, that have acquired legal status on the basis of the decree of 28 December 1888, which remains in force."

DECREE OF 17 AUGUST 1959 REGULATING THE EXERCISE OF THE FREEDOM OF THE PRESS IN THE BELGIAN CONGO[1]

Art. 1. Any person publishing a written periodical shall previously submit a declaration in writing to the governor of the province.

The declaration shall set out:

1. The title of the periodical;
2. Its aim and the purpose that it serves;
3. The exact names and functions of the members of its editorial board.

Any change made in any one of the above-mentioned points shall likewise be declared within a period of fifteen days.

Art. 2. The importation into and the circulation within the Belgian Congo of periodicals or other writings published outside the Belgian Congo, whatever the language, which are of a nature likely to disrupt law and order, may be prohibited by the Governor-General or his representative.

Art. 3. Irrespective of judicial proceedings, the Governor-General may suspend the publication of a periodical likely to endanger public order and tranquillity for a maximum period of six months.

. . .

[1] Published in the *Bulletin officiel du Congo Belge*, 52nd year, No. 16 *bis*, of 27 August 1959. Translation by the United Nations Secretariat.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

BASUTOLAND

THE BASUTOLAND (CONSTITUTION) ORDER IN COUNCIL, 1959

Made on 14 September 1959[1]

Part III

THE LEGISLATIVE COUNCIL

Interpretation

26. In this part of this order, unless the context otherwise requires,

. . .

"The Council" or "the Basutoland Council" means the Basutoland National Council established and constituted under section 27 of this order.

Establishment and Constitution of Basutoland Council

27. (1) There shall be a legislative council in and for Basutoland which shall be known as the Basutoland National Council.

(2) The Basutoland National Council shall consist of

(*a*) Four official members;

(*b*) Twenty-two chiefs;

(*c*) Forty elected members; and

(*d*) Fourteen nominated members.

. . .

Elected Members

33. The elected members of the Basutoland Council shall be persons who, being qualified for election as such in accordance with the provisions of section 38 of this order, shall be elected in accordance with such law as is enacted in pursuance of sub-section 4 or 5 of section 44 of this order.

. . .

General Qualifications for Elected and Nominated Members

38. Subject to the provisions of section 39 of this order, no person shall be qualified to be elected as an elected member or appointed as a nominated member of the Basutoland Council or, having been so elected or appointed, shall sit or vote in the Basutoland Council, unless he

(i) Is either a British subject or a British protected person; and

(ii) Possesses the other qualifications and none of the disqualifications of a voter specified in the law relating to elections to district councils for the time being in force; and

(iii) Is literate in the Sesuto language,

and, in the case of an elected member, is also an elected member of a district council.

Disqualifications for Elected and Nominated Membership

39. No person shall be qualified to be elected as an elected member or appointed as a nominated member of the Basutoland Council or, having been so elected or appointed, shall sit or vote in the Basutoland Council, who

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

(*b*) Holds any public office in a permanent capacity; or

(*c*) Is an unrehabilitated insolvent or undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law in force in any part of Her Majesty's dominions; or

(*d*) 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) of or exceeding twelve months imposed in any part of Her Majesty's dominions and has not received a free pardon; or

(*e*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in Basutoland; or

(*f*) Is disqualified for membership of the Council under any law for the time being in force in Basutoland relating to offences connected with elections; or

(*g*) Is not qualified to be registered as a voter

[1] Published in *Official Gazette of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland*, No. 3133, of 23 October 1959.

under any law for the time being in force in Basutoland relating to elections to district councils.

. . .

Election of Elected Members of the Council

44. (1) The elected members of the Basutoland Council shall be persons who, being qualified for election as such in accordance with the provisions of section 38 of this order, are elected by the elected members of the district councils in pursuance of sub-sections 3 and 4 of this section.[1]

. . .

[1] Since the district councils were thus to serve as electoral colleges for the purpose of elections to the Basutoland Council, certain provisions are quoted, under the next following heading, from the District Councils Elections Proclamation, 1959.

THE DISTRICT COUNCILS ELECTIONS PROCLAMATION, 1959

PROCLAMATION NO. 53 OF 1959, PROMULGATED ON 4 SEPTEMBER 1959[1]

Part I

PRELIMINARY

. . .

The Franchise

5. (1) Subject to the provisions of section six a person is entitled to be an elector under the provisions of this proclamation if such person

(*a*) Is a British subject or a British protected person; and

(*b*) Has passed his twenty-first birthday on the date of his application for registration as an elector; and

(*c*) Has paid tax at any time during the five years immediately preceding the date of his registration as an elector; and

(*d*) Has lawfully been resident in Basutoland for a continuous period of six months immediately before registration as an elector, absences for short temporary visits elsewhere being disregarded;

Provided that where any person who possesses the qualifications set out in paragraphs (*a*), (*b*) and (*c*) of this sub-section is engaged in work or labour outside Basutoland, he shall nevertheless be deemed to have the residential qualifications described in this paragraph if he satisfies the registration officer that either

(i) He has returned periodically to Basutoland to live there or has lived there for a period or periods which in the aggregate amount to not less than twelve months during the five years immediately preceding registration; or

(ii) He has continuously maintained a home in Basutoland for five years immediately preceding registration.

(2) It is hereby provided that all persons who are entitled to have their names placed or retained in any register of electors prepared under the provisions of this proclamation shall be entered in such register in a common list or roll without any distinction or classification whatever as to race, sex or otherwise.

[1] Published in *Official Gazette Extraordinary of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland*, No. 3124, of 4 September 1959.

Disqualification of Electors

6. No person shall be entitled to have his name entered or retained in any register of electors if such person

(*a*) Has taken any oath or made any declaration or acknowledgement of allegiance, obedience or adherence to any power or State not being part of the British Commonwealth or a British protectorate or British protected State or the Republic of Ireland, or does, concurs in or adopts any act done with the intention that he shall become a subject or citizen of any such power or State, or is the holder of a passport issued by any such power or State; or

(*b*) Is under any law found or declared to be insane; or

(*c*) Is disqualified for registration as an elector or for voting at any election by reason of his conviction of an election offence or illegal or corrupt practice; or

(*d*) 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 exceeding twelve 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.

. . .

Part 3

ELECTIONS

. . .

Elgibility and Nomination of Candidates

27. (1) Any person having the qualifications and none of the disqualifications set out in the third schedule shall be eligible for election as a member of a district council and may be nominated as a candidate for election in any electoral division of the district in which he has been registered as an elector.

. . .

[Sections 36 and 52 make provisions for the maintenance of secrecy at elections.]

. . .

THIRD SCHEDULE

. . .

QUALIFICATIONS AND DISQUALIFICATIONS OF CANDIDATES FOR ELECTION TO DISTRICT COUNCILS

1. No person shall be qualified to be elected as an elected member of a district council unless he

(i) Is either a British subject or a British protected person; and

(ii) Possesses the qualifications of an elector under this proclamation; and

(iii) Is literate in Sesuto.

2. No person shall be qualified to be elected as an elected member of a district council who

(i) Has taken any oath or made any declaration or acknowledgement of allegiance, obedience or adherence to any power or State not being part of the British Commonwealth or a British protectorate or British protected State or the Republic or Ireland, or does, concurs in or adopts any act done with the intention that he shall become a subject or citizen of any such power or State, or is the holder of a passport issued by any such power or State; or

(ii) Holds any public office in a temporary or permanent capacity; provided that if in any order in council relating to the constitution of Basutoland which may be made after the promulgation of this proclamation, a particular meaning is assigned to the term "public office", such meaning shall have effect as if enacted herein; or

(iii) Is an unrehabilitated insolvent or undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law in force in any part of Her Majesty's dominions; or

(iv) 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) of or exceeding twelve months imposed in any part of Her Majesty's dominions and has not received a free pardon; or

(v) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in Basutoland; or

(vi) Is incompetent to be registered as an elector or to vote at an election by reason of his conviction of an offence which is deemed to be an illegal or corrupt practice; or

(vii) Is not qualified to be registered as an elector under this proclamation; or

(viii) Is not literate in Sesuto; or

(ix) Has his normal place of residence outside Basutoland or who, although his normal place of residence is in Basutoland, has resided there for less than six months during the twelve months immediately preceding the date of nomination.

BRUNEI

THE CONSTITUTION OF THE STATE OF BRUNEI, 1959 of 29 September 1959[1]

Part I

PRELIMINARY

. . .

2. (1) In this constitution, unless the context otherwise requires

. . .

"British subject" has the meaning assigned to it by the British Nationality Act, 1948, as from time to time amended;

. . .

"Commonwealth country" means the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Ghana, the Federation of Malaya, the State of Singapore and any other country declared by Act of Parliament of the United Kingdom to be a Commonwealth country, and "part of the Commonwealth" means any Commonwealth country, any colony, protectorate or protected state, and any other territory administered by the government of any Commonwealth country;

. . .

"Muslim religion" means the Muslim religion according to Ahlissunnah Waljammaah;

. . .

Part II

RELIGION

3. (1) The religion of the State shall be the Muslim religion:

Provided that all other religions may be practised in peace and harmony by the persons professing them in any part of the State.

. . .

Part VI

THE LEGISLATIVE COUNCIL

23. There shall be a Legislative Council, to be styled in Malay the "Majlis Meshuarat Negeri", constituted in accordance with the provisions of this part.

24. The Legislative Council shall, subject to section 27, consist of eight *ex-officio* members, six official members, sixteen elected members and three nominated members.

. . .

[1] Published in *Supplement Extraordinary to the Government Gazette*, part II, of 29 September 1959.

27. (1) The elected members of the Legislative Council shall be persons who are members of district councils qualified for election as elected members of the Legislative Council under this constitution and, subject to sub-section 2,[1] shall be elected to the Legislative Council in accordance with the provisions of any written law in that behalf for the time being in force.

. . .

29. (1) Subject to sections 27 and 30, any person other than a regent who is a Brunei and who has attained the age of twenty-one years, shall be qualified to be elected as an elected member of the Legislative Council; . . .

(2) Until nationality legislation is brought into force, "a Brunei" means, for the purposes of this section, a person who is commonly accepted as a member of an indigenous branch of one of the following races — namely, Belait, Bisayah, Dusun, Kedayan, Malay, Murut or Tutong; and

(*a*) In the case of such race being Malay, professes the Muslim religion and conforms to Malay custom as practised in the State; and

(*b*) In any case, has either been born in the State or was born of a father who was a Brunei at the date of the birth of that person.

(3) In calculating, for the purposes of this section, a period of residence in the State

(*a*) A period of absence from the State of less than six months;

(*b*) A period of absence from the State for the purposes of education of such kind, in such country and for such time as may be prescribed by any written law; and

(*c*) A period of absence from the State for reasons of health or for any other cause prescribed by any written law, and for such time as may be so prescribed, shall be treated as residence in the State.

30. (1) No person shall be qualified to be appointed as an official member or a nominated member of the Legislative Council, or to be elected to be an elected member thereof, or having been so appointed or elected shall sit or vote therein, who

(*a*) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside the Commonwealth other than the Republic of Ireland;

(*b*) Is a person declared to be of unsound mind under any law in force in the State;

(*c*) Has been sentenced by a court in the State, in any part of the Commonwealth or in the Republic of Ireland to death or to imprisonment (by whatever name called) without the option of a fine:

Provided that this paragraph shall not apply to any person

(i) Until the time for lodging an appeal has lapsed or, if an appeal has been lodged, until such appeal has been dismissed or has been allowed but the appellate court has imposed a sentence of death or imprisonment (by whatever name called);

(ii) Who has received a free pardon;

(iii) If three years or more have elapsed since the termination of the imprisonment; or

(iv) In respect of whom the Sultan has, after full consideration of the circumstances, directed that this paragraph shall not apply;

(*d*) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the State or in any part of the Commonwealth;

(*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 the consideration for which exceeds in value the sum of one thousand dollars with the Government for or on account of the public service, and has not disclosed to the speaker the nature of such contract and his interest, or the interest of such 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;

(*f*) Is disqualified for membership of the Legislative Council under any written law for the time being in force relating to offences connected with elections; or

(*g*) In the case of an elected member, is disqualified for election by any written law for the time being in force by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or any connexion with, the conduct of any election or the compilation or revision of any electoral register.

(2) For the avoidance of doubt, it is declared that a person shall not be disqualified for election as an elected member of the Legislative Council by reason of the fact that he holds public office.

. . .

Part XI

MISCELLANEOUS

. . .

83. (1) Whenever it appears to the Sultan that an occasion of public danger exists whereby the security or economic life of the State, or any part thereof, is threatened, whether by war or external agression or internal disturbance, actual or threatened, he may by proclamation (hereinafter referred to as a "proclamation of emergency") declare a state of emergency either in the whole State or in such part of the State as may be specified in the proclamation.

(2) No proclamation of emergency shall be in force for more than two years, without prejudice, however,

[1] According to subsection 2, the Sultan may appoint a period of up to two years during which the elected members may be appointed by him instead of being elected.

to the issue of another such proclamation at or before the end of that period.

(3) When a proclamation of emergency has been made and so long as such proclamation is in force, the Sultan may make any orders whatsoever which he considers desirable in the public interest; and may prescribe penalties which may be imposed for any offence against any such order; and may provide for the trial by any court of persons guilty of such offences:

Provided that no such order shall confer any right to punish, without trial, by death, imprisonment or fine and that, except in so far as such procedure may be modified by any such order, the existing procedure in criminal cases shall apply in respect of any breach of any such order, or of any offence created by any such order, in respect of which breach or offence it is sought to make the offender liable to death, imprisonment or fine.

. . .

CYPRUS[1]

THE REGISTRATION OF ELECTORS LAW, 1959

No. 36 of 1959, of 9 November 1959[2]

2. (1) In this law, unless the context otherwise requires

. . .

"Election" includes

(*a*) The election of the first president of the republic;

(*b*) The election of the first vice-president of the republic;

(*c*) The election of the first members of the House of Representatives of the republic; and

(*d*) The election of the first members of the Communal Chambers of the republic;

. . .

"Greek" means a person who is a member of the Greek community of Cyprus;

"Greek constituency" means a constituency the electors of which are Greeks;

. . .

"Qualified person" means any person who is a British subject, and who

(*a*) Was born in Cyprus or whose father was born in Cyprus; or

(*b*) Has been ordinarily resident in Cyprus for a period or periods amounting in the aggregate to seven years during the fifteen years immediately preceding the qualifying date; or

(*c*) Is the wife of a person to whom any of the foregoing paragraphs applies;

. . .

"Republic" means the proposed republic of Cyprus;

"Turk" means a person who is a member of the Turkish community of Cyprus;

"Turkish constituency" means a constituency the electors of which are Turks;

. . .

(2) Any person who is a member of the Armenian, Maronite or Latin church in Cyprus shall, subject to the provisions of sub-section 2 of section 4, be registered in a Greek register.

(3) Any person who

(i) Is a qualified person;

(ii) Does not belong to the Greek or Turkish community;

(iii) Is not, under the provisions of sub-section 2 of this section, entitled to be registered in a Greek register,

may within a period of two weeks from the coming into operation of this law declare in writing to the governor that he fulfils each of the requirements (i) to (iii) above mentioned, and that he desires to be registered in a Greek or a Turkish register, as the case may be, and the governor, if satisfied of all the matter contained in such declaration, shall, by order published in the *Gazette*, declare that such person shall, and such person thereupon shall, be registered in a Greek or a Turkish register, as the case may be.

Part I

CONSTITUENCIES

3. For the purpose of the compilation of registers, Cyprus shall be divided into six Greek and six Turkish constituencies, the area and boundaries of which in each case shall correspond to those of the six districts of Nicosia, Limassol, Famagusta, Larnaca, Paphos and Kyrenia respectively, and each Greek and Turkish constituency shall be denominated in accordance with the district to which it corresponds.

Part II

QUALIFICATIONS AND DISQUALIFICATIONS OF ELECTORS

4. . . .

(2) Subject to the provisions of section 5, any person of or above the age of 21 years on the qualifying date who

[1] Cyprus became an independent State on 16 August 1960.

[2] Published in *The Statute Laws of Cyprus 1959*, the Government Printing Office, Nicosia.

(*a*) Is a qualified person, and

(*b*) Was ordinarily resident in Cyprus for a period (in this law referred to as "the qualifying period") of six months immediately preceding the qualifying date,

shall be entitled to be registered in a Greek or a Turkish register according to the community to which he belongs or in accordance with the provisions of sub-section 2 or of sub-section 3 of section 2 of this law.

(3) A person entitled to be registered in a Greek or in a Turkish register shall be registered in the constituency in which he has been ordinarily resident during a period of not less than four months immediately preceding the qualifying date, or, if he shall not have been so ordinarily resident for a period of four months continuously in any one constituency, he shall be entitled to be registered in the constituency in which he was first ordinarily resident during the qualifying period.

. . .

5. No person shall be entitled to be registered who

(*a*) Is throughout the whole of the qualifying period deprived of his liberty by lawful process of custody or imprisonment or is lawfully detained as a mental patient under the Mental Patients Law, or is adjudged under any law for the time being in force to be a person of unsound mind;

(*b*) Is on the qualifying date under any law for the time being in force in Cyprus disqualified from being registered or from voting at any election of whatsoever description by reason of his conviction of any electoral offence.

Part III

RIGHTS OF VOTING OF ELECTORS IN GREEK AND TURKISH CONSTITUENCIES

6. (1) The electors of each Greek constituency shall be qualified to vote in the election of the president of the republic, in the election of the Greek members of the House of Representatives and in the election of members of the Greek Communal Chamber.

(2) The electors of each Turkish constituency shall be qualified to vote in the election of the vice-president of the republic, in the election of Turkish members of the House of Representatives and in the election of members of the Turkish Communal Chamber.

. . .

16. This law shall continue in force until the date on which the constitution of the republic shall come into operation and shall thereupon expire.

. . .

THE ELECTIONS (PRESIDENT AND VICE-PRESIDENT OF THE REPUBLIC) LAW, 1959

No. 37 of 1959, of 20 November 1959[1]

Part I

PRELIMINARY

2. (1) In this law, unless the context otherwise requires,

"Candidate" means a person who is nominated for election as president or vice-president;

. . .

"Elector" means a person who pursuant to the Registration of Electors Law, 1959, is registered as an elector to vote at an election;

. . .

"President" means the first president of the republic;

. . .

"Qualified person" means any person who is a British subject, and who

(*a*) Was born in Cyprus or whose father was born in Cyprus; or

(*b*) Has been ordinarily resident in Cyprus for a period or periods amounting in the aggregate to seven years during the fifteen years immediately preceding the date of election; or

(*c*) Is the wife of a person to whom any of the foregoing paragraphs applies;

. . .

"Republic" means the proposed republic of Cyprus;

"Vice-President" means the first vice-president of the republic;

. . .

(2) Subject to sub-section 1, and unless the context otherwise requires, words or expressions contained in this law shall have the meanings respectively assigned to them by the Registration of Electors Law, 1959.

Part III

QUALIFICATIONS OF CANDIDATES

5. A person shall be qualified to be a candidate if, at the date of the election, such person

(*a*) Is a qualified person;

(*b*) Is an elector;

(*c*) Is of the age of thirty-five years or more;

[1] Published in *The Statute Laws of Cyprus 1959*, the Government Printing Office, Nicosia.

(*d*) Has not been convicted of an offence punishable with imprisonment for a period of over three years involving dishonesty or moral turpitude or is not subject to any disqualification imposed by a competent court for any electoral offence; and

(*e*) Is not suffering from a mental disease incapacitating such person from acting as president or vice-president,

and no other person shall be qualified to be so elected.

6. In addition to the qualifications required for a candidate under section 5, a candidate for election as president shall be a Greek and a candidate for election as vice-president shall be a Turk.

. . .

Part V

MISCELLANEOUS

. . .

44. This law shall continue in force until the date on which the constitution of the republic shall come into operation, and shall thereupon expire.

. . .

THE ELECTIONS (HOUSE OF REPRESENTATIVES AND COMMUNAL CHAMBERS) LAW, 1959

No. 47 of 1959, of 31 December 1959[1]

Part I

PRELIMINARY

. . .

2. (1) In this law, unless the context otherwise requires,

. . .

"Constitution" means the constitution of the proposed republic of Cyprus;

. . .

"Elector" means a person who, pursuant to the Registration of Electors Law, 1959, is registered as an elector to vote at an election;

. . .

"Greek Communal Chamber" means the Greek Communal Chamber which shall be established by the constitution;

"Greek constituency" means a constituency the electors of which are Greeks;

"House of Representatives" means the House of Representatives which shall be established by the constitution;

. . .

"Qualified person" means any person who is a British subject, and who

(*a*) Was born in Cyprus or whose father was born in Cyprus; or

(*b*) Has been ordinarily resident in Cyprus for a period or periods amounting in the aggregate to seven years during the fifteen years immediately preceding the date of the election; or

(*c*) Is the wife of a person to whom either of the foregoing paragraphs of this definition applies;

. . .

"Turkish Communal Chamber" means the Turkish Communal Chamber which shall be established by the constitution;

"Turkish constituency" means a constituency the electors of which are Turks.

(2) Subject to sub-section 1, and unless the context otherwise requires, words or expressions contained in this law, *mutatis mutandis*, have the meanings respectively assigned to them by the Elections (President and Vice-President of the Republic) Laws, 1959.[2]

. . .

Part II

CONSTITUENCIES

3. For the purpose of elections, Cyprus shall be divided into six Greek and six Turkish constituencies, the area and boundaries of which in each case shall correspond with those of the six districts of Nicosia, Limassol, Famagusta, Larnaca, Paphos and Kyrenia, respectively, and each Greek and Turkish constituency shall be denominated in accordance with the district with which it corresponds.

4. Each constituency shall return

(*a*) The number of Greek members of the House of Representatives specified in column A of part I of the first schedule, and the number of Turkish members of the house of representatives specified in column B of that part in relation to such constituency;

(*b*) The number of members of the Greek Communal Chamber specified in part II of the first schedule, and the number of members of the Turkish Communal Chamber specified in part III of the first schedule in relation to such constituency.

[1] Published in *The Statute Laws of Cyprus 1959*, the Government Printing Office, Nicosia.

[2] The words "the Elections (President and Vice-President of the Republic) Laws, 1959" signify Elections (President and Vice-President of the Republic) Law, 1959, subject to certain amendments adopted during 1959 which did not affect the provisions of the principal law, which are quoted in the present *Yearbook*.

Part III

QUALIFICATIONS OF CANDIDATES

5. (1) Subject to the provisions of sub-section 2 of this section and of section 6, a person shall be qualified to be a candidate if, on the day of nomination, he

(*a*) Is a qualified person;

(*b*) Is an elector;

(*c*) Is of the age of twenty-five years or more;

(*d*) Is not under sentence of imprisonment for a term of five years or more for any offence, or of imprisonment for a term of two years or more for any offence involving violence, injury to personal honour, dishonesty or moral turpitude;

(*e*) Is not labouring under a continuing disqualification of any kind imposed by a competent court for any electoral offence;

(*f*) Is not suffering from a mental disease incapacitating such person from acting as a member of the House of Representatives or as a member of a Communal Chamber,

and no other person shall be qualified to be so elected.

(2) No person shall be qualified to be a candidate for election as a member of the House of Representatives if on the day of nomination such person has been elected as a member of a Communal Chamber or is a candidate for election thereto, and no person shall be qualified to be a candidate for election as a member of a Communal Chamber if on the day of nomination such person has been elected as a member of the House of Representatives or is a candidate for election thereto.

6. In addition to the qualifications required for a candidate under section 5, a candidate for election as a Greek member of the House of Representatives or as a member of the Greek Communal Chamber shall be a Greek, and a candidate for election as a Turkish member of the House of Representatives or as a member of the Turkish Communal Chamber shall be a Turk.

. . .

Part VII

MISCELLANEOUS

. . .

75. This law shall continue in force until the date on which the constitution of the republic shall come into operation, and shall thereupon expire.[1]

. . .

[1] The Permanent Representative of Cyprus to the United Nations has communicated the information that the law expired on 16 August 1960, with the exception of certain provisions on by-elections.

GAMBIA

THE PROTECTORATE ELECTIONS ORDINANCE, 1959

ORDINANCE NO. 6 OF 1959, ASSENTED TO ON 31 DECEMBER 1959[1]

2. (1) In this ordinance, unless the context otherwise requires,

. . .

"House of Representatives" means the House of Representatives of the Gambia established and constituted by the order in council;

"Order in council" means such order as may be made by Her Majesty in Council to provide for a House of Representatives for the Gambia in place of the Legislative Council established by the Gambia (Constitution) Order in Council, 1954;[2]

Part II

QUALIFICATIONS AND DISQUALIFICATIONS OF VOTERS AT ELECTIONS

3. (1) Subject to the provisions of sub-section 2 of this section, every person (whether male or female) shall be entitled to be registered as a voter and, when registered, to vote at any election of the Member of the House of Representatives for the electoral district in which the town or village in which he is so registered is situated, who

(*a*) Is a British subject or a British protected person; and

(*b*) Has attained the age of twenty-one years; and

(*c*) For a period of at least twelve months immediately preceding the date on which the claim to be registered is made, has been ordinarily resident in the electoral district in which he wishes to be registered and to vote:

Provided that no person shall be entitled to be registered as a voter or to vote in more than one electoral district or in more than one town or village in that electoral district.

(2) Notwithstanding the provisions of sub-section 1 of this section, no person shall be registered as a voter thereunder, or having been registered thereunder shall be entitled to vote at the election of a Member of the House of Representatives who

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

[1] Published in *Supplement C to the Gambia Gazette No. 44 of 31 December 1959.*

[2] This step was made in the Gambia (Constitution) Order in Council, 1960, *Statutory Instruments* 1960, No. 701.

(*b*) Is serving a sentence of imprisonment; or

(*c*) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in the Gambia; or

(*d*) Is a head chief; or

(*e*) Is otherwise disqualified under this ordinance or under any other law for the time being in force.

(3) No person, who has been retained or employed for reward by or on behalf of a candidate at an election, for all or any of the purposes of such election, as an agent, clerk, messenger or in any other capacity, shall be entitled to vote at such election.

4. Every head chief, unless disqualified under this ordinance or under any other law for the time being in force, shall be entitled to vote at the election of a member or members of the House of Representatives required by the order in council to be elected by the head chiefs.

. . .

Part IX

OFFENCES RELATING TO ELECTIONS

. . .

[Section 31 of the ordinance, and the rules, set out in the second schedule to the ordinance, for the conduct of elections, make provisions to maintain the secrecy of voting.]

. . .

FEDERATION OF NIGERIA[1]

THE NIGERIA (CONSTITUTION) (AMENDMENT No. 3) ORDER IN COUNCIL, 1959[2]

69. The principal order[3] is amended by the insertion after section 243 (as set out in section 29 of the Nigeria (Constitution) (Amendment No. 2) Order in Council, 1959) of the following sections:

. . . 244. (1) Subject to the provisions of this section, the provisions contained in the sixth schedule to this order shall have effect throughout Nigeria.

(2) At any time when

(*a*) Her Majesty is at war; or

(*b*) There is in force a proclamation made by the Governor-General and published in the *Official Gazette* of the Federation declaring that a state of public emergency exists; or

(*c*) There is in force a resolution of each federal Legislative House in favour of which there were cast the votes of not less than two-thirds of all the members of the House declaring that democratic institutions in Nigeria are threatened by subversion,

measures may be taken in accordance with such provision as may be made in that behalf by a law enacted by the Federal Legislature (being either a specific law enacted with reference to a particular situation or a general law enacted in anticipation of situations that might arise thereafter) or by regulations made under the Emergency Powers Order in Council, 1939, as amended, derogating from the provisions of the sixth schedule to this order to such extent as may be reasonably justifiable in order to deal with the situation:

Provided that nothing in this subsection shall authorize a derogation from the provisions of paragraph 1 of that schedule except in respect of deaths resulting from lawful acts of war or from the provisions of paragraph 2 or 3 or sub-paragraph 7 of paragraph 5 of that schedule.

(3) A resolution passed by a Federal Legislative House for the purposes of sub-section 2 of this section shall remain in force for two years or such shorter period as may be specified therein:

Provided that any such resolution may be revoked at any time or may be extended from time to time for a further period not exceeding two years by resolution passed in like manner.

245. (1) Any question regarding the provisions of the sixth schedule to this order in their application to a region shall be heard and determined by the high court of the region, and the high court shall have power to make such orders, issue such writs and give such directions as it may think fit for the purposes of enforcing those provisions within the region.

(2) If any question regarding the provisions of the sixth schedule to this order in their application to a region arises in the course of proceedings before any court other than the high court of the region, that court may hear and determine that question.

(3) Nothing in this section shall prevent any court established for a region other than the high court from exercising jurisdiction in respect of any or all of the matters referred to in sub-section 1 of this

[1] The Federation of Nigeria became an independent State on 1 October 1960.

[2] Published as *Statutory Instruments*, 1959, No. 1772, by H.M. Stationery Office, London. The order was made on 19 October 1959, and the provisions quoted above entered into force on 24 October 1959.

[3] The principal order is the Nigeria (Constitution) Order in Council, 1954, extracts from which appeared in the *Yearbook on Human Rights for 1954*, pp. 359-62. This order, as amended in 1955, 1956, 1957 and 1958, was further amended by four orders in council made in 1959. Since a new constitution was adopted for the Federation in 1960, however (see the Nigeria (Constitution) Order in Council, 1960, *Statutory Instruments* 1960, No. 1652, entering into force on 1 October 1960), only certain amendments of 1959 concerning fundamental rights and their enforcement are noted in the present issue of the *Yearbook*.

section in accordance with any provision in that behalf in any law in force in the region.

(4) A law enacted by the Federal Legislature or the legislature of a region may confer upon the high court of that region such additional or supplementary powers as may appear to be necessary or desirable for enabling the court more effectively to exercise the jurisdiction conferred upon it by sub-section 1 of this section, and may make provision with respect to the practice and procedure of the court while exercising that jurisdiction.

(5) In this section, "region" includes the Southern Cameroons and Lagos.

(6) The provisions of this section shall have effect subject to the provisions of sections 144, 145, 146, 147 and 148 of this order.[1]

246. (1) Where

(*a*) Any person is detained in pursuance of provisions made in derogation from the provisions of paragraph 4 of the sixth schedule to this order by virtue of sub-section 2 of section 244 of this order; or

(*b*) The movements or residence within Nigeria of any person to whom paragraph 10 of that schedule applies are restricted otherwise than by order of a court in the interest of defence, public safety, public order, public morality or public health or in pursuance of provisions made in derogation from the provisions of that paragraph by virtue of that sub-section,

that person shall be entitled to require that his case should be referred within one month of the beginning of the period of detention or restriction and thereafter during that period at intervals of not more than six months to a tribunal established by law, and that tribunal may make recommendations concerning the necessity or expediency of continuing the detention or restriction to the authority that has ordered it:

Provided that such authority shall not, unless the Governor-General otherwise directs, be obliged to act in accordance with any such recommendation.

(2) A tribunal established for the purposes of this section shall be constituted in such manner as to ensure its independence and impartiality, and its chairman shall be appointed by the Chief Justice of the Federation from among the persons qualified to practise in Nigeria as barristers or solicitors.

. . .

71. (1) The principal order is amended by the insertion after the fifth schedule (as set out in the schedule to the Nigeria (Constitution) (Amendment) Order in Council, 1958) of the provisions set out in the schedule to this order.

(2) In its application to the northern region, the sixth schedule to the principal order (as set out in the schedule to this order) shall have effect as if sub-paragraph 10 of paragraph 5 were omitted.

(3) Sub-section 2 of this section shall cease to have effect on such date as may be fixed by the governor of the northern region by proclamation published in the *Official Gazette* of the region.

. . .

The Schedule

PROVISIONS TO BE INSERTED AS SIXTH SCHEDULE TO NIGERIA (CONSTITUTION) ORDER IN COUNCIL, 1954

Sixth Schedule. — FUNDAMENTAL RIGHTS

1. (1) No person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.

(2) A person shall not be regarded as having been deprived of his life in contravention of sub-paragraph 1 of this paragraph if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable

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

(ii) In order to effect an arrest or to prevent the escape of a person detained;

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

(iv) In order to prevent the commission by that person of a criminal offence.

(3) The use of force in any part of Nigeria in circumstances in which and to the extent to which it would be authorized in that part on the first day of November 1959 by the Code of Criminal Law established by the Criminal Code Ordinance as amended, shall be regarded as reasonably justifiable for the purposes of sub-paragraph 2 of this paragraph.

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

(2) Nothing in this paragraph shall invalidate any law by reason only that it authorizes the infliction in any part of Nigeria of any punishment that is lawful and customary in that part on the first day of November 1959.

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

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

(3) For the purposes of this paragraph, "forced labour" does not include

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

(*b*) Any labour required of members of the armed forces of the Crown in pursuance of their duties as such or, in the case of persons who have conscientious objections to military service, any labour required instead of such service;

(*c*) Any labour required in the event of an emergency or calamity threatening the life or well-being of the community; or

[1] These sections deal with courts and their jurisdiction.

(*d*) Any labour that forms part of normal communal or other civil obligations.

4. (1) No person shall be deprived of his personal liberty, save in the following cases, and in accordance with a procedure permitted by law:

(*a*) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty or in consequence of his unfitness to plead to a criminal charge;

(*b*) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(*c*) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(*d*) In the case of a minor, for the purpose of his education or welfare;

(*e*) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(*f*) For the purpose of preventing the unlawful entry of any person into Nigeria or for the purpose of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be promptly informed of the reasons for his arrest or detention and given particulars of any criminal offence with which he is charged.

(3) Any person who is arrested or detained in accordance with head (*c*) of sub-paragraph 1 of this paragraph shall be brought before a court without undue delay, and if he is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(4) Any person who is unlawfully arrested or detained shall be entitled to compensation.

(5) Nothing in this paragraph shall invalidate any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Crown or a member of a police force in execution of a sentence imposed by an officer of the armed forces of the Crown or a police force, as the case may be, in respect of an offence of which he has been found guilty and which is punishable by such detention.

5. (1) In the determination of his civil rights and obligations, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality:

Provided that nothing in this sub-paragraph shall invalidate any law by reason only that it confers on any person or authority power to determine questions arising in the administration of a law that affects or may effect the civil rights and obligations of any person.

(2) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in sub-paragraph 1 of this paragraph (including the announcement of the decisions of the court or tribunal) shall be held in public:

Provided that:

(*a*) A court or such a tribunal may exclude from its proceedings persons other than the parties thereto in the interest of defence, public safety, public order, public morality, the welfare of minors, the protection of the private lives of the parties, or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice; and

(*b*) If in any proceedings before a court or such a tribunal, the Governor-General or (in the case of proceedings in a court or tribunal in a region or the Southern Cameroons) the Governor or the Commissioner of the Cameroons, as the case may be, certifies that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard *in camera* and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter, including (without prejudice to the generality of the foregoing) such action for that purpose as the Governor-General may by regulation prescribe.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this sub-paragraph shall invalidate any law by reason only that it imposes upon any such person the burden of proving particular facts.

(5) Every person who is charged with a criminal offence shall be entitled

(*a*) To be informed promptly, in language that he understands and in detail, of the nature of the offence;

(*b*) To be given adequate time and facilities for the preparation of his defence;

(*c*) To defend himself in person or by legal representatives of his own choice;

(*d*) To examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as

those applying to the witnesses called by the prosecution;

(*e*) To have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence:

Provided that nothing in this sub-paragraph shall invalidate any law by reason only that it prohibits legal representation in native courts.

(6) When any person is tried for any criminal offence, the court shall keep a record of the proceedings, and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the record within a reasonable time upon payment of such fee as may be prescribed by law.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court; and no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

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

(10) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law.

6. (1) Every person shall be entitled to respect for his private and family life, his home and his correspondence.

(2) Nothing in this paragraph shall invalidate any law that is reasonably justifiable in a democratic society

(*a*) In the interest of defence, public safety, public order, public morality, public health or the economic well-being of the community; or

(*b*) For the purpose of protecting the rights and freedom of other persons.

7. (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observances if such instruction, ceremony or observances relate to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this paragraph shall invalidate any law that is reasonably justifiable in a democratic society

(*a*) In the interest of defence, public safety, public order, public morality or public health; or

(*b*) For the purpose of protecting the rights and freedom of other persons, including their rights and freedom to observe and practice their religions without the unsolicited interference of members of other religions.

8. (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Nothing in this paragraph shall invalidate any law that is reasonably justifiable in a democratic society

(*a*) In the interest of defence, public safety, public order, public morality or public health;

(*b*) For the purpose of protecting the rights, reputations and freedom of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, wireless broadcasting, television, or the exhibition of cinematograph films; or

(*c*) Imposing restrictions upon persons holding office under the Crown, members of the armed forces of the Crown or members of a police force.

9 (1) Every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to trade unions and other associations for the protection of his interests.

(2) Nothing in this paragraph shall invalidate any law containing any provisions that are reasonably justifiable in a democratic society —

(*a*) In the interest of defence, public safety, public order, public morality or public health;

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

(*c*) Imposing restrictions upon persons holding office under the Crown, members of the armed forces of the Crown or members of a police force.

10. (1) Every person to whom this paragraph applies is entitled to move freely throughout Nigeria and to reside in any part thereof; and no such person shall be expelled from Nigeria or refused entry thereto.

(2) Nothing in this paragraph shall invalidate any law that is reasonably justifiable in a democratic society

(*a*) Restricting the movements or residence of any person within Nigeria in the interest of defence, public safety, public order, public morality or public health; or

(*b*) For the removal of persons from Nigeria to be tried outside Nigeria for criminal offences or to undergo imprisonment outside Nigeria in execution of the sentences of courts in respect of criminal offences of which they have been found guilty.

(3) Nothing in this paragraph shall invalidate any law by reason only that it imposes restrictions with respect to the acquisition by any person of land or other property in Nigeria or any part thereof.

(4) This paragraph applies to any person who belongs to Nigeria.

(5) For the purposes of this paragraph a person shall be deemed to belong to Nigeria if he is a British subject or a British protected person, and

(*a*) Was born in Nigeria or of parents who at the time of his birth were ordinarily resident in Nigeria; or

(*b*) Has been ordinarily resident in Nigeria continuously for a period of seven years or more and since the completion of such period of residence has not been ordinarily resident continuously for a period of seven years or more in any other part of Her Majesty's dominions; or

(*c*) Has obtained the status of a British subject by reason of the grant by the Governor of Nigeria or the Governor-General of a certificate of naturalization under the British Nationality and Status of Aliens Act, 1914, the Naturalization of Aliens Ordinance, or the British Nationality Act, 1948; or

(*d*) Is the wife of a person to whom any of the foregoing heads applies not living apart from such person under a decree of a court or a deed of separation; or

(*e*) Is the child, stepchild or child adopted in a manner recognized by the law under the age of eighteen years of a person to whom any of the foregoing heads applies.

11. (1) A person of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person,

(*a*) Be subjected either expressly by, or in the practical application of, any law or any executive or administrative action of any government in Nigeria to disabilities or restrictions to which persons of other communities, tribes, places of origin, religions or political opinions are not made subject; or

(*b*) Be accorded either expressly by, or in the practical application of, any law or any such executive or administrative action any privilege or advantage that is not conferred on persons of other communities, tribes, places of origin, religions or political opinions.

(2) Nothing in this paragraph shall invalidate any law by reason only that

(*a*) It prescribes qualifications for service in an office under the Crown or as a member of the armed forces of the Crown or a member of a police force or for the service of a body corporate directly established by any law enacted by any legislature in Nigeria;

(*b*) It imposes restrictions with respect to the appointment of any person to an office under the Crown or as a member of the armed forces of the Crown or a member of a police force or to an office in the service of a body corporate directly established by any law enacted by any legislature in Nigeria;

(*c*) It imposes restrictions with respect to the acquisition by any person of land or other property in Nigeria or any part thereof;

(*d*) It imposes restrictions upon the employment, movements or residence within Nigeria of persons to whom paragraph 10 of this schedule does not apply or provides for the expulsion of such persons from Nigeria or the refusal to allow them to enter Nigeria; or

(*e*) It imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

12. In this schedule, unless it is otherwise expressly provided or required by the context,

"Court" means the federal supreme court, the high court of a region or the Southern Cameroons or Lagos, or a court established under section 142, 142D or 143 of this order (other than a court-martial), and includes the Judicial Committee of Her Majesty's Privy Council:

Provided that, in relation to a member of the armed forces of the Crown, it also includes a court-martial;

"Law" includes an unwritten rule of law;

"Member of the armed forces of the Crown" includes any person who is subject to military law;

"Member of a police force" includes a person who is subject to any law relating to the discipline of a police force;

"Minor" means a person who has not attained the age of general legal capacity under any law in force in Nigeria;

"Native court" means a court established by or under the Native Courts Law, 1956, or the Moslem Court of Appeal Law, 1956, of the northern region, the Customary Courts Law, 1957, of the western region, the Customary Courts Law, 1956, of the eastern region, or the Customary Courts Law, 1956, of the Southern Cameroons, as amended, or any law replacing any of those laws.

NORTHERN RHODESIA

THE NORTHERN RHODESIA (LEGISLATIVE COUNCIL) ORDER IN COUNCIL, 1959[1]

Part I

INTRODUCTORY

. . .

2. (1) The Northern Rhodesia (Legislative Council) Orders in Council, 1945 to 1954, the Northern Rhodesia (Legislative Council) (Validation of Membership) Order in Council, 1954, and the Northern Rhodesia (Electoral Provisions) Order in Council, 1958,[2] are hereby revoked.

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Part II

THE LEGISLATIVE COUNCIL

4. There shall be a Legislative Council in and for the Territory which shall consist of a speaker and, subject to section twelve of this order,[3] thirty members made up as follows — that is to say,

(*a*) Four *ex officio* members, who shall consist of the Chief Secretary to the Government, the Attorney-General, the Minister of Finance and the Minister of Native Affairs;

(*b*) Twenty-two elected members elected by persons registered under territorial law for the purposes of elections to the Council provided for by this section either as ordinary or as special voters and returned for the following constituencies, each of which shall return one member — that is to say,

(i) Twelve ordinary constituencies which shall together comprise all Crown lands in the western, central and southern provinces (other than such of those lands, if any, as may be prescribed) and any prescribed adjoining area of any native reserve or native trust land;

(ii) Six special constituencies which shall together comprise all parts of the Territory not for the time being included in the ordinary constituencies;

(iii) Two reserved African constituencies which shall together comprise all parts of the Territory for the time being included in the ordinary constituencies; and

(iv) Two reserved European constituencies which shall together comprise all parts of the Territory for the time being included in the special constituencies;

(*c*) Four nominated members appointed by the Governor acting, subject to section ten of this order, in his discretion, of whom

(i) Two (in this order separately referred to as "nominated official members") shall be appointed from among persons holding offices of emolument under the Crown in the Territory; and

(ii) Two (in this order separately referred to as "nominated unofficial members") shall be appointed from among persons who do not hold any office of emolument under the Crown.

. . .

6. A person shall not be qualified to be elected as an elected member at any election

(*a*) For an ordinary constituency, unless he is registered as an ordinary voter;

(*b*) For a special constituency, unless

(i) He is registered either as an ordinary voter or as a special voter; and

(ii) He has obtained the signature or mark of each of not less than two-thirds of the chiefs for the time being recognized under the Native Authority Ordinance or the Barotse Native Authority Ordinance, or under any territorial law amending or replacing either of those ordinances, as native

[1] Published as *Statutory Instruments* 1959, No. 105, by H.M. Stationery Office, London. The order was made on 19 January 1959 and entered into force on 24 January 1959. Speaking of the new constitution of the Territory, of which the order formed a part, paragraph 127 of *The Colonial Territories 1958-1959* (H.M. Stationery Office, London) states: "The constitution provides for a Legislative Council of 22 elected, two nominated and six official members presided over by a speaker. Twelve of the elected members are returned from 'ordinary' constituencies which include all the Crown land adjacent to the railway and some adjoining native reserves and native trust land; six are returned from 'special' constituencies, which cover the rest of the territory; two, who must be European, are returned from constituencies covering the same area as the six special constituencies; and two, who must be African, are returned from constituencies covering the same area as the 12 ordinary constituencies. There are sets of qualifications at higher levels for ordinary voters and lower levels for special voters. Ordinary and special voters vote together in each constituency, but the total votes of special voters in each ordinary constituency and each of the two constituencies reserved for Europeans cannot count for more than one-third of the total votes of the ordinary voters in that constituency. . . ."

In *Colonial Reports: Northern Rhodesia 1959* (H.M. Stationery Office), p. 103, it is observed: "All elected members of the Legislative Council are returned by, and become responsible to, a multi-racial electorate. Every qualified voter may vote twice, once for a member in a 'reserved' seat and once for another member, and at least one of his votes will always count in full.

"Franchise is conferred on all citizens of the United Kingdom and the colonies, citizens of Rhodesia and Nyasaland and British protected persons, male and female, over twenty-one years of age, subject to education, property or income, and residential qualifications."

[2] See *Yearbook on Human Rights for 1958*, pp. 296-7.

[3] Section 12 concerns the appointment of temporary members to replace *ex officio* or nominated members in certain circumstances.

authorities for areas contained within the constituency concerned, being a signature or mark given not earlier than ninety days before the day prescribed for the nomination of candidates at that election, to a certificate (which shall be irrevocable and, if so prescribed, in the prescribed form) that the chief has no objection to that person standing for election to the Council;

(*c*) For a reserved African constituency, unless he is an African and is registered as an ordinary voter; or

(*d*) For a reserved European constituency, unless he is a European and is registered as an ordinary voter,

nor shall he be so qualified for any description of constituency if a residence qualification is prescribed for a candidate for such a constituency in addition to that required for his registration as an ordinary or, as the case may be, special voter and he does not possess that additional qualification.

7. (1) Subject to sub-section 3 of this section, a person shall not be qualified for registration as a voter in any constituency, whether as an ordinary voter or as a special voter, unless

(*a*) He is a citizen of the United Kingdom and colonies or of the Federation, or is a British protected person by virtue of his connexion with the Territory; and

(*b*) He has attained the age of twenty-one years; and

(*c*) He has the prescribed residence qualifications; and

(*d*) He is able to complete, in English and without assistance, the prescribed form of application for registration or, if unable so to do by reason only of some physical incapacity,

(i) Is determined in the prescribed manner to have an adequate knowledge of the English language; or

(ii) If no such manner of determination has been prescribed, has sufficient knowledge of the English language to give the necessary instructions for the completion of that form on his behalf by the registering officer; and

(*e*) If so required by territorial law, he has taken in the prescribed form and manner an oath or affirmation of allegiance to Her Majesty.

(2) Subject to sub-sections 3 and 5 of this section, a person shall not be qualified for registration as an ordinary voter for any constituency unless he possesses one of the additional qualifications specified in part I of the first schedule to this order.

(3) Sub-sections 1 and 2 of this section shall not apply to any person who, immediately before the commencement date, was registered as a voter for the purpose of elections to the Legislative Council provided for by the Northern Rhodesia (Legislative Council) Orders in Council, 1945 to 1954.

(4) Subject to sub-section 5 of the section, a person shall not be qualified for registration as a special voter for any constituency unless

(*a*) He possesses one of the additional qualifications specified in part II of the first schedule to this order; and

(*b*) He does not possess any of the additional qualifications specified in part I of that schedule; and

(*c*) Either his application for registration is made before the end of the fourth period referred to in the said part II, or he has previously been so registered for that or some other constituency;

and any person registered as a special voter for any constituency who becomes the possessor of any of the additional qualifications specified in the said part I, and who applies in the prescribed manner to be registered as an ordinary voter for that constituency shall thereupon be registered accordingly and his registration as a special voter shall be cancelled.

(5) Any person who has at any time been registered for the purpose of elections to the council provided for by this order as an ordinary voter or a special voter for any constituency shall not be removed from, or refused registration on, the register of ordinary or, as the case may be, special voters for that or any other constituency by reason only of the fact that he does not for the time being possess any of the additional qualifications specified in part I or, as the case may be, part II of the first schedule to this order.

8. (1) Where, in any election of a member for an ordinary constituency or a reserved European constituency, the total number of special votes counted exceeds one-third of the total number of ordinary votes counted (any fraction of a vote in that one-third being disregarded), then, except for the purpose of determining whether or not any of the candidates should forfeit his deposit, each candidate shall be treated as having received such number of special votes (any fraction of a vote being disregarded) as bears the same proportion to the number of such votes actually received by that candidate as the said one-third bears to the said total number of special votes.

(2) In this section, the expressions "special votes" and "ordinary votes" mean votes cast by special voters or, as the case may be, ordinary voters.

. . .

First Schedule

ADDITIONAL QUALIFICATIONS REQUIRED FOR REGISTRATION AS VOTER

Part I. — *Ordinary Voters*

1. Subject to part III of this schedule, the additional qualifications required for registration as an ordinary voter are that the person applying therefor either

(*a*) Has an income qualification of not less than seven hundred and twenty pounds; or

(*b*) Has a property qualification of not less than fifteen hundred pounds; or

(*c*) Has completed a course of primary education of the prescribed standard, or possesses any prescribed alternative educational qualifications, and in either case has either

(i) An income qualification of not less than four hundred and eighty pounds; or

(ii) A property qualification of not less than one thousand pounds; or

(*d*) Has attended the first four years of a course of secondary education of the prescribed standard, or possesses any prescribed alternative educational qualifications, and in either case has either

(i) An income qualification of not less than three hundred pounds; or

(ii) A property qualification of not less than five hundred pounds; or

(*e*) Is a minister of religion of a prescribed class, or a member of a prescribed class of a prescribed religious body; or

(*f*) Is a chief of a prescribed class; or

(*g*) Is the wife of a person who for the time being possesses any of the qualifications specified in the foregoing sub-paragraphs of this paragraph.

Part II. — *Specal Voters*

2. Subject to part III of this schedule, the additional qualifications required for registration as a special voter are that the person applying therefor either

(*a*) Has an income qualification of not less than

(i) If the application is made during the first period, one hundred and fifty pounds;

(ii) If the application is made during the second period, three hundred pounds;

(iii) If the application is made during the third period, four hundred and fifty pounds;

(iv) If the application is made during the fourth period, six hundred pounds; or

(*b*) Has a property qualification of not less than

(i) If the application is made during the first period, five hundred pounds;

(ii) If the application is made during the second period, seven hundred and fifty pounds;

(iii) If the application is made during the third period, one thousand pounds;

(iv) If the application is made during the fourth period, twelve hundred and fifty pounds; or

(*c*) Has attended the first two years of a course of secondary education of the prescribed standard, or possesses any prescribed alternative educational qualifications, and in either case

(i) If the application is made during the first period, has an income qualification of not less than one hundred and twenty pounds;

(ii) If the application is made during the second period, has either an income qualification of not less than one hundred and fifty pounds or a property qualification of not less than five hundred pounds;

(iii) If the application is made during the third period, has either an income qualification of not less than two hundred pounds or a property qualification of not less than five hundred pounds;

(iv) If the application is made during the fourth period, has either an income qualification of not less than two hundred and fifty pounds or a property qualification of not less than five hundred pounds; or

(*d*) If the application is made after the end of the first period, has completed a course of primary education of the prescribed standard, or possesses any prescribed alternative educational qualifications, and in either case

(i) If the application is made during the second period, has either an income qualification of not less than two hundred and ten pounds or a property qualification of not less than six hundred pounds;

(ii) If the application is made during the third period, has either an income qualification of not less than three hundred pounds or a property qualification of not less than seven hundred and fifty pounds;

(iii) If the application is made during the fourth period, has either an income qualification of not less than three hundred and ninety pounds or a property qualification of not less than nine hundred pounds; or

(*e*) Is a member of a prescribed class of village headmen, tribal councillors or pensioners; or

(*f*) Is the wife of a person who for the time being possesses any of the qualifications specified in the foregoing sub-paragraphs of this paragraph.

3. References in paragraph 2 of this schedule to the first, second, third or fourth period, as the case may be, shall be construed as references to the period beginning in the case of the first period with the commencement date, or in any other case with the end of the immediately preceding period and ending with the end of such day as the Governor may by proclamation in the *Gazette* appoint for the purpose, being a day not earlier than one month nor later than two months after the date of the proclamation; and the Governor shall not appoint a day for the ending of any of the said periods unless he is satisfied that the total number of special voters for the time being registered in the Territory is not less than the total number of ordinary voters for the time being so registered, but subject to his being so satisfied shall appoint the following day or the earliest day thereafter which it is feasible to appoint — that is to say,

(*a*) In the case of the first period, the thirty-first day of December, nineteen hundred and sixty-one;

(*b*) In the case of the second period, the day falling three years after the day appointed for the ending of the first period;

(*c*) In the case of the third and fourth periods respectively, the day falling two years after the day appointed for the ending of the second or, as the case may be, third period.

Part III. — *General*

4. A person shall be treated for the purposes of part I or II of this schedule as having an income qualification of a particular amount if, and only if, during each of the two years immediately preceding his application for registration, he has been in bona fide receipt in his own right of an income of that amount; and in the computation of income,

(*a*) The value of any board or lodging which is provided for an employee by virtue of his employment and in respect of which he is not liable for any payment or deduction from his wages, and any money which, by virtue of his employment, is paid to any employee in respect of his board of lodging, shall be included; and

(*b*) In relation to any income resulting from a trade, business, undertaking, profession or calling, regard shall be had only to net income.

5. A person shall be treated for the purposes of the said part I or II as having a property qualification of a particular amount if, and only if, at the date of his application for registration he is the owner of immovable property within the Territory of that amount in value.

6. In paragraph 5 of this schedule, the expression "owner" means

(*a*) A holder in fee simple;

(*b*) A lessee in occupation under a lease of which the unexpired term is not less than ten years; or

(*c*) In relation to developed land forming part of a native reserve or native trust land, an African who is the holder of that land under native law and custom:

Provided that:

(i) Where any property is held in trust for any person, that person shall be deemed to be the owner thereof to the extent of his beneficial interest therein;

(ii) Where any property is beneficially owned by two or more persons as joint tenants, they shall be deemed to own it in equal undivided shares;

(iii) Where any property is owned by two or more persons in undivided shares, each of them shall be deemed to be the owner thereof to the extent of his share therein; and

(iv) A mortgagor in possession shall be deemed to be the owner of the property mortgaged.

7. For the purposes of paragraph 5 of this schedule, the value of any immovable property shall be taken to be

(*a*) In the case of property held in fee simple, the amount which the property, free of all encumbrances, would realize if at the date of the owner's application for registration as a voter it were sold in the open market by a willing seller to a willing buyer;

(*b*) In the case of leasehold property, either

(i) The value of the property under the foregoing sub-paragraph if it were held in fee simple by the lessee; or

(ii) A sum equal to one-hundredth part of that value for each year of the lease unexpired at the date of the lessee's application for registration as a voter,

whichever is the less;

(*c*) In the case of developed land forming part of a native reserve or native trust land, the value assessed in the prescribed manner of any buildings erected on and any prescribed improvements effected to that land.

8. Where a man is married under a system permitting of polygamy and has more than one wife, only the wife to whom he has been married for the longest period, or, if the system under which he is married recognizes any other wife to be the senior wife, only that other wife shall be deemed to be his wife for the purposes of sub-paragraph (*g*) of paragraph 1 or sub-paragraph (*f*) of paragraph 2 of this schedule.

9. If at any time the Governor is satisfied that, since the commencement date or the date of the last proclamation such as is hereinafter mentioned, whichever of those dates is the later, the purchasing power in the Territory of the currency of the Federation has decreased or increased to an extent equivalent to not less than ten per cent of that purchasing power at the commencement date, he may by proclamation in the *Gazette* direct that, as from such date not earlier than one month nor later than two months after the date of the proclamation as may be specified therein, parts I and II of this schedule shall have effect

(*a*) As if for the sums of money specified therein there were substituted such amounts as may be respectively specified in relation thereto in the direction, being amounts equal to the sums specified in the said parts I and II as originally enacted increased or, as the case may be, reduced by ten per cent for every complete ten per cent by which the Governor is satisfied that the said purchasing power is for the time being less or, as the case may be, greater than it was at the commencement date; or

(*b*) Where a proclamation made by virtue of sub-paragraph (*a*) of this paragraph is for the time being

in force, and the Governor is satisfied that the said purchasing power is for the time being the same as, or less than, ten per cent less or greater than it was at the commencement date, as if no proclamation had ever been made by virtue of the said sub-paragraph (*a*),

and on the date so specified in any such direction any previous proclamation under this paragraph shall cease to have effect; and the provisions of this schedule shall have effect subject to any such direction for the time being in force.

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PART III

INTERNATIONAL AGREEMENTS

INTERNATIONAL LABOUR ORGANISATION

MINIMUM AGE (FISHERMEN) CONVENTION, 1959

CONVENTION NO. 112, ADOPTED ON 19 JUNE 1959 BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FORTY-THIRD SESSION[1]

Art. 1. 1. For the purpose of this convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters.

2. This convention shall not apply to fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation.

Art. 2. 1. Children under the age of fifteen years shall not be employed or work on fishing vessels.

2. Provided that such children may occasionally take part in the activities on board fishing vessels during school holidays, subject to the conditions that the activities in which they are engaged

(*a*) Are not harmful to their health or normal development;

(*b*) Are not such as to prejudice their attendance at school; and

(*c*) Are not intended for commercial profit.

3. Provided further that national laws or regulations may provide for the issue in respect of children of not less than fourteen years of age of certificates permitting them to be employed in cases in which an educational or other appropriate authority designated by such laws or regulations is satisfied, after having due regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of the employment proposed, that such employment will be beneficial to the child.

Art. 3. Young persons under the age of eighteen years shall not be employed or work on coal-burning fishing vessels as trimmers or stokers.

Art. 4. The provisions of articles 2 and 3 shall not apply to work done by children on school-ships or training-ships, provided that such work is approved and supervised by public authority.

Art. 5. The formal ratifications of this convention shall be communicated to the Director-General of the International Labour Office for registration.

Art. 6. 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. 7. 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. 8. 1. The Director-General of the International Labour Office shall notify all members of 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. 9. 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. 10. 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.

[1] Published in International Labour Office: *Official Bulletin*, Vol. XLII, 1959, No. 1.

Art. 11. 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 7 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. 12. The English and French versions of the text of this convention are equally authoritative.

MEDICAL EXAMINATION (FISHERMEN) CONVENTION, 1959

CONVENTION NO. 113, ADOPTED ON 19 JUNE 1959 BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FORTY-THIRD SESSION[1]

Art. 1. 1. For the purpose of this convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters.

2. The competent authority may, after consultation with the fishing-boat owners' and fishermen's organizations concerned, where such exist, grant exemptions from the application of the provisions of this convention in respect of vessels which do not normally remain at sea for periods of more than three days.

3. This convention shall not apply to fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation.

Art. 2. No person shall be engaged for employment in any capacity on a fishing vessel unless he produces a certificate attesting to his fitness for the work for which he is to be employed at sea signed by a medical practitioner who shall be approved by the competent authority.

Art. 3. 1. The competent authority shall, after consultation with the fishing-boat owners' and fishermen's organizations concerned, where such exist, prescribe the nature of the medical examination to be made and the particulars to be included in the medical certificate.

2. When prescribing the nature of the examination, due regard shall be had to the age of the person to be examined and the nature of the duties to be performed.

3. In particular, the medical certificate shall attest that the person is not suffering from any disease likely to be aggravated by, or to render him unfit for, service at sea or likely to endanger the health of other persons on board.

Art. 4. 1. In the case of young persons of less than twenty-one years of age, the medical certificate shall remain in force for a period not exceeding one year from the date on which it was granted.

2. In the case of persons who have attained the age of twenty-one years, the competent authority shall determine the period for which the medical certificate shall remain in force.

3. If the period of validity of a certificate expires in the course of a voyage the certificate shall continue in force until the end of that voyage.

Art. 5. Arrangements shall be made to enable a person who, after examination, has been refused a certificate to apply for a further examination by a medical referee or referees who shall be independent of any fishing-boat owner or of any organization of fishing-boat owners or fishermen.

[The provisions of Articles 6-13 are identical with those of articles 5-12 respectively of the Minimum Age (Fishermen) Convention, 1959, quoted on p. 367 above, except that, in article 12 of the present text, the expression "article 8 above" appears instead of "article 7 above".]

[1] Published in International Labour Office: *Official Bulletin*, Vol. XLII, 1959, No. 1.

FISHERMEN'S ARTICLES OF AGREEMENT CONVENTION, 1959

CONVENTION NO. 114, ADOPTED ON 19 JUNE 1959 BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FORTY-THIRD SESSION[1]

Art. 1. 1. For the purpose of this convention, the term "fishing vessel" includes all registered or documented ships and boats of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters.

2. The competent authority may exempt from the application of the provisions of this convention fishing vessels of a type and size determined after consulta-

[1] Published in International Labour Office: *Official Bulletin*, Vol. XLII, 1959, No. 1.

tion with the fishing-boat owners' and fishermen's organizations concerned, where such exist.

3. The competent authority may, if satisfied that the matters dealt with in this convention are adequately regulated by collective agreements between fishing-boat owners or fishing-boat owners' organizations and fishermen's organizations, exempt from the provisions of the convention concerning individual agreements owners and fishermen covered by such collective agreements.

Art. 2. For the purpose of this convention, the term "fisherman" includes every person employed or engaged in any capacity on board any fishing vessel and entered on the ship's articles. It excludes pilots, cadets and duly indentured apprentices, naval ratings, and other persons in the permanent service of a government.

Art. 3. 1. Articles of agreement shall be signed both by the owner of the fishing vessel or his authorized representative and by the fisherman. Reasonable facilities to examine the articles of agreement before they are signed shall be given to the fisherman and, as the case may be, also to his adviser.

2. The fisherman shall sign the agreement under conditions which shall be prescribed by national law in order to ensure adequate supervision by the competent public authority.

3. The foregoing provisions shall be deemed to have been fulfilled if the competent authority certifies that the provisions of the agreement have been laid before it in writing and have been confirmed both by the owner of the fishing vessel or his authorized representative and by the fisherman.

4. National law shall make adequate provision to ensure that the fisherman has understood the agreement.

5. The agreement shall not contain anything which is contrary to the provisions of national law.

6. National law shall prescribe such further formalities and safeguards in respect of the completion of the agreement as may be considered necessary for the protection of the interests of the owner of the fishing vessel and of the fisherman.

Art. 4. 1. Adequate measures shall be taken in accordance with national law for ensuring that the agreement shall not contain any stipulation by which the parties purport to contract in advance to depart from the ordinary rules as to jurisdiction over the agreement.

2. This article shall not be interpreted as excluding a reference to arbitration.

Art. 5. A record of employment shall be maintained for every fisherman by or in a manner prescribed by the competent authority. At the end of each voyage or venture a record of service in regard to that voyage or venture shall be available to the fisherman concerned or entered in his service book.

Art. 6. 1. The agreement may be made either for a definite period or for a voyage or, if permitted by national law, for an indefinite period.

2. The agreement shall state clearly the respective rights and obligations of each of the parties.

3. It shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations:

(*a*) The surname and other names of the fisherman, the date of his birth or his age, and his birthplace;

(*b*) The place at which and date on which the agreement was completed;

(*c*) The name of the fishing vessel or vessels on board which the fisherman undertakes to serve;

(*d*) The voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;

(*e*) The capacity in which the fisherman is to be employed;

(*f*) If possible, the place at which and date on which the fisherman is required to report on board for service;

(*g*) The scale of provisions to be supplied to the fisherman, unless some alternative system is provided for by national law;

(*h*) The amount of his wages, or the amount of his share and the method of calculating such share if he is to be remunerated on a share basis, or the amount of his wage and share and the method of calculating the latter if he is to be remunerated on a combined basis, and any agreed minimum wage;

(*i*) The termination of the agreement and the conditions thereof — that is to say,

(i) If the agreement has been made for a definite period, the date fixed for its expiry;

(ii) If the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisherman shall be discharged;

(iii) If the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission: Provided that such period shall not be less for the owner of the fishing vessel than for the fisherman;

(*j*) Any other particulars which national law may require.

Art. 7. If national law provides that a list of crew shall be carried on board, the agreement shall either be recorded in or annexed to the list of crew.

Art. 8. In order that the fisherman may satisfy himself as to the nature and extent of his rights and obligations, the competent authority shall lay down the measures to be taken to enable clear information

to be obtained on board as to the conditions of employment.

Art. 9. An agreement entered into for a voyage, for a definite period, or for an indefinite period, shall be duly terminated by

(*a*) Mutual consent of the perties;

(*b*) Death of the fisherman;

(*c*) Loss or total unseaworthiness of the fishing vessel;

(*d*) Any other cause that may be provided for in national law.

Art. 10. National law, collective agreements or individual agreements shall determine the circumstances in which the owner or skipper may immediately discharge a fisherman.

Art. 11. National law, collective agreements or individual agreements shall also determine the circumstances in which the fisherman may demand his immediate discharge.

Art. 12. Except as otherwise provided therein, effect may be given to the provisions of this convention by national law or by collective agreements.

[The provisions of articles 13-20 are identical with those of articles 5-12 respectively of the Minimum Age (Fishermen) Convention, 1959, quoted on p. 367 above, except that, in article 19 of the present text, the expression "article 15 above" appears instead of "article 7 above".]

OCCUPATIONAL HEALTH SERVICES RECOMMENDATION, 1959

RECOMMENDATION NO. 112, ADOPTED ON 24 JUNE 1959 BY THE INTERNATIONAL LABOUR CONFERENCE AT ITS FORTY-THIRD SESSION[1]

I. DEFINITION

1. For the purpose of this recommendation, the expression "occupational health service" means a service established in or near a place of employment for the purposes of

(*a*) Protecting the workers against any health hazard which may arise out of their work or the conditions in which it is carried on;

(*b*) Contributing towards the workers' physical and mental adjustment, in particular by the adaptation of the work to the workers and their assignment to jobs for which they are suited; and

(*c*) Contributing to the establishment and maintenance of the highest possible degree of physical and mental well-being of the workers.

II. METHODS OF IMPLEMENTATION

2. Having regard to the diversity of national circumstances and practices, occupational health services may be provided, as conditions require

(*a*) By virtue of laws or regulations;

(*b*) By virtue of collective agreement or as otherwise agreed upon by the employers and workers concerned; or

(*c*) In any other manner approved by the competent authority after consultation with employers' and workers' organizations.

III. ORGANIZATION

3. Depending on the circumstances and the applicable standards, occupational health services

(*a*) Should either be organized by the undertakings themselves or be attached to an outside body;

(*b*) Should be organized

(i) As a separate service within a single undertaking; or

(ii) As a service common to a number of undertakings.

4. In order to extend occupational health facilities to all workers, occupational health services should be set up for industrial, non-industrial and agricultural undertakings and for public services: Provided that where occupational health services cannot immediately be set up for all undertakings, such services should be established in the first instance

(*a*) For undertakings where the health risks appear greatest;

(*b*) For undertakings where the workers are exposed to special health hazards;

(*c*) For undertakings which employ more than a prescribed minimum number of workers.

5. Where the organization of an occupational health service, as defined in this recommendation, is not for the time being practicable for geographical or other reasons defined by national laws or regulations, the undertaking should make arrangements with a physician or a local medical service for

(*a*) Administering emergency treatment;

(*b*) Carrying out medical examinations prescribed by national laws or regulations; and

(*c*) Exercising surveillance over hygiene conditions in the undertaking.

IV. FUNCTIONS

6. The role of occupational health services should be essentially preventive.

7. Occupational health services should not be required to verify the justification of absence on grounds of sickness; they should not be precluded from ascertaining the conditions which may have led to a

[1] Published in International Labour Office: *Official Bulletin*, Vol. XLII, 1959, No. 1.

worker's absence on sick leave and obtaining information about the progress of the worker's illness, so that they will be better able to evaluate their preventive programme, discover occupational hazards, and recommend the suitable placement of workers for rehabilitation purposes.

8. The functions of occupational health services should be progressively developed, in accordance with the circumstances and having regard to the extent to which one or more of these functions are adequately discharged in accordance with national law or practice by other appropriate services, so that they will include in particular the following:

(*a*) Surveillance within the undertaking of all factors which may affect the health of the workers and advice in this respect to management and to workers or their representatives in the undertaking;

(*b*) Job analysis or participation therein in the light of hygienic, physiological and psychological considerations and advice to management and workers on the best possible adaptation of the job to the worker having regard to these considerations;

(*c*) Participation, with the other appropriate departments and bodies in the undertaking, in the prevention of accidents and occupational diseases and in the supervision of personal protective equipment and of its use, and advice to management and workers in this respect;

(*d*) Surveillance of the hygiene of sanitary installations and all other facilities for the welfare of the workers of the undertaking, such as kitchens, canteens, day nurseries and rest homes and, as necessary, surveillance of any dietetic arrangements made for the workers;

(*e*) Pre-employment, periodic and special medical examinations — including, where necessary, biological and radiological examinations — prescribed by national laws or regulations, or by agreements between the parties or organizations concerned, or considered advisable for preventive purposes by the industrial physician; such examinations should ensure particular surveillance over certain classes of workers, such as women, young persons, workers exposed to special risks and handicapped persons;

(*f*) Surveillance of the adaptation of jobs to workers, in particular handicapped workers, in accordance with their physical abilities, participation in the rehabilitation and retraining of such workers and advice in this respect;

(*g*) Advice to management and workers on the occasion of the placing or reassignment of workers;

(*h*) Advice to individual workers at their request regarding any disorders that may occur or be aggravated in the course of work;

(*i*) Emergency treatment in case of accident or indisposition, and also, in certain circumstances and in agreement with those concerned (including the worker's own physician), ambulatory treatment of workers who have not been absent from work or who have returned after absence;

(*j*) Initial and regular subsequent training of first-aid personnel, and supervision and maintenance of first-aid equipment in co-operation, where appropriate, with other departments and bodies concerned;

(*k*) Education of the personnel of the undertaking in health and hygiene;

(*l*) Compilation and periodic review of statistics concerning health conditions in the undertaking;

(*m*) Research in occupational health or participation in such research in association with specialized services or institutions.

9. Where one or more of the functions enumerated in the preceding paragraph are carried out, in accordance with national law or practice, by appropriate services other than occupational health services, these should provide the industrial physician with any relevant information he may wish to request.

10. Occupational health services should maintain close contact with the other departments and bodies in the undertaking concerned with questions of the workers' health, safety or welfare, and particularly the welfare department, the safety department, the personnel department, the trade union organs in the undertaking, safety and health committees and any other committee or any person in the undertaking dealing with health or welfare questions.

11. Occupational health services should also maintain relations with external services and bodies dealing with questions of the health, safety, retraining, rehabilitation, reassignment and welfare of the workers.

12. (1) Occupational health services should begin a confidential personal medical file at the time of a worker's pre-employment examination or first visit to the service and should keep the file up to date at each succeeding examination or visit.

(2) Occupational health services should maintain appropriate records, so that they can provide any necessary information concerning the work of the service and the general state of health of the workers, subject to the provisions of paragraph 21.

V. Personnel and Equipment

13. Every occupational health service should be placed under the direction of a physician who will be directly responsible for the working of the service either to the management or to the body to which the service is subordinated.

14. The physicians in occupational health services should not have under their care a greater number of workers than they can adequately supervise, due account being taken of the particular problems that may be associated with the type and nature of the industry concerned.

15. The physicians in occupational health services should enjoy full professional and moral independence

of both the employer and the workers. In order to safeguard this independence national laws or regulations, or agreements between the parties or organizations concerned, should lay down the terms and conditions of employment of industrial physicians and, in particular, the conditions concerning their appointment and the termination of their employment.

16. The physician in charge of an occupational health service should have received, as far as possible, special training in occupational health, or at least should be familiar with industrial hygiene, special emergency treatment and occupational pathology, as well as with the laws and regulations governing the various duties of the service. The physician should be given the opportunity to improve his knowledge in these fields.

17. The nursing staff attached to occupational health services should possess qualifications according to the standards prescribed by the competent body.

18. The first-aid personnel should

(*a*) Consist exclusively of suitably qualified persons; and

(*b*) Be readily available during working hours.

19. The premises and equipment of occupational health services should conform to the standards prescribed by the competent body.

VI. Necessary Conditions for Performance of Functions

20. In order that they may efficiently perform their functions, occupational health services should

(*a*) Have free access to all work places and to the ancillary installations of the undertaking;

(*b*) Inspect the work places at appropriate intervals in co-operation, where necessary, with other services of the undertaking;

(*c*) Have access to information concerning the processes, performance standards and substances used or the use of which is contemplated;

(*d*) Be authorized to undertake, or to request that approved technical bodies undertake,

(i) Surveys and investigations on potential occupational health hazards, for example by the sampling and analysis of the atmosphere of work places, of the products and substances used, or of any other material suspected of being harmful;

(ii) The assessment of harmful physical agents;

(*e*) Be authorized to request the competent authorities to ensure compliance with occupational health and safety standards.

21. All persons attached to occupational health services should be required to observe professional secrecy as regards both medical and technical information which may come to their knowledge in the exercise of the functions and activities enumerated above, subject to such exceptions as may be provided by national laws or regulations.

VII. General Provisions

22. All workers and their organizations should co-operate fully in attaining the objectives of occupational health services.

23. The services provided by occupational health services in pursuance of this recommendation should not involve the workers in any expense.

24. Where national laws or regulations do not provide otherwise, and in the absence of agreement between the parties concerned, the expense of the organization and operation of occupational health services should be borne by the employer.

25. National laws or regulations should specify the authority responsible for supervising the organization and operation of occupational health services. They may, in appropriate cases, confer on recognized technical bodies the role of advisers in this field.

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS[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 1959, the following became parties to the convention, by instruments of ratification or accession deposited on the dates indicated: Colombia (27 October), Finland (18 December),[2] India (27 August)[2] and Iraq (20 January).

2. *Convention relating to the Status of Refugees (Geneva, 1951)* (see *Yearbook on Human Rights for 1951*, pp. 581-8)

Yugoslavia became a party to the convention, by instrument of ratification deposited on 15 December 1959.

3. *Convention on the Political Rights of Women (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 375-6)

During 1959, Guatemala[2] and the Republic of Korea became parties to the convention, by instruments of ratification or accession deposited on 7 October and 23 June respectively.

4. *Convention on the International Right of Correction (New York, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 373-5)

No states became parties to the convention during 1959.

5. *Slavery Convention of 1926 as amended by the Protocol of 7 December 1953 (New York, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 345-6)

During 1959, Jordan, Morocco and the Ukrainian Soviet Socialist Republic became parties to the convention as amended by the protocol, by instruments of ratification or accession deposited on 5 May, 11 May and 27 January respectively.

6. *Convention on the Status of Stateless Persons (New York, 1954)* (see *Yearbook on Human Rights for 1954*, pp. 369-75)

During 1959, the United Kingdom of Great Britain and Northern Ireland[3] and Yugoslavia became parties to the convention, by instruments of ratification or accession deposited on 16 April and 9 April respectively.

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 1959, the following became parties to the convention, by instruments of ratification or accession deposited on the dates indicated: China (28 May), Finland (1 April), Federal Republic of Germany (14 January), Iran (30 December), Mexico (30 June), Morocco (11 May), Portugal (10 August) and Sweden (28 October).

8. *Convention on the Nationality of Married Women (New York, 1957)* (see *Yearbook on Human Rights for 1957*, pp. 301-2)

During 1959, the following became parties to the convention, by instruments of ratification or accession deposited on the dates indicated: Canada (21 October), Denmark (22 June), Federation of Malaya (24 February), Hungary (3 December), Poland (3 July) and Yugoslavia (13 March).

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 1959.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (see *Yearbook on Human Right for 1948*, pp. 425-7)

No States ratified the convention during 1959.

3. *Freedom of Association and Protection of the Rights to Organize Convention, 1948* (see *Yearbook on Human Rights for 1948*, pp. 427-30)

During 1959, the ratifications of Bulgaria and Guinea were registered, on 8 June and 2 January

[1] Concerning the status of these agreements at the end of 1958, see *Yearbook on Human Rights for 1958*, pp. 312-4. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of the Organization of American States and the Council of Europe was furnished by the International Labour Office, the Pan American Union and the Secretariat-General of the Council of Europe, respectively. The information concerning the Geneva conventions of 12 August 1949 was taken from the *Annual Report, 1959* of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depositary), the information concerning agreements adopted under the auspices of UNESCO was furnished by the secretariat of UNESCO.

[2] Subject to a declaration or reservation, or both.

[3] Subject to a declaration or reservation, or both.

respectively. (Guinea confirmed its obligations under the convention, which France had previously declared applicable.)

4. *Right to Organise and Collective Bargaining Convention, 1949* (see *Yearbook on Human Rights for 1949*, pp. 291-2)

During 1959, the ratifications of the following were registered, on the dates indicated: Bulgaria (8 June), Ecuador (28 May), Ghana (2 July) and Guinea (26 March).

5. *Equal Remuneration Convention, 1951* (see *Yearbook on Human Rights for 1951*, pp. 469-70)

The ratification of Norway was registered on 24 September 1959.

6. *Social Security (Minimum Standards) Convention, 1952* (see *Yearbook on Human Rights for 1952*, pp. 377-89)

The ratification of Belgium as regards parts II-X of the convention was registered on 26 November 1959.

7. *Maternity Protection Convention (Revised), 1952* (see *Yearbook on Human Rights for 1952*, pp. 389-92)

No States ratified the convention during 1959.

8. *Abolition of Penal Sanctions (Indigenous Workers) Convention*, 1955 (see *Yearbook on Human Rights for 1955*, pp. 325-7)

The ratification of Iran was registered on 13 April 1959.

9. *Abolition of Forced Labour Convention, 1957* (see *Yearbook on Human Rights for 1957*, pp. 303-4)

During 1959, the ratifications of the following were registered, on the dates indicated: Canada (14 July), China (31 March), Costa Rica (4 May), Federal Republic of Germany (22 June), Guatemala (9 December), Iran (13 April), Iraq (15 June), Mexico (1 June), Netherlands (18 February), Portugal (23 November) and Tunisia (12 January).

The convention came into force on 17 January 1959.

10. *Discrimination (Employment and Occupation) Convention, 1958* (see *Yearbook on Human Rights for 1958*, pp. 307-8)

During 1959, the ratifications of the following were registered, on the dates indicated: Iraq (15 June), Israel (12 January), Liberia (22 July), Norway (24 September), Portugal (19 November) and Tunisia (14 September).

11. *Minimum Age (Fishermen) Convention, 1959* (see p. 367 above)

No States ratified the convention during 1959.

12. *Medical Examination (Fishermen) Convention, 1959* (see p. 368 above)

No States ratified the convention during 1959.

13. *Fishermen's Articles of Agreement Convention, 1959* (see p. 368 above)

No States ratified the convention during 1959.

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)

Iran became a party to the agreement, by instrument of ratification deposited on 30 December 1959.

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)

Norway became a party to the agreement, by instrument of acceptance deposited on 2 April 1959.

3. *Universal Copyright Convention and Protocols thereto (Geneva, 1952)* (see *Yearbook on Human Rights for 1952*, pp. 398-403)

During 1959, Brazil, Czechoslovakia and Lebanon became parties to the convention, on 13 October, 6 October and 17 July respectively. The ratification of Brazil and the accession of Lebanon referred also to protocols I, II and III, while the accession of Czechoslovakia referred also to protocols II and III.

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 1959, Iran, Nicaragua and Pakistan became parties to the convention, on 22 June, 25 November and 27 March respectively.

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 1959.

2. *Inter-American Convention on the Granting of Political Rights to Women (Bogotá, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 438-9)

Colombia became a party to the convention, by instrument of ratification deposited on 3 June 1959.

3. *Inter-American Convention on the Granting of Civil Rights to Women (Bogotā, 1948)* (see *Yearbook on Human Rights for 1948*, pp. 439-40)

Colombia became a party to the convention, by instrument of ratification deposited on 3 June 1959.

4. *Convention on Diplomatic Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 330-2)

No States became parties to the convention during 1959.

5. *Convention on Territorial Asylum (Caracas, 1954)* (see *Yearbook on Human Rights for 1955*, pp. 329-30)

No States became parties to the convention during 1959.

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 States became parties to the convention during 1959.

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)

No States became parties to the protocol during 1959.

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)

No States became parties to the agreement or the protocol during 1959.

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)

No States became parties to the agreement or the protocol during 1959.

5. *European Convention on Social and Medical Assistance and Protocol thereto (Paris, 1953)* (see *Yearbook on Human Rights for 1953*, pp. 359-61)

No States became parties to the convention or the protocol during 1959.

6. *European Convention on Establishment (Paris, 1955)* (see *Yearbook on Human Rights for 1956*, pp. 292-7)

No States became parties to the convention during 1959.

VI. Other Instruments

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1. Publications containing texts of relevant laws, regulations, etc., and comprehensive codes, such as the Criminal Code and the Criminal Procedure Code.

2. Editions of legal provisions containing detailed commentaries.

3. Texts of international agreements relevant to human rights, adhered to by Yugoslavia.

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